

**CALIFORNIA COASTAL COMMISSION**

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# W19a

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## STAFF REPORT: APPEAL – NO SUBSTANTIAL ISSUE

**Appeal No.:** A-5-LGB-22-0009

**Applicant:** Bill Gross and Amy Schwartz Gross

**Agent:** Laurence P. Nokes, Esq

**Local Government:** City of Laguna Beach

**Local Decision:** Approval with Conditions

**Appellant:** Mark Towfiq and Carol Nakahara

**Project Location:** 2475 South Coast Highway, Laguna Beach, Orange County (APN: 656-114-19)

**Project Description:** Appeal of City of Laguna Beach local Coastal Development Permit 21-10810 for the installation of an approx. 10-ft. high, 170 sq. ft. art sculpture consisting of blown-glass spheres, reeds, and oceanic shapes and directional lighting attached to a metal grate in the backyard of a single-family residence. Rocks placed at grade provide weight to support the sculpture in the rear yard.

**Staff Recommendation:** No substantial issue.

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**IMPORTANT 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 three minutes total per side. Please plan your testimony accordingly. Only the applicant, appellant(s), 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-approved project appealed to the Commission is the installation of an approximately 10-foot-high, 170 square foot art sculpture consisting of blown-glass spheres, reeds, and oceanic shapes and directional lighting attached to a metal grate with river rock providing weight to support the structure in the rear yard of an oceanfront single-family residence ([Exhibit 2](#)). No underground foundation or footings are proposed.

The project site is located at 2475 South Coast Highway ([Exhibit 1](#)) on a 41,800 square foot lot, zoned R-1 (Residential Low Density). A single-family residence exists on the subject lot and on the lot immediately to the north. A multi-family residence exists south of the subject site. The subject lot slopes from the elevation of the adjacent South Coast Highway down to the edge of a coastal bluff that overlooks a small pocket beach and the Pacific Ocean.



Figure 1: Proposed Art Sculpture

The appellants contend that **1)** the applicant's plans do not depict an accurate stringline and would not meet the required stringline setback; **2)** that if the stringline setback does not apply, the art sculpture still violates the required bluff edge setback pursuant to Zoning Code Section 25.44.050; **3)** that the City's staff report erroneously states that the required bluff top setback is only 10 feet in clear contravention of the requirements of Section 25.44.050, subdivision (E)(3); and **4)** that unpermitted fill at the site has extended the bluff

edge, distorted the location of the 25-foot setback, and there is no substantial evidence to support a conclusion that the unpermitted placement of fill did not impact the location of the bluff top edge.

Staff recommends the Commission find that no substantial issue exists with respect to the grounds on which the appeal was filed and the project's consistency with the certified Local Coastal Program (LCP). The scope of the City-approved project is limited to the installation of an art sculpture deemed by the applicant and the City to be approximately 37 feet from a bluff edge within the rear yard of an existing single-family residence. Even if a precise bluff edge determination were required, the project does not constitute development that would be entitled to rely on existing bluff/shoreline protective devices or require new bluff/shoreline protective devices. There will be no impacts to coastal resources. The City's approval of the project will not prejudice the implementation of the LCP in this area because it is so minor in scope. The motion and resolution can be found on **Page 5**.

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## APPENDICES

Appendix A – Substantive File Documents

### **EXHIBITS**

[Exhibit 1 – Project Location](#)

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – City Determination, Local CDP No. 21-10810](#)

[Exhibit 4 – Appeal](#)

## **I. MOTION AND RESOLUTION – NO SUBSTANTIAL ISSUE**

### **Motion:**

I move that the Commission determine that Appeal No. A-5-LGB-22-0009 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 finds that Appeal No. A-5-LGB-22-0009 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

## **II. APPELLANTS' CONTENTIONS**

On February 22, 2022, Mark Towfiq and Carol Nakahara filed an appeal of City of Laguna Beach local CDP No. 21-10810 ([Exhibit 4](#)). The appellants raise the following concerns with the City-approved development:

