

**CALIFORNIA COASTAL COMMISSION**

SOUTH COAST DISTRICT OFFICE  
301 E. OCEAN BLVD, SUITE 300  
LONG BEACH, CA 90802-4325  
VOICE (562) 590-5071  
FAX (562) 590-5084



# F9a

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## STAFF REPORT: APPEAL – NO SUBSTANTIAL ISSUE

**Appeal No.:** A-5-DPT-21-0038

**Applicant:** Ning Zhang & Kui Cai Li

**Agent:** FoxLin Architects

**Local Government:** City of Dana Point

**Local Decision:** Approval with Conditions

**Appellants:** David J. Daly and Joseph Janczyk

**Project Location:** 35491 Camino Capistrano, Capistrano Beach, Dana Point, Orange County (APN: 691-083-33)

**Project Description:** Appeal of City of Dana Point Local Coastal Development Permit No.19-0014 for the demolition of an existing single-family residence and the construction of a new, 24-ft. high, two-story 9,000 sq. ft. single-family residence with two attached garages on a coastal bluff lot, a new subsurface drainage system to facilitate positive site drainage flow to the street, and minor correctional recontouring of the bluff face (return-to-natural).

**Staff Recommendation:** No Substantial Issue.

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**IMPORTANT HEARING PROCEDURE NOTE:** This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally, and at the discretion of the Chair, testimony is limited to 3 minutes total per side. Please plan your testimony accordingly. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify. Others may submit comments in writing. If

the Commission determines that the appeal does raise a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony.

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## SUMMARY OF STAFF RECOMMENDATION

The City of Dana Point approved a local coastal development permit (CDP) for the demolition of an existing single-family residence and the construction of a new, 24-ft. high two-story 9,000 sq. ft. single-family residence with two attached garages on a coastal bluff lot with a pool and spa, a new subsurface drainage system to facilitate positive site drainage flow to the street, and minor correctional recontouring of the bluff face (return-to-natural). The existing single-family residence, garage, pool and spa were constructed prior to the passage of the Coastal Act. The rear portion of the existing residence is constructed on what is now defined as a coastal bluff face under the City's certified Local Coastal Program (LCP). The bluff face was originally cut during grading operations and improved with retaining walls. The existing portions of the single-family residence and related improvements located on the coastal bluff face and in the coastal bluff edge setback are now non-conforming. The City-approved project includes the removal of all non-conforming portions of existing single-family residence and related improvements.

On June 7, 2021, David J. Daly filed an appeal of the local CDP and on June 11, 2021, Joseph Janczyk filed another appeal. The appellants raise the following concerns with the City-approved development:

1) The geotechnical and soils analysis was conducted by a City staff Geotechnical Engineer; however, it should have been conducted by an independent Geotechnical Engineer to verify that the proposed development, including the digging for the proposed new pool and spa, will not cause irreparable damage to the coastal bluff and adjacent homes; and

2) Proactive measures to “...*remedy any damage that may occur...*” to the adjacent property to the south should be required. The appellant suggests that measures could include reduced grading on the seaward portion of the subject site or a construction of a retention wall bordering the subject site and the adjacent property to the south. Section 9.27.030(c)(4) of the Dana Point Municipal Code provides that a State Licensed Civil Engineering Geologist must prepare a site specific geotechnical and soils report to address and explain any proposed deviation from the minimum setbacks from the coastal bluff, which is 40 ft. at the subject site (according to the Zoning Map for RSF3). The applicant provided a Geotechnical Engineering Report by an independent company called NOVA Services, dated April 24, 2019. In that report, justification is provided for the proposed deviation to 25 ft. based on bluff stability calculations and coupled with an assessment of 50 years of bluff erosion for the site. The report also recommends a conventional spread, shallow foundation system and footings, which has been incorporated into the project design, and is consistent with the certified LCP. The

geotechnical report further finds that “the impact of the proposed development on the adjacent properties is considered minimal as all construction work will be entirely on the subject property and should not affect the adjoining properties in any significant manner.”

