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STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

Appeal No.: A-5-LGB-21-0043

Applicant: Lohbach Studios

Agents: Glenn Gellatly

Local Government: City of Laguna Beach

Local Decision: Approval with Conditions

Appellant: Mark & Sharon Fudge; George Weiss

Project Location: 1007 Gaviota Drive, Laguna Beach, Orange County
(APN: 644-076-01)

Project Description: Appeal of City of Laguna Beach Local Coastal Development Permit No. 16-1845 for after-the-fact approval of substantial demolition (more than 50%) of an existing duplex, and approval of construction of a new single-family residence on an ocean-fronting property on a bluff.

Staff Recommendation: Determine that a substantial issue exists.

SUMMARY OF STAFF RECOMMENDATION

The subject property is a 5,181-square-foot rectangular ocean-fronting lot at 1007 Gaviota Drive in Laguna Beach, Orange County. The City of Laguna Beach's action on Local CDP No. 16-1845 authorizes, after-the-fact, the substantial demolition (more than 50%) of an existing duplex and authorizes the construction of a new single-family residence on an ocean-fronting property on a bluff.

A-5-LGB-21-0043 (Lohbach Studios)
Appeal – Substantial Issue

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which appeal number A-5-LGB-21-0043 has been filed because the City’s decision that the development is consistent with the provisions of the certified LCP regarding new development on a bluff property was not adequately supported by documents in the record file or the local CDP’s findings. In addition, there are substantial issues as to whether the City-approved addition conforms to the required setbacks or whether it would increase the size or degree of nonconformities onsite, as well as the perpetuation of potentially obsolete bluff retention structures onsite. Further information is required to determine whether or not the project is consistent with the relevant policies of the LCP. A summary of the appellants’ contentions may be found on page 4 of this report. The complete appeal is included as [Exhibit 3](#).

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

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 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, N-33-20, and N-08-21, 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 and Aerials of Project Site](#)

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – Appeal](#)

I. MOTIONS AND RESOLUTIONS

Motion: I move that the Commission determine that Appeal No. A-5-LGB-21-0043 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

Staff recommends a **NO** vote. Following the staff recommendation will result in 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-21-0043** 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 June 22, 2021, Mark and Sharon Fudge and George Weiss, as a private citizen, filed an appeal during the ten (10) working day appeal period ([Exhibit 3](#)). No other appeals were received. Mark and Sharon Fudge attended multiple local hearings and submitted comments regarding the project to the City of Laguna Beach Design Review Board, and George Weiss, as a City Council Member, cast a dissenting vote at the City Council hearing that upheld the DRB's action. Thus, the appellants 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 is not consistent with the City's certified LCP. More specifically, they raise the following concerns with the proposed development:

1. Bluff edge determination has not been made consistent with the certified Land Use Element (LUE) definition, and, furthermore, all requirements relating to bluff top development have not been properly assessed (such as minimum required setbacks for development).
2. Project approval allowed new development to rely on existing shoreline protective devices. Nor did the City require a waiver of rights to future shoreline protection as a condition of approval. Project approval allowed obsolete structures to remain at the site in conjunction with new development. The existing non-conforming structure was not brought into conformity with the LCP.
3. Project approval allowed for encroachment of private development into public coastal access.

III. LOCAL GOVERNMENT ACTION

In 2014, the City of Laguna Beach issued permits for an interior remodel and a 150-

square-foot garage addition at the subject site (1007 Gaviota Drive). On December 18, 2014, the City's enforcement staff issued a stop work order for unpermitted construction that exceeded the permitted scope of work. The unpermitted work involved demolition of more than 50% of the existing residential structure, including exterior walls and the flooring and roofing systems.

On October 27, 2016, the City of Laguna Beach Design Review Board (DRB) held an initial hearing for a new residence at the subject site. This project was tabled to address the concerns raised by the Board and to prepare reports for an initial study to address potential historic resource and environmental context concerns.