- 1) the applicant's plans do not depict an accurate stringline and would not meet the required stringline setback pursuant to certified Zoning Code Section 25.50.004.
- 2) that if the stringline setback does not apply, the art sculpture still violates the required bluff edge setback pursuant to Zoning Code Section 25.44.050.
- 3) the City's Staff Report erroneously states that the required bluff top setback is only 10 feet in clear contravention of the requirements of Section 25.44.050, subdivision (E)(3).
- 4) unpermitted fill at the site has extended the bluff edge, distorted the location of the 25-foot setback, and there is no substantial evidence to support a conclusion that the unpermitted placement of fill did not impact the location of the bluff top edge.

## **III. LOCAL GOVERNMENT ACTION**

On January 13, 2022, the City of Laguna Beach Design Review Board approved Design Review 21-10809 and local Coastal Development Permit 21-10810 ([Exhibit 3](#)). At the hearing, the Design Review Board members raised concern with the protective glass cover and the directional lighting. The Design Review Board approved the project with two

conditions to eliminate the protective glass cover and to use a lighting timer in the evening. The Design Review Board determined that the project was categorically exempt from the California Environmental Quality Act (“CEQA”) under Section 15303, Class 3 (New Construction).

The City’s Notice of Final Local Action for Design Review 21-10809 and local Coastal Development Permit No. 21-10810 was received by the Commission’s South Coast District office on February 7, 2022, and the Commission’s required ten working-day appeal period was established. During the Commission’s appeal period, this appeal was received on February 22, 2022. No other appeals were received prior to the end of the Commission’s appeal period on February 22, 2022.

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

After certification of a Local Coastal Program (LCP), 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)].

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 atop the coastal 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 the Commission finds that the appellants’ contentions raise no substantial issue, the action of the local government becomes final.

### **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, the appellants, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

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 – NO SUBSTANTIAL ISSUE**

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

The proposed project involves the installation of an approximately 10-foot-high, 170 square foot art sculpture consisting of blown-glass spheres, reeds, and oceanic shapes and directional lighting attached to a metal grate. Rocks placed at grade provide weight to support the sculpture in the rear yard of the property ([Exhibit 2](#)). Underneath the sculpture, sod and dirt were replaced with decomposed granite (pervious) to avoid muddy conditions. No underground foundation or footings are proposed to support the art sculpture.

The project site is located at 2475 South Coast Highway ([Exhibit 1](#)) on a 41,800 square foot lot, zoned R-1 (Residential Low Density). A single-family residence exists to the north and a multi-family residence exists south of the subject site. The subject lot slopes from the elevation of the adjacent South Coast Highway down to edge of a coastal bluff that overlooks a small pocket beach and the Pacific Ocean.

### **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. The standard of review for this appeal is consistency with the certified Local Coastal Program and with the public access and recreation policies of the Coastal Act.

**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 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**

**Contention 1: the applicant’s plans do not depict an accurate stringline and would not meet the required stringline setback pursuant to certified Zoning Code Section 25.50.004.**

The appellants cite Section 25.50.004, subdivision (B)(4) of the City’s certified Zoning Code, a component of the City’s Local Coastal Program (LCP), that “no new building, [...] 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.” The appellants also cite Section 25.50.004, subdivision (B)(4)(b) which defines the stringline as “a line across a parcel that connects the oceanward ends of the nearest adjacent walls of the main buildings on adjacent lots.” The appellants contend that

the applicant's plans depict an inaccurate building stringline, which would be three to four feet further inland had the stringline been applied to the nearest adjacent building closest to the property line. As a result, the appellants contend that the project would not meet the required setback using the correct stringline.