Section 9.27.030(c)(5) of the Dana Point Municipal Code provides that any development within the coastal blufftop setback area shall minimize landform alteration, be subordinate to the natural character of the bluff, and is limited to structures that may include retaining and non-retaining walls, fences, and drought-tolerant landscaping, and prohibits swimming pools and sunken spas in the coastal blufftop setback area. The City-approved project proposes to remove non-conforming improvements and incorporate drought-tolerant landscaping in the coastal blufftop setback area, and the proposed pool and spa will not be located within the setback area. In addition, the City-approved project would result in improved site drainage by directing it away from the coastal bluff with a subsurface drainage system and a sump pump to facilitate runoff within the coastal bluff edge setback to the street, thereby reducing bluff erosion, consistent with Conservation/Open Space Policy 2.11 of the General Plan of the certified LCP. The Commission geologist has reviewed the project documentation and concurs with the applicant’s geologist and the City’s Engineering Geologist that the approved bluff edge setback is adequate and that damage resulting from construction of the subject home to the adjacent property to the south is unlikely.

Therefore, Staff recommends that the Commission determine that **no substantial issue exists** with respect to the grounds on which appeal number A-5-DPT-21-0038 has been filed. The motion and resolution can be found on **Page 5** of the staff report.

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### **EXHIBITS**

[Exhibit 1 – Vicinity Map and Project Site](#)

[Exhibit 2 – City- Approved Project Plans](#)

[Exhibit 3 – Local Determination](#)

[Exhibit 4 – Appeals](#)

## I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

**Motion:** I move that the Commission determine that Appeal No. A-5-DPT-21-0038 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

**Resolution:** The Commission hereby finds that Appeal No. **A-5-DPT-21-0038** presents **no substantial issue** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access policies of the Coastal Act.

## II. APPELLANTS' CONTENTIONS

The Commission received a Notice of Final Action (NOFA) for the City of Dana Point Local CDP No. 19-0014 on June 1, 2021. On June 7, 2021, an appeal was filed by David J. Daly ([Exhibit 4](#)). Specifically, the appellant raises the following concerns with the City-approved development:

- 1). The geotechnical and soils analysis was conducted by a City staff Geotechnical Engineer; however, it should have been conducted by an independent Geotechnical Engineer to verify that the proposed development, including the digging for the proposed new pool and spa, will not cause irreparable damage to the coastal bluff and adjacent homes.

On June 11, 2021, another timely appeal was filed by Joseph Janczyk ([Exhibit 4](#)). Specifically, the appellant raises the following concerns with the City-approved development:

- 2). Proactive measures to “...remedy any damage that may occur...” to the adjacent property to the south should be required. The appellant suggests that measures could include reduced grading on the seaward portion of the subject site or a construction of a retention wall bordering the subject site and the adjacent property to the south.

## III. LOCAL GOVERNMENT ACTION

On May 10, 2021, the City of Dana Point Planning Commission held a public hearing for the proposed development. The Planning Commission approved with conditions Local Coastal Development Permit CDP19-0014/Minor Site Permit SDP 19-0023(M) (Resolution 21-05-10-049) ([Exhibit 3](#)).

On June 1, 2021, the Coastal Commission's South Coast District Office received a valid Notice of Final Action (NOFA) for the local CDP. The Commission issued a Notification of Appeal Period on June 1, 2021. On June 7, 2021, David J. Daly filed an appeal of the City of Dana Point Planning Commission's approval action ([Exhibit 4](#)). The City and applicant were notified of the appeal by Commission staff in a letter dated June 7, 2021. On June 11, 2021, Joseph Janczyk filed an appeal of the City of Dana Point Planning Commission's approval action. The City and applicant were notified of the second appeal by the Commission staff on June 14, 2021.

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

After certification of LCPs, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on CDPs. Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea or within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff [Coastal Act Section 30603(a)]. Section 30603(a)(2) of the Coastal Act establishes that the City's approval of the development may be appealed to the Commission because it is located within 300 feet of the top of the seaward face of a coastal bluff.

##### **Hearing Procedure and Grounds for an Appeal**

The grounds for appeal of an approved local CDP in the appealable area are stated in section 30603(b)(1) of the Coastal Act, which states:

(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 [the Coastal Act].