On April 4, 2018, the City's Planning Commission held a public hearing regarding the proposal for the abandonment of an approximate 1,992-square-foot portion of an unimproved City right-of-way for Anita Street located adjacent to 1007 Gaviota Drive. The City's Public Works Department (PWD) had started a capital improvement project with the intent to replace the beach accessway. PWD worked with the property owners of 1007 Gaviota Drive to allow private encroachments associated with the access to their home. In return, the property owners offered to contribute funds to the capital improvement project, including the installation and maintenance of landscaping and irrigation, which would remain under City ownership. However, the Planning Commission did not find General Plan consistency with the proposed abandonment.

On May 22, 2018, City Council continued the abandonment. On June 12, 2018, City Council removed the abandonment from the agenda so city staff could further review the project and the application was subsequently withdrawn and no further action was taken on the abandonment.

On March 11, 2021, DRB held a public hearing for consideration and subsequent conditional approval of the Local CDP subject to this appeal (No. 16-1845), Design Review 16-1844, Variance 19-5474, Revocable Encroachment Permit 16-1846, and a CEQA Categorical Exemption authorizing the applicant's request to "demolish an existing duplex and construct a new single-family dwelling."

On May 4, 2021, the City Council of the City of Laguna Beach conducted a public hearing on a local appeal of the March 11, 2021 DRW decision. The City Council upheld the DRB's decision but imposed additional conditions of approval to address the appellant's concerns regarding view impacts.

On June 9, 2021, 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 June 22, 2021, Mark and Sharon Fudge and George Weiss, as a private citizen, filed an appeal to the California Coastal Commission during the 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 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 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) 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 review on the merits of the project. A de novo review on the merits of the project 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 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 Mark Fudge and George Weiss 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.

V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

A. PROJECT LOCATION AND DESCRIPTION

The subject property is a 5,181-square-foot rectangular ocean-fronting bluff lot at 1007 Gaviota Drive in the City of Laguna Beach, Orange County ([Exhibit 1](#)). The site is located at the corner of Gaviota Drive and the Anita Street public beach accessway. City records indicate that the project site was originally developed in 1924 with a two-story single-family residence with an attached one-car garage. The project site is developed with the remainder of a formerly extant duplex that has been substantially demolished. The site is zoned R-2 (Residential Medium Density) and is surrounded by a mix of single-family residences and other duplexes. The subject lot is located between the first public road (South Coast Highway) and the sea (Anita Street Beach). There is a public beach access stairway approximately 30 feet north of the site.

The City of Laguna Beach's action on Local CDP No. 16-1845 approves after-the-fact the substantial demolition (more than 50%) of an existing 2,736-square-foot, 30-foot-high duplex, and approves the construction of a 3,592-square-foot, three-level, 30-foot-high single-family residence with an attached 657-square-foot two-car garage, elevated decks/terraces (1,612 square feet), retaining walls, landscaping, and grading (approximately 594 cubic yards) ([Exhibit 2](#)). The proposed project involves the demolition of the remaining elements of the duplex, except for the main level concrete floor slab, three

steel columns, the upper-level floor system and horizontal steel beam, and a portion of the wall between the garage and living area. The proposed single-family residence has been designed around the existing main and upper floor systems and steel structure, and a new lower level is proposed. The new lower level contains habitable space (two bedroom suites), a mechanical and storage space, and air conditioning equipment, and is located below the main terrace. The City granted a variance for encroachments into the front setback and additional building setback at the front. The City also granted a Revocable Encroachment Permit for construction of pilasters, walls, fencing, lighting, irrigation, patio, and walkways within the public rights-of-way along both Gaviota Drive and Anita Street (the proposed development is on a corner lot).

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 more than 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). 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 applicable standard of review;
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 (or the public access policies of the Coastal Act). The subject coastal development permit is appealable to the Commission due to the project's location between the first public road and the sea. The appellants' grounds for appeal are attached as [Exhibit 3](#).

