

CALIFORNIA COASTAL COMMISSION

South Coast District Office
301 E. Ocean Blvd., SUITE 300
Long Beach, CA 90802-4830
VOICE (562) 590-5071
FAX (562) 590-5084



W11b

Filed: 01/16/2020
49th Day: 03/27/2020
Staff: A. Spencer-LB
Staff Report: 04/30/2020
Hearing Date: 05/12/2020

STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

Appeal No.: A-5-LGB-21-0023

Applicant: Mohammad Honarkar

Local Government: City of Laguna Beach

Local Decision: Approval with Conditions

Appellants: Mark & Sharon Fudge

Project Location: 425 S. Coast Highway, Laguna Beach, Orange County
(APN: 644-076-05)

Project Description: Appeal by Mark and Sharon Fudge from decision of City of Laguna Beach Local CDP No. 20-7925 for repair and improvements to the Hotel Laguna.

Staff Recommendation: Determine that a substantial issue exists

IMPORTANT HEARING PROCEDURE NOTE: The Commission will not take public testimony during the “substantial issue” phase of the appeal hearing unless at least three Commissioners request it. If the Commission finds that the appeal raises a substantial issue, the “de novo” phase of the hearing will follow, during which the Commission will take public testimony.

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.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which appeal number A-5-LGB-21-0023 has been filed for the following reasons: (1) the City did not require a bluff edge determination for the project site and thus it is not possible for the City to make findings of consistency with the coastal bluff development policies of the certified Local Coastal Program (“LCP”); (2) the City approved development on the sandy beach, which runs counter to the LCP policies; (3) the City did not adequately analyze whether the proposed project would trigger a or would increase the size or degree of existing nonconformity with respect to the LCP; and (3) the City’s approval of the project could extend uses of an unpermitted deck/patio that encroaches onto a bluff face.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE	4
II. APPELLANTS’ CONTENTIONS	4
III. LOCAL GOVERNMENT ACTION.....	4
IV. APPEAL PROCEDURES.....	6
V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE	8
A. PROJECT DESCRIPTION AND LOCATION.....	8
B. LOCAL COASTAL PROGRAM CERTIFICATION	9
C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS.....	9

APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

[Exhibit 1 – Project Location](#)

[Exhibit 2 – Approved Project Plans](#)

[Exhibit 3 – Appeal](#)

[Exhibit 4 – Notice of Final Local Action for Local CDP No. 20-7925](#)

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

Motion: I move that the Commission determine that Appeal No. A-5-LGB-21-0023 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

Staff recommends a **NO** vote. Following the staff recommendation on this motion will result in the Commission proceeding to conduct a de novo review of the application, and adoption of the following resolution and findings. Conversely, passage of this motion would result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution: The Commission hereby finds that Appeal No. **A-5-LGB-21-0023** 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 March 15, 2021, Mark and Sharon Fudge filed an appeal of Local CDP No. 20-7925 (**Exhibit 3**). The appellants contend that the City's approval does not comply with the City's certified LCP. More specifically, the appellants raise the following concerns with the City-approved development:

- 1) The project site is located on a coastal bluff, and the City should have considered the bluff, bluff edge, and bluff face protection policies found in the LCP.
- 2) Portions of the development occur on the beach sand where improvements are prohibited by the LCP unless undertaken for public health and safety.
- 3) The project has been piecemealed. If considered in totality, the project may constitute a major remodel.
- 4) The City's approval allows for unpermitted development to undergo further improvement without resolving the underlying violation.
- 5) Nonconforming uses (parking) have been ceased for more than one year and shall not be re-established unless they conform to the Zoning code and LCP.

III. LOCAL GOVERNMENT ACTION

On October 28, 2020, the City of Laguna Beach issued an exemption for the Hotel Laguna to remodel the interior main and basement floor levels, replace six windows in-kind, waterproof an exterior wall, excavate trench on existing rear deck for electrical repair, replace a door and pavement in-kind, repair and paint planter walls, adjust slope of existing access ways around a rose garden, install a portable ramp over existing steps, install ADA-compliant handrails, re-stripe a parking lot to provide ADA parking spaces (no change in number of spaces) and remove a partition wall and kiosk near parking lot entry. Mark and Sharon Fudge appealed the City's exemption determination to the Coastal Commission on

November 10, 2020 (Appeal No. A-5-LGB-20-0064). However, before a Substantial Issue hearing could be scheduled for the City's exemption, the applicant (Mohammad Honarkar) withdrew his Claim of Exemption. Instead, the applicant applied for a CDP for the following development (as described by the applicant):

North Façade: Replace trash enclosure; remove existing planters and railing around north east corner; replace portions of stairway; replace three kitchen windows; replace access ramp and install guardrail from kitchen for ADA compliance; and repair water proofing of exterior wall.