As stated above, the project is located in the appealable area. 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 the appeal was filed pursuant to Section 30603. Under Section 13115 of Title 14 of the California Code of Regulations, if Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the Commission must proceed to the de novo public hearing on the merits of the project. If the Commission finds substantial issue, the de novo hearing will be scheduled at a subsequent Commission hearing. 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 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, will typically have three minutes per side at the discretion of the Chair to address whether the appeal raises a substantial issue. 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), or those who, for good cause, were unable to oppose the application before the local government, and the local government. Testimony from other persons must be submitted in writing. 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 – NO SUBSTANTIAL ISSUE**

### **A. PROJECT DESCRIPTION AND LOCATION**

The City-approved project is the demolition of an existing non-conforming 2,544 sq. ft. single-family residence, an attached two-car garage, a pool, spa and a variety of hardscaping (some located on the coastal bluff) and the construction of a new, two-story, 24-ft. high, 9,000 sq. ft. single-family residence with two attached two-car garages, a pool and spa, on a coastal bluff lot and a new subsurface drainage system to facilitate positive site drainage flow to the street. Compacted dirt fill is proposed to be placed along the rear portion of the lot, but not into the coastal bluff setback, to facilitate gravity flow drainage down and away from the single-family residence and the coastal bluff. The City allowed for a 25-ft. setback for the proposed development (instead of 40 ft.) and the project will also remove all structures and hardscape improvements located on the bluff face and within the approved 25-foot bluff edge setback deviation ([Exhibit 2](#)). The City-approved project will also conduct minor correctional recontouring (return-to-natural) of the existing bluff face where it was previously graded to accommodate existing improvements implemented prior to the passage of the Coastal Act. The recontouring will only occur on the bluff face in the location of the demolished single-family residence, retaining walls, and associated improvements. The existing single-family residence and associated structures were constructed in the 1950s prior to the passage of the Coastal Act. The rear portion of the existing structure (seaward portion) is constructed on what is now defined as a coastal bluff face under the City's certified LCP, which was originally cut during grading operations and improved with retaining walls. The existing portions of the single-family residence and related improvements located on the coastal bluff face and in the coastal bluff edge setback area are prohibited and are now non-conforming to the certified LCP.

The project site is a 17,859 sq. ft. coastal bluff lot at 35491 Camino Capistrano, Capistrano Beach in the City of Dana Point in Orange County ([Exhibit 1](#)). The lot is zoned Residential Single Family 3 (RSF 3) in the City of Dana Point's Zoning Code (which is included in the certified IP), located within the City's Coastal Overlay District, as well as the appealable jurisdiction of the California Coastal Commission. The site is not located between the first public road and the sea; however, the site is located directly landward of the first public road (Pacific Coast Highway). Due to the project's location within 300 feet of the top of the seaward face of a coastal bluff, development approved by the City of Dana Point pursuant to its certified LCP is appealable to the Coastal Commission at this project site. Public access to the beach is available approximately 0.5 miles southwest of the site, across Pacific Coast Highway, at Poche Beach.

## **B. LOCAL COASTAL PROGRAM CERTIFICATION**

Dana Point is a shoreline community in southern Orange County that was incorporated as a City in 1989. On September 13, 1989, the Commission approved the City's post-incorporation LCP. The City's LCP is comprised of a variety of planning documents. At the project site, the applicable document is The Monarch Beach/Capistrano Beach 1996 LCP (comprised of the Land Use Element, Urban Design Element, and Conservation Open Space Element [LUP], and the City's Zoning Code [IP]). Therefore, the project site is located within the City of Dana Point'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 a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed pursuant to Section 30603. Section 13115(c) of the Commission regulations provides that the Commission may consider the following five factors when determining if a local action raises a significant issue:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the 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.

Staff is recommending that the Commission find that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a) of the Coastal Act.

## **D. SUBSTANTIAL ISSUE ANALYSIS**

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 certified LCP and the public access policies of the Coastal Act. The appellants raise the following contentions:

**Contention No. 1: The geotechnical analysis was conducted by a City staff Geotechnical Engineer; however, it should have been conducted by an independent Geotechnical Engineer to verify that the proposed development, including digging for the proposed pool and spa, will not cause irreparable damage to the coastal bluff and adjacent homes.**

The appellant asserts that the City-approved project raises a substantial issue because there was no independent geotechnical and soils analysis conducted to verify that the proposed development will not destabilize the bluff.