Appellants' Argument 1:

The appellants assert that the coastal bluff edge determination has not been made consistent with the certified Land Use Element (LUE) definition, and that all requirements relating to blufftop development have not been properly assessed (such as bluff top setbacks, prohibition of private development on the bluff face, waiver of future shoreline/bluff protection devices, minimization of landform alteration, and more), and consequently none of the applicable blufftop/bluff face policies were applied.

The applicant submitted a Geotechnical Bluff Top Evaluation prepared by Geofirm dated May 8, 2015. In this report, Geofirm concludes that based on the 1970 topography, the slope of the project site would not be considered a coastal bluff because the overall slope of the project site would have been at an angle of approximately 37 degrees and, therefore, there is no coastal bluff edge (or top of bluff) on the site. Consequently, the applicant argues that the project site is an oceanfront lot with no blufftop or bluff edge and that development is proposed on oceanfront bluff faces.

Entry 102 of the Land Use Element (LUE) Glossary, a component of the City of Laguna Beach certified LCP, contains the following definition of 'Oceanfront Bluff/Coastal bluff' [**emphasis added**]:

...A bluff overlooking a beach or shoreline **or** that is subject to marine erosion. Many oceanfront bluffs consist of a gently sloping upper bluff and a steeper lower bluff or sea cliff. The term "oceanfront bluff" or "coastal bluff" refers to the entire slope between a marine terrace or upland area and the sea. The term "sea cliff" refers to the lower, near vertical portion of an oceanfront bluff.

In addition, Section 25.50.004(B)(4)(a) of the certified IP defines the 'oceanfront bluff' as:

- (a) an oceanfront landform having a slope of forty-five degrees or greater from horizontal whose top is ten or more feet above mean sea level.
 - i. In cases where an oceanfront bluff possesses an irregular or multiple slope condition, the setback will be taken from the most inland forty-five degree or greater slope.
 - ii. In cases where the landform constitutes an oceanfront bluff whose slope is less than forty-five degrees, a determination as to whether or not the specific

landform is subject to this provision shall be made by the director of community development.

Pursuant to the LUP's definition, an 'oceanfront bluff/coastal bluff' is a bluff that overlooks a beach or shoreline, or a bluff that is subject to marine erosion. The subject site overlooks the beach and shoreline and is subject to marine erosion, and therefore is a coastal bluff under the operative standard of review (Laguna Beach certified LCP).

In addition, Section 25.50.004(B)(4)(a) still clearly identifies oceanfront bluffs with slopes less than 45 degrees (such as the project site) as oceanfront bluffs. However, Section 25.50.004 provides the City's Director of Community Development some discretion to determine whether the subject site should be subject to the 25-foot bluff edge setback requirement of Section 25.50.004(B)(4)(a) but does not give discretion to determine that a bluff is not a bluff simply because its slope is less than 45 degrees.

Additionally, in 1980, the Coastal Commission granted a coastal development administrative permit (A-80-7442), which authorized the construction of three retaining walls at the project site. More specifically, this permit described the development, in part, as: "construction of 3 retaining walls on an improved, ± 4800 sq. ft., ocean bluff, R-2 lot..." The Commission has historically considered the project site to be a bluff property.

Therefore, it is clear that the site is an oceanfront bluff property. The outstanding question is whether the City's determination to not require the 25-foot bluff edge setback was appropriate.

In addition to a minimum 25-foot bluff edge setback, Section 25.50.004(B) provides two other setbacks options for oceanfront and oceanfront bluff properties: the building stringline, and an oceanfront building setback established as a line drawn through the points where the plane of elevation fourteen feet above mean sea level touches the land mass of the particular parcel involved.

Section 25.50.004(B) of the certified IP states:

(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:

(1) Except as provided in subdivisions (2), (3) and (5) of this subsection, the oceanfront building setback line on all oceanfront property within the city is fixed and established as the line drawn through the points where the plane of elevation

twelve feet above the mean sea level touches the land mass (other than beach sand) of the particular parcel involved.