West (Rear) Façade at North End: Repair/replace guardrail; place wooden deck covering over existing concrete deck; replace door; remove wall and windows of lower-level club room and install sliding glass doors.

West (Rear) Façade at South End: Trench certain areas of rear deck/patio for electrical repair and fill back to original condition; replace two windows; install a cantilevered service counter; repaint/repair three windows; swap door and window at southwest corner; replace steps and place temporary pavers for erosion control on exposed dirt between the rose garden and rear deck/patio; replace glass guardrail at southwest corner between walkway and rear deck /patio (not on deck/patio); and reroof-in-kind over restaurant and chimney area. No repairs and/or improvements proposed to the rear deck/patio.

Tenant Spaces at the Southeast End: Fill in a door at south façade that leads to the parking lot; replace the west wall and doors at ground floor level facing the rose garden (no changes to the upper hotel room levels); remove awnings and replace windows along the east façade; and install structural retaining walls and steel moment frames along the interior walls of 20% of the total ground floor area limited to only the tenant spaces with no changes to the upper floors (3,200 square feet of 16,000 square feet of ground floor). Install doors between the lobby and the rose garden.

Rose Garden: Install on-grade steps and ADA lift near the southeast corner; replace existing ramp and install handrails along east end for ADA compliance; repair planter walls; replace in-kind steps at the southwest corner; repair and replace fence along south end.

Parking Lot: Remove existing kiosk and low partition wall near entry at South Coast Highway; restripe parking lot to accommodate ADA parking spaces with no changes to the number of existing parking spaces; and install concrete bumpers on ADA parking spaces.

On February 25, 2021, the City of Laguna Beach Design Review Board ("DRB") held a public hearing for the subject CDP application. The DRB approved Local CDP No. 20-7925 with the condition that the removal and sliding glass door replacement for the basement-level room, grading, and retaining wall improvements be processed as a separate CDP. ([Exhibit 4](#)). No staff report was prepared for this hearing.

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

On March 1, 2021, the Coastal Commission’s South Coast District Office received a valid Notice of Final Action for Local CDP No. 20-7925. The Commission issued a Notification of Appeal Period on March 1, 2021. On March 15, 2020, Mark and Sharon Fudge filed an appeal during the ten working day appeal period ([Exhibit 3](#)). No other appeals were received. The City and applicant were notified of the appeal by Commission staff in a letter dated March 16, 2021.

IV. APPEAL PROCEDURES

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on CDPs. Development projects approved by cities or counties may be appealed if they are located within certain geographic appealable areas, such as those located between the sea and the first public road paralleling the sea, or within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of a coastal bluff. Furthermore, developments approved by counties may be appealed if they are not a designated “principal permitted use” under the certified LCP. Finally, any local government action on a proposed development that would constitute a major public work or a major energy facility may be appealed, whether approved or denied by the city or county [Coastal Act Section 30603(a)].

Section 30603 of the Coastal Act states in relevant part:

- (a) After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:
 - (1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.
 - (2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.

The project site is in an appealable area because it is located between the sea and the first public road paralleling the sea, and is within 300 feet of the inland extent of any beach. (Section 30603(a)(1).) The project site would also qualify as an appealable area

because of its location on the bluff. (Section 30603(a)(2).) The issues raised in the subject appeal apply to proposed development located in the appealable area.

Grounds for Appeal

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

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.

Section 30625(b)(2) of the Coastal Act requires the Commission to conduct a de novo review of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a). If Commission staff recommends a finding that a substantial issue does exist, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered presumed, and the Commission will conduct the de novo portion of the public hearing on the merits of the project at a later time. A de novo review of the application on the merits uses the certified LCP as the standard of review. (Section 30604(b).) In addition, for projects located between the first public road and the sea, a specific finding must be made at the de novo stage of the appeal that any approved project is consistent with the public access and recreation policies of the Coastal Act. (Section 30604(c).) Sections 13110-13120 of Title 14 of the California Code of Regulations further explain the appeal hearing process.