Chapter 9 of the City’s Municipal Code (which is included in the certified IP) contains the following policy pertaining to development adjacent to coastal bluffs:

**Dana Point Zoning Map states that all RSF3 lots shall adhere to a 40 ft. setback.<sup>1</sup>**

**Section 9.27.030(c) of the Dana Point Municipal Code** states:

(c) Development Adjacent to Coastal Bluffs. Development adjacent to coastal bluffs shall minimize hazards to owners, occupants, property, and the general public; be environmentally sensitive to the natural coastal bluffs; and protect the bluffs as a scenic visual resource. The minimum setback from the bluff edge of a coastal bluff shall be established by the underlying zoning district. However, in no case shall the minimum setback be less than 25 feet or one which provides for 50 years of erosion, whichever is most restrictive

**Section 9.27.030(c)(4) of the Dana Point Municipal Code** states:

(4) Requirements for Setback Deviation. A State Licensed Civil Engineering Geologist shall prepare a site specific geotechnical and soils report to address and explain any proposed deviation from the minimum setbacks from the coastal bluff edge in the Zoning Map, and the Draft Dana Point General Plan Coastal Erosion Technical Report dated July 11, 1990. The report shall include:

- (A) An explanation and calculation of the deviations, if any, in the setback from the coastal bluff edge.
- (B) If caissons are not recommended, the report shall explain why caissons are not needed. If caissons are recommended in the report, the following additional information shall be provided:
  - 1. Indicate the angle of repose.
  - 2. Depth of caisson required for the structure and limits of caissons.
- (C) Requirements for Setback Deviation. Should an analysis of the geotechnical report conclude that a greater or lesser setback may be necessary than that required by this Code, the Planning Commission can make a finding that it is in the interest of the public safety to approve an additional or lesser setback as recommended. However, in no case shall a setback of less than 25 feet or less than 50 years of bluff erosion, whichever is most restrictive, be permitted.

The policies cited above provide that a State Licensed Civil Engineering Geologist must prepare a site specific geotechnical and soils report to address and explain any proposed deviation from the minimum setbacks from the coastal bluff, which is 40 ft. at the subject

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<sup>1</sup> <https://www.danapoint.org/Home/ShowDocument?id=111>

site, according to the Zoning map for RSF3.<sup>2</sup> The applicant provided a Geotechnical Engineering Report by NOVA Services, dated April 24, 2019, prepared and signed by Carl D. Schrenk (Certified Engineering Geologist) and Jesse D. Bearfield (Professional Engineer). In that report, justification is provided for the proposed deviation to 25 ft. based on bluff stability calculations and coupled with an assessment of 50 years of bluff erosion for the site, consistent with Sections 9.27.030(c)(4)(A) and 9.27.030(c)(4)(C). The report also recommends a conventional spread, shallow foundation system and footings, which has been incorporated into the project design, consistent with Section 9.27.030(c)(4)(B). The City's Engineering Geologist reviewed the report and concurred that both the requested setback deviation from 40 to 25 ft. and foundation system with conventional footings are appropriate for the site and consistent with the City's LCP.

In addition, the Commission's staff geologist reviewed the geotechnical and soils report and agrees that the coastal bluff adjacent to the proposed development is sufficiently stable against major landslides, with a minimum factor of safety of at least 1.5, and that the projected future erosion of up to 8 ft. over 50 years is a reasonable estimate to use. The Factor of Safety is an indicator of slope stability, where a value of 1.5 for a static analysis is the common standard used by the Commission for many years for establishing the geologic stability of new blufftop development. In theory, failure is imminent when the factor of safety drops to 1.0. Therefore, the factor of safety at increasing values above 1.0 lends increasing confidence in the stability of the slope. To establish a safe setback for slope stability, the geotechnical analysis needs to establish the distance from the edge of a coastal bluff at which the factor of safety is equal to 1.5 (static), and in this case, the factor of safety is greater than 1.5. The NOVA slope stability analysis indicates that the bluff has a minimum static factor of safety of 1.6 to 1.7, indicating that the bluff is stable against deep-seated bluff failures and a bluff top setback is not necessary to achieve a 1.5 factor of safety. Additionally, the more landward position of the proposed residence, in comparison to the existing house, would reduce loading near the bluff edge, marginally improving bluff stability.

The minimum 25-foot setback would be sufficient to accommodate the projected 8 feet of bluff retreat over the next 50 years, with a substantial buffer. Moreover, the Commission's staff geologist agrees with the general conclusion that marine erosion of the bluff toe is unlikely to occur over the next 50 years, even under high sea level rise scenarios; thus, future increases in the rate of bluff retreat are not expected and are unlikely to threaten the proposed new development. The 25-foot setback is shown in [Exhibit 2](#).