The purpose of the Zoning Code Section 25.50.004 referenced by the appellants is to establish building setback lines via either a stringline or a 25-foot bluff edge setback. In this case, the art sculpture is not a building. Moreover, the art sculpture constitutes temporary development as it is an easily removable landscape feature with no underground foundation or footings. Thus, a building stringline, whether accurate or not, would not be applicable in this case. If the stringline (as defined by the appellants) were applicable to this permitted development, the subject sculpture would not meet the more restrictive stringline requirement. Yet, the appellants do not raise coastal resource issues caused by the three to four feet difference between the sculpture's location and the building stringline. Even though the building stringline is more restrictive in this case, had the 25-foot building bluff edge setback been applicable, the subject sculpture would be landward of the setback by approximately 12 feet. Therefore, the appellants' contention that the applicant's plans do not depict an accurate stringline pursuant to Zoning Code Section 25.50.004 does not raise a substantial issue.

**Contention 2: that if the stringline setback does not apply, the art sculpture still violates the required bluff edge setback pursuant to Zoning Code Section 25.44.050.**

The appellants contend the development must meet a required 25-foot setback from the bluff edge per Zoning Code Section 25.44.050, subdivision (E)(3). The purpose of the Zoning Code Section 25.44.050 is to maintain, enhance and promote the unique character of the Three Arch Bay area of Laguna Beach. More specifically, subdivision (E) refers to a building stringline for the Three Arch Bay area. In this case, the subject property is not within the Three Arch Bay area. Even if Zoning Code Section 25.44.050 was relevant, the code refers to a building stringline, in which case would not apply to the art sculpture. If subdivision (E)(3) was relevant, the art sculpture would be landward of the bluff top setback minimum of 25 feet by approximately 12 feet. Therefore, the appellants' contention that the art sculpture violates the bluff top setback per Zoning Code Section 25.44.050, subdivision (E)(3) does not raise a substantial issue.

**Contention 3: the City's Staff Report erroneously states that the required bluff top setback is only 10 feet in clear contravention of the requirements of Section 25.44.050, subdivision (E)(3).**

More specifically, the appellants contend that the City erroneously uses Section 25.50.004(B)(4)(d) to establish a 10-foot bluff top setback for the rear yard, and that the City did not provide any support for its conclusion that the project qualifies as a balcony, patio, deck, or similar architectural structure to which that setback may apply. The appellants argue that the sculpture is an accessory structure to which the 10-foot setback would not apply. As such, the appellant contends the 25-foot setback pursuant to Section 25.44.050, subdivision (E)(3) should apply. As noted earlier, Section 25.44.050 (E)(3)

refers to the Three Arch Bay area of Laguna Beach and therefore this section of the Zoning Code is not applicable here.

The City references Section 25.50.004(B)(4)(d) of the certified Zoning Code of the LCP and notes that “patio deck covers or similar architectural features to project a maximum of five feet beyond the applicable building setback or deck stringline, whichever is least restrictive; however, in no case shall such projects be closer than ten feet to the top of an oceanfront bluff. In this case, the deck stringline is least restrictive, but the requested improvements must still observe a setback of ten feet from the bluff edge.”

As noted earlier, Zoning Code Section 25.50.004 establishes building setbacks, and the art sculpture is not a building. Again, the art sculpture constitutes temporary development as it is an easily removable landscape feature with no underground foundation or footings, unlike a balcony, patio, deck or similar architectural structure. The art sculpture is a temporary ornament located approximately 37 feet from the bluff edge, and the appellants do not raise any coastal resource issues caused by setting a minimum 10-foot setback, which the art sculpture exceeds by approximately 27 feet. Conversely, had the City applied the more restrictive provision (a maximum of five feet beyond the applicable building setback), the art sculpture would satisfy both the building stringline and bluff edge setback accounting for the additional five feet granted for such architectural features.

Therefore, the appellants’ contention that the City erroneously uses Section 25.50.004(B)(4)(d) in contravention to the requirements of Section 25.44.050, subdivision (E)(3), does not raise a substantial issue.

**Contention 4: unpermitted fill at the site has extended the bluff edge, distorted the location of the 25-foot setback, and there is no substantial evidence to support a conclusion that the unpermitted placement of fill did not impact the location of the bluff top edge.**

As referenced above, the 25-foot bluff edge setbacks established by Sections 25.50.004(B)(4) and 25.44.050(E)(3) are not applicable in this case.