(2) Except as provided in subdivisions (3) and (5) of this subsection, the oceanfront building setback line on all oceanfront property situated between Thalia Street and Bluebird Canyon Drive is fixed and established as the line drawn through the points where the plane of elevation thirteen feet above mean sea level touches the land mass (other than beach sand) of the particular parcel involved.

(3) Except as provided in subdivision (5) of this subsection, the oceanfront building setback line on all oceanfront property situated between Laguna Avenue and Thalia Street is fixed and established as the line drawn through the points where the plane of elevation fourteen feet above mean sea level touches the land mass (other than beach sand) of the particular parcel involved.

(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.

(a) An “oceanfront bluff” is an oceanfront landform having a slope of forty-five degrees or greater from horizontal whose top is ten or more feet above mean sea level.

(i) In cases where an oceanfront bluff possesses an irregular or multiple slope condition, the setback will be taken from the most inland forty-five degree or greater slope.

(ii) In cases where the landform constitutes an oceanfront bluff whose slope is less than forty-five degrees, a determination as to whether or not the specific landform is subject to this provision shall be made by the director of community development.

(b) The building stringline averages the setback of oceanfront buildings on both adjacent sides of coastal lots and is defined as follows: The stringline setback shall be depicted as a line across a parcel that connects the oceanward ends of the nearest adjacent walls of the main buildings on adjacent lots. Posts or columns that extend to grade from upper story decks, balconies, stairways and other types of similar features shall not be used to define the building stringline criteria.

(i) In the event that there is no applicable stringline on adjacent oceanfront lots, the setback shall be at least twenty-five feet from the top of an oceanfront bluff.

(ii) Only in such cases where the design review board determines that the stringline is significantly more restrictive than the twenty-five foot setback may the board modify the required building setback, provided it determines that unique conditions relating to landform, lot orientation or

excessive building setbacks on an adjacent property prevent or severely restrict residential development that otherwise meets the intent of the zoning code.

It is unclear which oceanside setback line the applicant is using for the single-family residence setback. The applicant describes the new residence as applying a managed retreat strategy to the site but most of the new residence will remain in the same footprint as the existing duplex. In addition, the proposed development would violate the building stringline because the construction of a new lower living area further seaward than the existing duplex would not comply with the building stringline setback.

In the City's staff report, the City states that during a virtual meeting on June 23, 2020, Coastal Commission staff, after reviewing geotechnical reports and a prior 1980 permit, indicated that the location of the bluff is at the oceanward side of the uppermost terrace wall. However, Dr. Joseph Street, Commission staff's senior geologist, simply indicated that using the edge upper wall *might* be a reasonable compromise because the Commission had authorized development in that area under the previously approved 1980 permit and a setback from that area to the existing structure would be approximately 25 feet, but Dr. Street noted during that call that was not a decision he could make unilaterally during that meeting. In any case, it is unclear whether the property is or is not being treated as a bluff property, and it is unclear from the plans and the City's findings what setback, if any, has been applied.

The fact that the subject site is on a coastal bluff is important in part because Policy 7-A of LUP of the certified LCP (cited in Appendix A) requires that the quality of public views from the hillsides and along the city's shoreline be preserved to the maximum extent feasible. Setting development farther back from the edge of the coastal bluff decreases the project's visibility from the beach below, where the public has access along the shoreline. The City's record does not consider such alternative locations or alternative smaller project designs, as would be required if the site were determined to be located on a coastal bluff and setback policies were applied.

In addition, Policies 7.3 and 10.2 and Actions 7.3.3, 7.3.5, 10.2.6, and 10.2.8 of the of the LUP (cited in Appendix A) require that new development minimize the alteration of natural landforms and not contribute to geologic instability. Setting development back from the edge of the bluff can substantially decrease risk to life and property, because the farther from the bluff edge development is located, the less likely it is that that development will become jeopardized by erosion, landslides, and similar hazards. Likewise, setbacks decrease the likelihood of destruction of a structure caused by geologic instability. The added weight and disturbance of development, irrigation, and human activity closer to the bluff edge all could increase the rate of erosion and bluff retreat. For these reasons, the LCP requires a bluff edge (or top of the bluff) setback as a condition of approval for development on bluff sites.