Qualifications to Testify before the Commission

If the Commission, by a vote of three or more Commissioners, decides to hear arguments and vote on the substantial issue question, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. The time limit for public testimony will be set by the chair at the time of the hearing. As noted in Section 13117 of Title 14 of the California Code of Regulations, the only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. In this case, the City's record reflects that Mark and Sharon Fudge opposed the project in person at the local hearing. Testimony from other persons must be submitted in writing. There are no other known parties who qualify to speak at the hearing if the Commission decides to hear arguments.

Upon the close of the public hearing, the Commission will vote on the substantial issue question. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will follow at a later date during which the Commission will take public testimony.

V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

A. PROJECT DESCRIPTION AND LOCATION

The applicant is proposing a series of repairs and improvements to the Hotel Laguna, a 68-room hotel that is located on a coastal bluff adjacent to Main Beach within the City of Laguna Beach. The scope of work includes several different components ([Exhibit 2](#)).

On the northeast corner of the hotel (adjacent to the Coast Highway/Laguna Avenue intersection), the applicant is proposing to remove existing planters, a railing, and awnings. Portions of a dilapidated access stairway adjacent to Laguna Avenue would be replaced in-kind. Three kitchen windows adjacent to Laguna Avenue would be replaced in-kind. An access ramp leading from Laguna Avenue to the kitchen entrance would be re-graded for ADA compliance; a new handrail would also be installed for the access ramp. Finally, the water proofing for an exterior wall would be repaired.

The north end of the seaward façade contains a portion of the hotel called the Marine Room, which was constructed prior to the effective date of the Coastal Act (January 1, 1977). This room is located at the base of the coastal bluff and features a deck that extends onto the beach sand. Here, the applicant proposes to repair and replace a 36-in. guardrail with a 42-inch guardrail that is compliant with the California Building Code standards. A wooden deck covering would be placed over the existing concrete deck, and an existing door to the Marine Room would be replaced in-kind.

The south end of the seaward façade contains a restaurant and an associated deck.¹ Here, the applicant proposes to trench portions of the deck (adjacent to the exterior restaurant wall) for electrical repair and fill the deck back to its original condition. The applicant also proposed to replace two windows in-kind, install a new cantilevered service counter to serve the patio, reroof the restaurant structure in-kind, and switch a window and door location at the southwest corner of the restaurant. Adjacent to the deck, the applicant proposes to install temporary erosion control pavers and replace a glass guardrail in-kind that leads from the rose garden to the unpermitted patio.

The southeast end of the hotel structure contains tenant spaces at the ground level. Here, the applicant proposed to fill in an obsolete door that currently leads to the parking lot (located on the south end of the project site), replace the west wall and doors at the ground floor level that faces the enclosed rose garden, remove the awnings that face the street, and install structural retaining walls and steel moment frames along 20 percent of the interior walls of the tenant spaces. New doors would be installed between the lobby and the rose garden.

The rose garden is located within an interior courtyard associated with the Hotel Laguna. Here, the applicant proposes to install on-grade steps and an ADA lift near the entrance to the parking lot. An existing ramp from the parking lot to the rose

¹ As detailed later in this report, the associated restaurant deck is unpermitted.

garden would be repaved for ADA compliance- new handrails would be installed on the repaved ramp. The existing rose garden planter walls would be repaired in place, and existing stairs would be replaced in-kind.

The project proposal originally included the replacement of the seaward Marine Room wall with two sliding glass doors, an after-the-fact approval for grading between the unpermitted deck at the southwest corner and the rose garden, and installation of retaining walls between the unpermitted deck and the rose garden. However, the City decided to process these improvements under a separate CDP.

The project site is a rectangular 41,096 square-foot ocean-fronting, bluff top lot located at 425 S Coast Highway in Laguna Beach ([Exhibit 1](#)). The site is located above Main Street Beach, between the first public road (South Coast Highway) and the sea. It is in an area where development approved by the City pursuant to its certified LCP is appealable to the Coastal Commission. The area is zoned in the certified LCP as Central Business District Coastal Bluffs is characterized by commercial and residential structures on ocean-fronting bluffs. Public access to the beach is available via Laguna Avenue, directly adjacent to the project site.

