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Filed: 05/02/2022
49th Day: 07/12/2022
Staff: A. Spencer- LB
Staff Report: 05/19/2022
Hearing Date: 06/09/2022

STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE & DE NOVO

Appeal No.: **A-5-LGB-22-0017**

Applicant: **32007 S Coast Hwy, LLC**

Agent: Marshall Innins Design Group

Local Government: City of Laguna Beach

Local Decision: Exempt from Coastal Development Permit Requirements

Appellants: Mark & Sharon Fudge

Project Location: 32007 Coast Highway, Laguna Beach, Orange County
(APN: 656-151-08)

Project Description: Appeal of City of Laguna Beach Local Coastal Development Exemption No. BPC-2021-10196 for, at a single-family residence, replacement of all existing doors and windows; replacement of existing decks at main house and garage; repair of gutters and downspouts of existing roofs, upper decks, and lower decks; repair of side yard stairway (including treads, risers, stair stringers, railing, and landing decks); remodel room below garage; repair of existing funicular; removal of wood siding and replacement with stucco; interior repairs to main house; re-roof repair of driveway deck; replacement of mechanized equipment; and replacement of existing hardscape.

Staff Recommendation: Determine that a substantial issue exists and deny a Coastal Development Permit Exemption.

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

SUMMARY OF STAFF RECOMMENDATION

The City’s action on Local CDP No. BPC-2021-10196 authorized, at a single-family residence, replacement of all existing doors and windows; replacement of existing decks at main house and garage; repair of gutters and downspouts of existing roofs, upper decks, and lower decks; repair of side yard stairway (including treads, risers, stair stringers, railing, and landing decks); remodel room below garage; repair of existing funicular; removal of wood siding and replacement with stucco; interior repairs to main house; re-roof repair of driveway deck; replacement of mechanized equipment; and replacement of existing hardscape.

The project site is a flag-shaped, 12,410 sq. ft. lot that is developed with a single-family residence near the toe of the bluff, a detached two-car garage located at street level at PCH, and a funicular that runs between the garage and the residence up the slope ([Exhibit 1](#)).

The project site shares a bluff slope with a neighboring parcel at 32005 Coast Highway (which the project site abuts on the east and the north). The 32005 Coast Highway lot is located at the top of the slope (adjacent to PCH), whereas the project site is located at the bottom of the slope. The slope that connects the two properties has been subject to erosion for decades. According to City records and previous geologic reports, the slope has been repeatedly impacted by unpermitted grading, erosion and debris flow.

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which appeal number A-5-LGB-22-0017 has been filed for the following reasons: the project is located seaward of the coastal bluff edge for the site, as determined by the Commission’s staff geologist. According to Title 25 Policy 25.07.008 (part of the City’s certified Implementation Plan), improvements to single-family residences are not exempt if the residence is located within 50 ft. of the coastal bluff edge. Likewise, the proposed repair and maintenance would not be eligible for an exemption pursuant to Section 25.07.008(A)(3)(d). This section states that repair and maintenance actions located within 50 ft. of a coastal bluff edge are not exempt from CDP requirements if the proposed work includes temporary or permanent placement or removal of any solid material, the temporary or permanent presence of mechanized equipment, or the outdoor storage of construction materials. The proposed repair and maintenance actions would include removal and placement of solid materials and mechanical equipment along a coastal bluff face, and there is no evidence that work has been planned to be completed with only hand tools, which would thus preclude the project from being eligible for a CDP exemption.

Some repair and maintenance of the subject site may be authorized pursuant to a coastal development permit issued by the City of Laguna Beach, and must be planned in conjunction with proposed development on the same site (slope stabilization) which has been appealed to the Commission under Appeal Nos. A-5-LGB-20-0058 and A-5-LGB-20-0059.

For the reasons stated above, Commission staff also recommends that, after a public hearing, the Commission **deny a Coastal Development Permit Exemption**. The Motion and resolution can be found on Page 4 of the staff report.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE5
II. APPELLANTS’ CONTENTIONS5
III. LOCAL GOVERNMENT ACTION5
IV. APPEAL PROCEDURES6
V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE7
 A. PROJECT DESCRIPTION AND LOCATION 7
 B. LOCAL COASTAL PROGRAM CERTIFICATION..... 10
 C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS 10
 D. SUBSTANTIAL ISSUE ANALYSIS..... 11
VI. MOTION AND RESOLUTION – CLAIM OF EXEMPTION 16
VII. FINDINGS AND DECLARATIONS – CLAIM OF EXEMPTION..... 16
 A. PROJECT DESCRIPTION 16
 B. COASTAL DEVELOPMENT PERMIT REQUIREMENTS 16
APPENDIX A – SUBSTANTIVE FILE DOCUMENTS 17