Therefore, concerns regarding the project site's location on a potential coastal bluff and whether the proposed development is consistent with the LCP policies concerning development on a bluff face and bluff edge setbacks have not been adequately

addressed by the City of Laguna Beach in approving the local CDP. The City's record does not demonstrate that the City-approved development is wholly consistent with the policies of the LCP or that all the necessary and appropriate requirements have been assessed. The City's findings fail to provide an adequate degree of factual and legal support for its decision to approve the proposed development and grant a Local CDP.

Appellants' Argument 2:

The appellants assert that the City-approved permit is not consistent with the certified LCP because it allows new development to rely on existing shoreline protective devices. The appellants also contend that the City failed to require a waiver of rights to future shoreline protection as a condition of approval although it is required by the certified LCP. The appellants maintain the project approval allows obsolete structures (including shoreline protective devices) to remain at the site in conjunction with new development, and the project approval does not require existing non-conforming structures to be brought into conformity with the LCP.

The City-approved project constitutes new development. Although the existing retaining walls and seawall are not proposed to be reinforced and no new bluff or shoreline protection devices are proposed to establish geologic stability or protection from coastal hazards, LUE Action 7.3.8 (cited in Appendix A) requires, where applicable, that applications for development on oceanfront bluff sites identify and remove all unpermitted and/or obsolete structures, including but not limited to protective devices, which encroach into oceanfront bluffs. In addition, LUE Action 7.3.10 (cited in Appendix A) requires that pre-existing nonconforming oceanfront or oceanfront bluff structures to be brought into conformity with the LCP when the proposed work constitutes new development.

Because the local permit authorizes the demolition of a duplex and construction of new development, the bluff retaining structures and seawall would no longer perform their intended function to serve the previously existing duplex and as a result may become obsolete. LUE 7.3.8 would require the removal of these structures once obsolete. The City's findings fail to analyze alternatives, including the potential need to remove these protective structures once they become obsolete. Therefore, the appellants' contention regarding the protective devices onsite raises a substantial issue.

In addition, LUE Action 7.3.12 and 10.2.6 (cited in Appendix A) requires that new structures be sited and designed to avoid the need for shoreline and/or oceanfront bluff protective devices during the economic life of the structure. Based on a 2016 Coastal Hazards Analysis prepared for the site, the City concluded that the site will be safe from coastal hazards including sea level rise and wave runup over the project's 75-year design life. However, the applicant's coastal hazards analysis is only based on the sea level rise projections provided in the Coastal Commission's 2015 Sea-Level Rise Policy Guidance document and has not been supplemented in consideration of the updated projections on rising sea levels provided for in the 2017 Rising Seas report and the 2018 OPC Guidance. More information is needed regarding the stability of the slope, which currently relies on bluff retaining structures and a seawall, and how it may be affected by coastal hazards based on more recent projections.

Also, the City did not impose a special condition requiring a waiver of bluff/shoreline protective devices for the protection of the proposed new development in the future and a deed restriction to record the waiver on the title of the property, which is required by LUP Action 7.3.9 (cited in Appendix A). Without the imposition of a condition of the permit to expressly require the waiver and recordation of the deed restriction prior to issuance of the local coastal development permit, there is no assurance that the requirements provided for in Action 7.3.9 are enforceable by the City after approval of the permit by the City's Design Review Board. The City has the authority and responsibility to impose conditions as necessary to ensure consistency with the certified LCP, but it did not do so in this case. Therefore, the Commission finds that the project does raise a substantial issue regarding conformity with the LCP.

Appellants' Argument 3:

The appellants assert that the local approval allows for encroachment of private development into public coastal access areas.