The project site is developed with a four-level, 68-room hotel that was constructed in 1930, prior to the effective date of the Coastal Act (January 1, 1977). Between 1930, and 1977, the Hotel Laguna underwent several additions. These include a two-story banquet and dining room addition in 1950, a new storage building in 1952, and a basement addition (The Marine Room) in 1963. In addition, the hotel has undertaken a number of interior remodels and alterations. The Hotel Laguna is rated E (Excellent) in the City's Historic Resource Inventory, and is currently eligible for listing in both the State of California and the National Register of historic places.

B. LOCAL COASTAL PROGRAM CERTIFICATION

The City of Laguna Beach LCP was certified on January 13, 1993. The City's LCP is comprised of a Land Use Plan (LUP) and an Implementation Plan (IP). The City's Land Use Plan is comprised of a variety of planning documents including the Land Use Element (LUE), Open Space/Conservation Element, Technical Appendix, and Fuel Modification Guidelines (of the Safety General Element of the City's General Plan as adopted by Resolution 89.104). The Implementation Plan portion of the certified LCP is comprised of over 10 documents, including Title 25, the City's Zoning Code. The Coastal Land Use Element of the LCP was updated and replaced in its entirety via LCPA 1-10 in 2012. The Open Space/Conservation Element and Title 25 have been amended a number of times since original certification. Laguna Beach has a certified LCP, but there are four areas of deferred certification in the City: Irvine Cove, Blue Lagoon, Hobo Canyon, and Three Arch Bay. The project site is located within the City of Laguna Beach's certified jurisdiction and is subject to the policies of the certified LCP.

C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS

Section 30625(b)(2) of the Coastal Act requires the Commission to conduct a de novo review of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal has been filed pursuant to Section 30603(a). The term "substantial issue" is not defined in the Coastal Act or its

implementing regulations. However, Section 13115(c) of the Commission’s regulations lists the following 5 factors as appropriate considerations in determining whether an appeal raises a substantial issue:

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

D. SUBSTANTIAL ISSUE ANALYSIS

As stated in Section IV of this report, the grounds for an appeal of a CDP issued by the local government are the project’s conformity with the policies of the LCP and with the public access policies of the Coastal Act. The appellants raise several substantial issues discussed in detail below. Therefore, Staff is recommending that the Commission find that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a) of the Coastal Act.

Contention: The City should have considered bluff, bluff edge, and bluff face protection policies.

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

Action 7.3.4 Require new development to assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Action 7.3.5 Prohibit development on oceanfront bluff faces, except public improvements providing public access, protecting coastal resources, or providing for public safety. Permit such improvements only when no feasible alternative exists and when designed and constructed to minimize landform alteration of the oceanfront bluff face, to not contribute to further erosion of the oceanfront bluff face, and to be visually compatible with the surrounding area to the maximum extent feasible.

Action 7.3.8 On oceanfront bluff sites, require applications where applicable, to

identify and remove all unpermitted and/or obsolete structures, including but not limited to protective devices, fences, walkways and stairways, which encroach into oceanfront bluffs.

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

Action 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 10.2.7 Require all new development located on oceanfront bluffs to be sited in accordance with the stringline but not less than 25 feet from the bluff edge. This requirement shall apply to the principal structure and major accessory structures such as guesthouses and pools that require a structural foundation. The setback shall be increased where necessary to ensure geologic safety and stability of the development.

Action 10.2.8 On oceanfront bluffs, require new minor accessory structures such as decks, patios and walkways that do not require structural foundations to be sited in accordance with stringline but not less than 10 feet from the bluff edge. Require accessory structures to be removed or relocated landward when threatened by erosion, geologic instability or other coastal hazards.

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

The City shall impose a **25-foot minimum setback** or a distance ascertained by stringline measurements for all blufftop development, notwithstanding the fact that ecological and environmental constraints may require an additional setback.