The applicant determined that the bluff edge is approximately 37 feet seaward of the art sculpture. The City reviewed the bluff edge determination report provided by GeoSoils Inc., dated February 28, 2021. GeoSoils Inc. reviewed vertical and oblique aerial photographs, conducted onsite observations, considered the fill placement and historical geomorphic processes at the site, and concluded that the coastal bluff edge at the subject site is shown on the topographic survey conducted by RdM Surveying Inc. on November 19, 2020 ([Exhibit 2](#)). The report compared the coastal edge bluff as seen on the topographic survey to two aerial photographs and concluded that “the position of the coastal bluff edge has changed very little in the last  $\pm 100$  years.” As such, the City deemed the development to be in compliance with the LCP. The appellants’ contention that the location of the 25-foot setback is distorted due to unpermitted fill and that there is no substantial evidence to

support a conclusion that the placement of fill did not impact the location of the bluff top edge does not raise a substantial issue.

Furthermore, the project does not involve an underground foundation or construction of shore/bluff protective devices and would not interfere with the permanent development on the lot. Specifically, the subject project would not enlarge or extend the life of the existing residence on the lot and does not render the existing residence as a whole any closer to the bluff edge or affect the life of the residence as a whole. Even if there is fill on the property, the sculpture poses no threat to geologic stability and would not affect the bluff edge. Even if the bluff edge were measured incorrectly and reviewed incorrectly by the City, there would be no adverse impacts to coastal resources. Therefore, this contention does not raise a substantial issue.

**SUBSTANTIAL ISSUE FACTORS:**

The Commission typically applies five factors in making a determination whether an appeal raises a substantial issue pursuant to Section 30625(b)(2).

**1. The degree of factual and legal support for the local government’s decision that the development is consistent with the relevant provisions of the Coastal Act.** The City adequately supported its approval of the project’s consistency with the applicable policies of the certified LCP and the public access provisions of the Coastal Act. The City concluded that the project is approximately 37 feet from a coastal bluff edge which provides an adequate buffer to protect environmentally sensitive habitats and coastal scenic resources. The City also found that the project did not include grading or the alteration of natural landforms that would result in undue risks from geological and erosional forces. Therefore, there is a sufficient degree of factual and legal support for the local government’s decision, and this factor supports a finding of no substantial issue.

**2. The extent and scope of the development as approved by the local government.** The local government granted a CDP for an art sculpture in the rear yard approximately 37 feet from the bluff edge. The scope of work includes removing the sod and dirt, placing decomposed granite on the ground, placing a metal grate on the decomposed granite, attaching the blown glass pieces and directional lighting to the grate, and then placing river rock on top to add weight. The project does not propose any structural changes to existing single-family home or propose an underground foundation for the art sculpture. The project also does not propose any bluff/shoreline protective devices and is easily removable. Therefore, this factor supports a finding of no 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. The LCP and the Coastal Act include special protections for coastal bluffs. The City approved an art installation that is 37 feet from the bluff edge and that does not require a bluff/shoreline protective device. Thus, this resource will not be affected by this project. 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 subject site is a nonconforming oceanfront bluff property. Most of the 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. In this case, the City approved an easily removable art sculpture with no foundation that is 37 feet from the bluff edge and does not require a bluff/shoreline protective device. The project does not raise any coastal resource issues. As stated above, the City had adequate factual support to approve the project, and the approval of similar development without foundations set back from the bluff would not prejudice the LCP in this area. Therefore, 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 a local issue related to project-specific factors of the City's approval of an art sculpture installation on a residential bluff top lot in a developed residential neighborhood of Laguna Beach, and the process the City used to approve the art sculpture, but the appeal does not raise any issues of statewide significance. This factor weighs in favor of a finding of no substantial issue.

### **Conclusion**

In conclusion, the Commission finds that no 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 – Substantive File Documents**

1. City of Laguna Beach certified Local Coastal Program.
2. City of Laguna Beach Resolution No. 21-10809 approving Design Review 21-10809 and CDP No. 21-10810.