The Anita Street beach public accessway immediately abuts the project site. The applicant currently maintains private driveway access, hardscaping and landscaping that encroaches into the public right-of-way within Anita Street. The property owner (or predecessors-in-interest) of 1007 Gaviota Drive have benefited from this private encroachment for approximately 75 years (since c. 1924 when the site was first developed). The City has granted a Revocable Encroachment Permit for construction of pilasters, walls, fencing, lighting, irrigation, patio, and walkways within the public rights-of-way along both Gaviota Drive and Anita Street (the proposed development is on a corner lot). However, the City does not charge an annual fee for its encroachment permits to ensure that the public benefits from private improvements. Subsequent to the City's action on the subject local permit, the applicant has offered to fund a water bottle refilling station in the Anita Street public right-of-way and to consent to the City installing a loading zone in the public right-of-way as mitigation, but the City could provide either of these benefits without authorizing the encroachment permit or it could charge a market based annual fee to fund additional public improvements for each year the private encroachments remain in the public right-of-way. This offer was not memorialized in the local permit. Moreover, the potential benefits of a water filling station are not equal to the burden the public bears regarding the encroachment, and the City can already install a loading zone in the public rights-of-way if it so chooses.

However, while the private encroachment has been longstanding, this should not indicate such an encroachment onto a public right-of-way is appropriate to continue in perpetuity, especially when a private site is being redeveloped, which is the proper time to address existing non-conformities associated with the private development. The public rights-of-way could potentially be used to provide public amenities such as vehicle or bicycle parking, or some other use supporting public coastal access that is not currently contemplated.

The applicant's Driveway Feasibility Study concludes that the applicant is only able to safely access the property with vehicles from the private encroachment in the Anita Street beach public accessway. However, this may only be true because the new development is

not being required to conform to other setback requirements, including the rear (street) yard setback that would allow a new garage more space for vehicular access from the Gaviota Drive like most other properties in this neighborhood. Moreover, if it is true that the private development would rely on the public right-of-way for access to the garage, then it cannot easily be removed as is ordinarily required when a revocable encroachment permit is granted. Given that the project constitutes new development, such issues and non-conformities should be addressed and/or removed.

Additional Issues Raised by Appellants:

The appellants also raise additional issues, not as grounds for an appeal but as issues that should be considered during the de novo review of this application if the Commission finds substantial issues exist for the foregoing reasons detailed above.

The appellants would like confirmation regarding the status of a deed restriction that was required as a special condition of the Coastal Commission's 1980 CDP for the installation of the bluff retaining walls and seawall at the site to grant an irrevocable offer to dedicate an access easement.

In addition, the appellants are requesting that the potential reduction of density at the project site from a duplex to a single-family residence be reviewed more closely during the de novo review of this application.

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 (specifically the coastal bluff definition and bluff top/face policies) and the public access provisions of the Coastal Act. 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 demolition of a duplex and construction of new single-family residence and accessory structures on the subject site located on bluff property. The record does not consider less massive alternative project designs, as would be required if the site were determined to be located on a coastal bluff and setback policies applied. Therefore, it is not possible at this time to determine how the extent and scope of the project compares to the allowable scope of development at this site, 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 include special protections for coastal bluffs. Additionally, the development would encroach upon two public rights-of-way which are used for access to the coast. 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 setback areas or potentially sited on a bluff face would set negative 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 coastal bluff sites, of which there are hundreds in Laguna Beach. Without adequate information to determine whether the lot is on a coastal bluff, allowing the City’s local CDP approval to stand would result in adverse precedent 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 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 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.

APPENDIX A – RELEVANT LCP POLICIES

Laguna Beach Land Use Element:

Policy 7.3 states:

Design and site new development to protect natural and environmental sensitive resources, such as areas of unique scenic quality, public views, and visual compatibility with surrounding uses and to minimize natural landform alterations.

Action 7.3.2 states: Review all applications for new development to determine potential threats from coastal and other hazards.

Action 7.3.3 states: Design and site new development to avoid hazardous areas and minimize risks to life and property from coastal and other hazards.