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

“(B) Building Setbacks on or Adjacent to the Pacific Ocean and Beaches. There is established building setback lines along the ocean frontage of all property within the city fronting up and adjacent to the Pacific Ocean and its beaches, as provided in this

subsection, and no building, structure or improvements shall be erected or constructed after the effective date of the ordinance codified in this section on the sandy portion of any beach except that which is determined by the city council to be necessary for the public health, safety and welfare. In addition, no building, structure or improvement shall be erected or constructed after the effective date of the ordinance codified in this section on the oceanward side of the following building setback lines:...

(4) In addition to (1), (2) and (3) above, **no new building, additions to existing buildings, or structures or improvements shall encroach beyond the applicable building stringline or shall be closer than twenty-five feet to the top of an oceanfront bluff; the more restrictive shall apply.** Greater setback may be required by the city engineer or building official in order to protect the public health, safety or welfare. Pools and spas shall be no closer than twenty-five feet to the top of bluff. Public accessways shall be exempt from this provision..."

The appellants assert that the City should have required a bluff edge determination for the project and analyzed the referenced bluff top development policies for the project. In the City's determination for the proposed project, the findings state that the applicant's technical reports did not determine a bluff edge at the project site. The applicant asserts that a bluff edge does not exist because the project site has been significantly graded over time, presumably to accommodate hotel additions. This rationale appears to reference the certified Implementation Plan (IP) definition of a coastal bluff, which defines a coastal bluff as follows²:

The "blufftop" shall be defined as an incline greater than the slope of the buildable pad. The "bluff face" is defined as that portion of bluff which slope is forty-five degrees or greater from horizontal, and whose top is ten or more feet above mean sea level.

The IP blufftop definition is typically used to determine whether a given property is located on a coastal bluff. The project site, which is zoned in the certified LCP as Central Business District Central Bluffs, is on a coastal bluff. The Commission has consistently relied on the certified LUP definition of a bluff edge to guide bluff edge determinations. The LUP defines a "bluff edge" as follows:

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

² Refer to Title 25 Zoning Code, Section 25.44.050(D)(2) for the full text.

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 LUP bluff edge definition states that the original bluff edge shall be considered for projects, even if the original bluff edge is covered in fill or cut through grading. The City's determination for the project did not include an analysis of the bluff edge utilizing the certified LUP bluff edge definition. As described below, the absence of this analysis does raise a substantial issue with regard to consistency with the certified LCP's bluff protection policies.

As mentioned previously, the project site is located on a coastal bluff approximately 200 ft. south of the City's Downtown district. Although the bluff edge has not been verified for this site, it is evident that the hotel development sprawls down the bluff face and onto the beach sand. Under LUE Action 7.3.10 (referenced above), this legally nonconforming hotel may retain, repair, and maintain its existing nonconformities. However, any development that increases the size or degree, which could include extensive repair/maintenance actions equivalent to "new development" would require the entire pre-existing structure to be brought into conformity with the LCP. The City's determination letter classified the proposed project components as repair and maintenance, not new development. However, the City did not adequately analyze whether or not the proposed repair/maintenance would increase the size or degree of any of the existing nonconformities onsite. If any of the repair/maintenance activities was determined to increase the size or degree of the nonconformity, the project would then need to adhere to Actions 10.2.7 and 10.2.8. These actions provide the 25 ft. minimum setback requirement for primary structures and the 10 ft. minimum setback requirement for accessory structures (including decks, patios, pools, etc.). Although the project appears to consist mainly of repair and maintenance actions at that would not result in new features, some of the proposed repair and maintenance may be so extensive that structural elements are essentially being replaced. There is not adequate factual and legal support to determine that the project is consistent with the bluff protection policies in the certified LCP. If not adequately analyzed, the hotel may retain or develop nonconformities that are larger in scope than what is originally existing and could prejudice the certified LCP.

Contention: Portions of the project occur on the sandy beach, which is inconsistent with the certified LCP.

Open Space Conservation Element (OSCE) Policy 1E states:

Prohibit the construction of buildings and other man-made structures on the sandy portion of the beach unless necessary for public health and safety.