The Commission's geologist concurs that a 25 ft. setback is adequate and that the proposed developments will not destabilize the bluff. Since the pool is sufficiently set back from the bluff edge, it is unlikely to be threatened by erosion over at least the next 50 years. Furthermore, the erosion that has occurred historically is at least partially related to runoff over the edge of the bluff, and the newly proposed drainage modifications will likely

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<sup>2</sup> Although the City's LCP states: "A State Licensed **Civil** Engineering Geologist shall prepare...", it should actually state "A State Licensed **Certified** Engineering Geologist shall prepare...". Staff is working with the City of Dana Point to correct this error in the City's LCP.

reduce this source of erosion. The existing drainage conditions allow runoff to flow towards the coastal bluff face. Compacted dirt fill is proposed to be placed along the rear portion of the lot, but not into the coastal bluff setback, to facilitate positive site drainage flow to the street. In summary, Commission staff's geologist reviewed the geotechnical and soils report and concurs with the findings of the NOVA Services report and the City's Engineering Geologist's concurrence.

In its review of the project, the City adequately analyzed the project to ensure consistency with Dana Point Municipal Code Section 9.27.030(c)(4) for development adjacent to coastal bluffs. The City provided a high degree of factual and legal support for its decision to approve the proposed project. Not only was the geotechnical and soils report conducted by an independent company that provided that the coastal bluff is stable against major landslides and found the 25 ft. setback deviation to be adequate, but both the City's Geotechnical Engineer and the Commission's staff geologist reviewed and concurred with the findings of the report. Therefore, the appellant's contention does not raise a substantial issue.

**Contention No. 2: The appellant contends that proactive measures to “...remedy any damage that may occur...” to the adjacent property to the south should be required. The appellant suggests that measures could include reduced grading on the seaward portion of the subject site or a construction of a retention wall bordering the subject site and the adjacent property to the south.**

The following LUP and IP policies pertain to the appellant's contention:

**Conservation/Open Space Policy 2.11 of the General Plan states:**

Preserve Dana Point's bluffs as a natural and scenic resource and avoid risk to life and property through responsible and sensitive bluff top development, including, but not limited to, the provision of drainage which directs runoff away from the bluff edge and towards the street, where feasible, and restricting irrigation and use of water-intensive landscaping within the setback area to prevent bluff erosion.  
(Coastal Act/30251, 30253)

**Section 9.27.030(c)(5) of the Dana Point Municipal Code states:**

(5) Permitted Development within the Coastal Bluff Edge Setback. Precautions are required to ensure that the integrity of the bluff is not threatened. Development within the coastal blufftop setback area shall minimize landform alteration, be subordinate to the natural character of the bluff, and is limited to structures that may include retaining and non-retaining walls, fences, and drought-tolerant landscaping which conform to the setback requirements of this Chapter. Swimming pools and sunken spas are prohibited within the setback area. Additional setbacks shall be required if recommended in a geotechnical report submitted for the minor development.

The appellant states that the proposed work at the subject site might cause damage to the adjacent site. The appellant further suggests that proactive measures be imposed on the project, such as a reduction in the proposed grading activity on the seaward portion of the subject site or construction of a retaining wall at the southern property line to protect the adjacent property from damage.

The appellant contends that if the subject development results in damage to the adjacent site to the south, the adjacent property owner may not be able to correct the damage due to the existence of a gully on the seaward portion of the site. The appellant assumes that the gully would result in a requirement for a larger bluff edge setback than is required for the subject site. As described above under Contention No. 1, Section 9.27.030(c)(4) requires that any setback deviation from the Zoning Map be justified on a case-by-case basis. The Zoning Map for a RSF3 lot requires a minimum 40 ft. coastal blufftop setback. Any development proposed on adjacent lot(s) would be subject to a site-specific geotechnical and soils analysis to determine any potential setback deviations for development (including remediation). Thus, it is possible the setback on the adjacent site could also be 25 ft. or the required setback could be greater than 40 ft. No site-specific geotechnical report has been submitted for the adjacent site. It is notable that the adjacent site to the south is developed with hardscape improvements that extend up to or very close to the bluff edge and the seaward portion of the proposed residence will be located landward of the seaward portion of the existing home adjacent to the south. The project's geotechnical and soils report states that "the impact of the proposed development on the adjacent properties is considered minimal as all construction work will be entirely on the subject property and should not affect the adjoining properties in any significant manner."