Action 7.3.4 states: Require new development to assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic stability, 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 states: 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 7.3.6 states: Require new development on oceanfront blufftop lots to incorporate drainage improvements, removal of and/or revisions to irrigation systems, and/or use of native or drought-tolerant vegetation into the design to minimize threats to oceanfront bluff recession.

Action 7.3.8 states: On oceanfront bluff sites, require applications where applicable, to identify and removal 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 states: 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 property as a deed restriction.

Action 7.3.10 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 or oceanfront bluff structure to be brought into conformity with the LCP.

Action 7.3.12 states: Site and design new structures to avoid the need for shoreline and/or oceanfront bluff protective devices during the economic life of the structure (75 years).

Action 7.3.13 states: Limit the use of shoreline/bluff protective devices to the minimum required to protect existing development in danger of erosion. Site and design any such protective devices as far landward as possible. “Existing development” for purposes of this policy shall consist only of a principal structure, e.g. residential dwelling, required garage, or second residential unit, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping etc. No shoreline/bluff protective device shall be allowed for the sole purpose of protecting an accessory structure.

Policy 10.2 states:

Design and site new development to protect natural and environmentally sensitive resources such as areas of unique scenic quality, public views, and visual compatibility with surrounding uses and to minimize landform alterations. (Same as Policy 7.3)

Action 10.2.5 states: On bluff sites, requires applications where applicable, to include a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contain statements that the project site is suitable for the proposed development and that the development will be safe from geologic hazard for its economic life. For development on oceanfront bluffs, such reports shall include slope stability analyses and estimates of the long-term average bluff retreat/erosion rate over the expected life of the development. Reports are to be prepared/signed by a licensed professional Engineering Geologist or Geotechnical Engineer.

Action 10.2.6 states: Require all new development located on an oceanfront bluff top to be setback from the oceanfront bluff edge a sufficient distance to ensure stability, ensure that it will not be endangered by erosion, and to avoid the need for protective devices during the economic life of the structure (75 years). Such setbacks must take into consideration expected long-term bluff retreat over the next 75 years, as well as slope stability. The predicted bluff retreat shall be evaluated considering not only historical bluff retreat data, but also acceleration of bluff retreat made possible by continued and accelerated sea level rise, future increase in storm or El Nino events, and any known site-specific conditions. To assure stability, the development must maintain a minimum factor of safety against landsliding of 1.5 (static) or 1.2 (pseudostatic, $k=0.15$ or determined through analysis by the geotechnical engineer) for the economic life of the structure.

Action 10.2.7 states: 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 states: 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.

Open Space/Conservation Element Policies:

Policy 7-A states:

Preserve to the maximum extent feasible the quality of public views from the hillsides and along the city's shoreline.

Policy 7-K states:

Preserve as much as possible the natural character of the landscape (including coastal bluffs, hillsides and ridgelines) by requiring proposed development plans to preserve and enhance scenic and conservation values to the maximum extent possible, to minimize impacts on soil mantle, vegetation cover, water resources, physiographic features, erosion problems, and require re-contouring and replanting where the natural landscape has been disturbed.

Policy 10-C states:

Require projects located in geological hazard areas to be designed to avoid the hazards, where feasible. Stabilization of hazard areas for purposes of development shall only be permitted where there is no other alternative location or where such stabilization is necessary for public safety. The more unstable areas should be left ungraded and undeveloped, utilizing land use designations such as Open Space.

Policy 10-E states:

Development in the areas designated "Residential/Hillside Protection" on the Land Use Plan Map or within potential geologic hazard areas identified on the Geological Conditions Map of the Open Space/Conservation Element shall not be permitted unless a comprehensive geological and soils report is prepared pursuant to Title 22 of the City's Municipal Code, and adequate mitigation measures have been approved and implemented by the City's geologist. For projects located in areas subject to hazards as identified on the Geologic Conditions Map or subject to erosion, landslide or mudslide, earthquake, flooding or wave damage hazards confirmed by a geologic assessment, as a condition of approval or new development a waiver of liability shall be required through a deed restriction.