The appellants contend that portions of the proposed development occur on the sandy beach, which is in direct conflict with OSCE Policy 1E, referenced above. **Exhibit X** details the scope of work proposed by the applicant. The scope of work that would occur at the toe of the coastal bluff (i.e. on top of the beach sand) include: 1) the replacement of a 36-in. deck railing with a 42-in. deck railing; 2) the placement of a wooden deck covering over the existing concrete deck flooring; 3) a like-for-like replacement of an exterior door; and 4)

the removal of a seaward wall and windows associated with a pre-coastal hotel addition, and installation of sliding glass doors within the same linear footprint of the existing wall.

Although the deck railing replacement and door and window replacements could be considered repair and maintenance, the new deck covering may constitute an improvement to the existing non-conforming structure. OSCE Policy 1E broadly prohibits any structure from being constructed on the sandy beach. The applicant indicates that no new *structural* elements are proposed to be placed on the sandy beach. The proposed deck cover and replacement door would not be considered structural elements. However, the development would occur on the sandy beach. Therefore, this specific contention does raise a substantial issue.

Contention: The City piecemealed the project, which is inconsistent with CEQA and the Coastal Act.

The appellants contend that the City’s decision to piecemeal the project into several components is inconsistent with CEQA and the Coastal Act. Furthermore, the appellants assert that the project could trigger a major remodel if reviewed as one project instead of several separate projects. In general, the CEQA policies do not constitute the standard of review for this appeal. In addition, the LCP does not contain a specific policy that prohibits project piecemealing, although the Commission generally discourages project piecemealing.

Although the act of piecemealing in itself does not raise a substantial issue, the applicants raise a valid concern regarding the potential of successive “minor” projects to cumulatively trigger the “major remodel” definition. For each project that involves any structural changes, the City should keep track of the extent of alteration of structural elements (which the Commission has interpreted to include the roof structure, foundation, exterior walls, structural framing elements, and overall square footage) and make a finding that the project would not trigger a major remodel definition. If any structural action pushes the cumulative extent of structural alteration of any one element to 50 percent or greater, the structure would then be deemed to be redeveloped, and would need to be brought into conformity with the current LCP policies. In this case, the City processed an Administrative CDP for a portion of the proposed project without detailed findings or calculations of the scope of work, or references to prior development on the site that could be analyzed cumulatively. The approved portion of the project includes the replacement of steel moment frames supporting 20 percent of the ground floor area of the tenant spaces located at the southeast end of the structure. Although this particular structural change falls below the 50 percent threshold, there was no analysis of previous structural additions/alterations. Therefore, it is unclear if this approved structural change would trigger the major remodel definition. Therefore, there is low factual support for the City’s approval of the project, and the appellants’ contention does raise a substantial issue.

Contention: The City’s approval allows previously unpermitted development to undergo further improvement without resolving the underlying violation.

The appellants contend that the City’s approval would allow for unpermitted onsite development to be retained and improved without first resolving the underlying violation.

The certified LUP contains the following policy regarding unpermitted development on oceanfront bluffs:

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

The project description includes the following actions on the South End of the seaward façade: trench areas of rear deck and patio for electrical repair and fill back to original condition; replace two windows; install a cantilevered service counter; repair/repaint three windows; replace stairs and place erosion control pavers on exposed dirt between the rose garden and rear deck/patio; replace a glass guardrail between the rose garden and rear deck/patio; and reroof in kind over restaurant and chimney area (**Exhibit X**). The rear deck/patio is approximately 400 sq. ft. in size, appears to have been built into the bluff face and was constructed pursuant to local Conditional Use Permits CUP 87-03 (which permitted a 24-seat patio) and CUP 95-04 (which permitted an expansion of the original 24-seat patio) to serve an existing restaurant. However, neither the patio nor its subsequent expansion received a CDP. Thus, a Notice of Violation was sent on October 13, 2009 and a violation file was opened against the property (Violation File No. V-5-09-020). This violation has not been resolved as of present.

The project description states that no repairs or improvements are being proposed to the patio. However, the proposed trenching and fill does appear to take place on the unpermitted patio. Furthermore, the other proposed restaurant improvements on the seaward side (cantilevered deck, replacement of the glass guardrail between the rose garden and rear patio), while not directly related to the patio, would serve functions that would enable the continued use of the unpermitted patio. The applicant has not applied for an after-the-fact approval for this patio; therefore, this patio remains as an unpermitted structure that appears to encroach on the bluff face and could be subject to removal. The Commission would need more coordination with the City and the applicant to resolve this issue. Overall, the development that retains the use of an unpermitted structure- particularly one that potentially encroaches onto the bluff face- raises significant concern regarding consistency with the certified LCP. Therefore, the appellants' contention does raise a substantial issue.