To reduce the likelihood of impacts to the bluff from the proposed development, the applicant is also proposing a drainage system to direct site drainage to the street. In addition, the geotechnical and soils report includes recommendations that are incorporated in the project as approved by the City to return areas on the bluff face and within the bluff edge setback to a predeveloped, natural, condition after demolition of the existing single family residence and existing accessory developments. The recontoured bluff face would facilitate a more natural appearance to the coastal bluff and result in improved site drainage by directing it away from the coastal bluff with a subsurface drainage system and a sump pump to facilitate runoff within the coastal bluff edge setback to the street thereby reducing bluff erosion, consistent with Conservation/Open Space Policy 2.11 of the General Plan.

As stated previously, some of the existing developments on the project site are non-conforming (including portions of the existing single-family residence). The City-approved project would minimize landform alterations by removing non-conforming developments on the coastal bluff and within the setback and would incorporate drought-tolerant plants within the coastal blufftop setback, consistent with Section 9.27.030(c)(5). The pool and spa are proposed landward of the 25 ft. setback line. In addition, the City included a permit condition which requires the project to "meet all water quality requirements including Low Impact Development (LID) implementation" and another permit condition that requires the

applicant to “provide erosion and sediment control measures at all times,” consistent with Conservation/Open Space Policy 2.11 of the General Plan.

The City-approved project has adequate measures in place to ensure that the coastal bluff integrity is retained and is consistent with Section 9.27.030(c)(5) and Conservation/Open Space Policy 2.11 of the General Plan of the certified LCP. Therefore, the appellant’s 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 substantially supported its approval of the project as being consistent with the applicable policies of the certified LCP (specifically the coastal bluff policies). The applicant provided a geotechnical engineering report and the City’s Engineering Geologist reviewed the report and concurred that both the requested setback deviation from 40 to 25 ft. and foundation system with conventional footings are appropriate for the site. The Commission’s geologist also agrees that a 25 ft. setback is adequate and that the proposed developments will not destabilize the bluff. Therefore, there is a high degree of factual and legal support for the local government’s decision that the project, as conditioned, is consistent with the LCP, and this factor supports a no substantial issue finding.

**2. The extent and scope of the development as approved or denied by the local government.** The City-approved development will demolish a single-family residence and replace it with a new single-family residence on a coastal bluff. The scope is consistent with that of the surrounding development, which is comprised primarily of single-family residences sited adjacent to the coastal bluff. The development is consistent with the requirements for a Residential Single Family 3 (RSF 3) lot in the City of Dana Point’s Zoning Code (which is included in the certified IP). Therefore, this factor supports a finding of no substantial issue.

**3. The significance of the coastal resources affected by the decision.** A proper geotechnical and soils analysis was conducted and concluded that the coastal bluff was stable, the development would not affect neighboring coastal blufftop lots, and that a 25 ft. setback is adequate. Furthermore, the proposed project would remove nonconformities and impose a more stringent development setback than what currently exists. The proposed project would not adversely impact the stability of the coastal bluff, public access or views to or along the ocean or the coast. Therefore, this factor supports a finding of no substantial issue.

**4. The precedential value of the local government’s decision for future interpretations of its LCP.** The proposed project is a redevelopment of an existing non-conforming single-family residence and the proposed new developments conform with the policies of the certified LCP. The City interpreted the LCP in a manner that is consistent with the Coastal Act. Thus, the City’s decision will not set an adverse precedent for interpretation of the LCP. This factor supports a finding of no substantial issue.

**5. Whether the appeal raises local issues, or those of regional or statewide significance.** The appeal raises coastal issues of local, regional, or statewide significance related to coastal blufftop development; however, the City-approved project is consistent with the certified LCP's policies pertaining to the protection of coastal bluffs. Furthermore, the project will not adversely impact public access, public coastal views, or the character of the surrounding area. The proposed development is located landward of the coastal bluff edge setback, and the project would not impact public health and safety. Therefore, this factor supports a finding of no substantial issue.

### **Conclusion**

In conclusion, the Commission finds that the appeal raises **no substantial issue** as to conformity with the policies of the City's certified LCP and the public access policies of the Coastal Act.

## **APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

1. Geotechnical Engineering Report, NOVA Services, April 24, 2019.