Contention: Pursuant to IP Policy 25.56.006, nonconforming parking uses have ceased for a period of more than one year and shall not be re-established until they conform to the zoning code and LCP.

The appellants contend that the City's approval is inconsistent with IP policy 25.56.006 in that nonconforming parking uses onsite have not been used in more than one year, and therefore cannot be re-established until the parking conforms to the zoning code and the LCP. IP 25.56.006 states:

25.56.006 Change in building use.

If any nonconforming use or portion thereof is abandoned or ceases for a period of twelve or more consecutive months, or is changed to a conforming use, it shall not thereafter be reestablished or reopened.

The Hotel Laguna has been out of operation for approximately two years. The hotel has fallen into a state of disrepair and has more recently experienced closures in light of the COVID-19 pandemic. The existing parking lot holds 41 parking spaces, which are associated with the hotel use. Under the certified LCP Technical Appendix, Hotels require one space per room plus one additional space per 15 rooms (or fraction). If the development was new or constituted a major remodel, the 68-room hotel would require 73 parking spaces (68 for all of the rooms, plus an additional 5 spaces per 15 rooms). If the development is identified as repair and maintenance of an existing legal use (hotels are allowed in the subject Central Business District Central Bluffs Land Use specified in the LCP), the parking lot would be considered a legally nonconforming use for a pre-coastal structure. Although the hotel is not undergoing a change in use, IP Policy 25.56.006 narrowly states any nonconforming use that is abandoned for 12 or more consecutive months shall not be re-established. The IP policy is specific to non-conforming uses, but does not require non-conforming conditions like parking or setbacks to be brought into conformity if the underlying development is inoperable for 12 months. Thus, so long as the hotel is a conforming use, the hotel would likely be able to maintain the existing nonconforming parking and other non-conforming conditions. Therefore, the appellants' 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 with the relevant provisions of the Coastal Act.

The City processed an administrative permit for the proposed project with a finding the proposed project is consistent with the certified LCP. However, the City did not substantially support its approval of the project's consistency with all of the applicable policies of the certified LCP and the public access provisions of the Coastal Act (specifically the bluff protection and unpermitted development 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 CDP for improvements to an existing hotel on the subject site located on an ocean-fronting bluff top property. Because the record does not contain an accurate representation the elements that should be included in the CDP action, it is not possible to determine the scope of the development. Therefore this factor supports a finding of substantial issue.

3. The significance of the coastal resources affected by the decision. The subject site is an oceanfront bluff lot, which may raise specific concerns that are not routinely raised on

interior, in-fill lots. California’s coastal bluffs are a significant resource, and represent a rare and visually pleasing landform which California citizens and governments have historically sought to preserve. Coastal bluffs are dynamic geologic formations, and development on them increases the potential for geologic hazards. Development on coastal bluffs and adjacent to public beaches also can have significant impacts on scenic resources and public access opportunities. The LCP and the Coastal Act provide coastal bluffs with special protections. This factor supports a finding of substantial issue.

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

The subject site is an oceanfront bluff property. The majority of ocean-fronting development in Laguna Beach is sited on bluff properties, and the decision of the local government for this project could influence future permit decisions made in the City’s Coastal Zone. Allowing the local government’s decision to approve new improvements potentially encroaching into bluff edge setback areas or sited on a bluff face would set a precedent for future interpretations of its LCP that may be incorrect. If the subject local CDP is found to be consistent with the LCP based on the current record, there is a potential that future applicants will reference this permit if they wish to develop other oceanfront coastal bluff sites, of which there are hundreds in Laguna Beach. Without adequate information to determine the extent and scope of the proposed development, allowing the City’s local CDP approval to stand would result in adverse precedent regarding application of the LCP’s various resource protection policies. This factor supports a finding of substantial issue.

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

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

Conclusion

In conclusion, the Commission finds 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 scenic and visual policies of the Coastal Act.

Appendix A – Substantive File Documents

1. City of Laguna Beach certified Local Coastal Program.