EXHIBITS

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

[Exhibit 2 – Appeal](#)

[Exhibit 3 – City’s CDP Exemption No. BPC-2021-10194](#)

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

Motion: I move that the Commission determine that Appeal No. A-5-LGB-22-0017 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

Staff recommends a **NO** vote. Following the staff recommendation on this motion will result in the Commission proceeding to conduct a de novo review of the application, and adoption of the following resolution and findings. Conversely, passage of this motion 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: The Commission hereby finds that Appeal No. **A-5-LGB-22-0017** 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

The Commission received a Notice of Exemption for City of Laguna Beach Exemption Request No. BPC-2021-10194 on April 18, 2022. The exemption approves repair and maintenance of, and improvements to, a single-family residence on an ocean-fronting, blufftop property.

On May 2, 2022, Mark and Sharon Fudge filed an appeal of the City's CDP Exemption determination (**Exhibit 2**). The appellants contend that the proposed project does not meet the LCP requirements for a CDP exemption for the following reasons:

- 1) The subject residence is located entirely beyond the bluff edge, as determined by the Commission's staff geologist during a previous appeal on the site (A-5-LGB-19-0193).
- 2) It is unclear whether the proposed scope of work meets or exceeds the 50 percent threshold for major remodels.
- 3) The project site has a history of unpermitted development that has not been addressed.
- 4) The residence should not be allowed to undertake any repair/maintenance until a permanent slope repair project is approved for the site.

III. LOCAL GOVERNMENT ACTION

On April 13, 2022, the City of Laguna Beach determined that the proposed development was exempt from coastal development permit requirements and issued BPC-2021-10194 (**Exhibit 3**). On April 18, 2022, the Coastal Commission received the City's determination of exemption and the Commission's 10 working day appeal period was established, extending to May 2, 2022. On May 2, 2022, the Commission received Mark and Sharon Fudge's appeal (**Exhibit 2**). No other appeals were received. On May 17, 2022, a Notification of Appeal was sent to the Laguna Beach Community Development Department

and the applicant, notifying each party of the appeal of the City's coastal development permit exemption. The City's decision was automatically stayed, pursuant to Public Resources Code Section 30623, pending Commission action on the appeal.

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. Development approved by cities or counties may be appealed if it is 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.

Section 30603 of the Coastal Act states in relevant part:

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

The project site is in an appealable area because it is located between the sea and the first public road paralleling the sea and within 300 feet of the inland extent of any beach. The project site would also qualify as an appealable area based on Section 30603(a)(2) because of its location on the bluff. The issues raised in the subject appeal, on which the Commission finds there is a substantial issue as described further below, apply to proposed development located in the appeals area.

Grounds for Appeal

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

- (b)(1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.

Section 30625(b)(2) of the Coastal Act requires a de novo review of the appealed project unless the Commission determines that no substantial issue exists with respect to the

grounds on which an appeal has been filed pursuant to Section 30603(a). If Commission staff recommends a finding 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 portion of the public hearing on the merits of the project. A de novo review of 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 applicant, persons who opposed the application before the local government (or their representatives), and the local government. In this case, the record reflects that Mark and Sharon Fudge were unable to oppose the project at the local level because the City did not hold a public hearing for the exemption request but qualify as aggrieved parties pursuant to Section 30625 of the Coastal Act. Testimony from persons other than Mark Fudge and Sharon Fudge 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 immediately follow, during which the Commission will take public testimony.

V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

A. PROJECT DESCRIPTION AND LOCATION

The applicant is proposing the following work at the site of a blufftop single-family residence: replacement of all existing doors and windows; replacement of existing decks at main house and garage; repair of gutters and downspouts of existing roofs, upper decks, and lower decks; repair of side yard stairway (including treads, risers, stair stringers, railing, and landing decks); remodel room below garage; repair of existing funicular; removal of wood siding and replacement with stucco; interior repairs to main house; re-roof repair of driveway deck; replacement of mechanized equipment; and replacement of existing hardscape. The project is located within the South Laguna area of Laguna Beach, in Orange County, seaward of Pacific Coast Highway (PCH).

The project site is a flag-shaped, 12,410 sq. ft. lot that is developed with a single-family residence near the toe of the bluff, a detached two-car garage located at street level at

PCH, and a funicular that runs between the garage and the residence up the slope ([Exhibit 1](#)).

The project site shares a bluff slope with a neighboring parcel at 32005 Coast Highway (which the project site abuts on the east and the north). The 32005 Coast Highway lot is located at the top of the slope (adjacent to PCH), whereas the project site is located at the bottom of the slope. The slope that connects the two properties has been subject to erosion for decades. According to City records and previous geologic reports, the slope has been repeatedly impacted by unpermitted grading, erosion and debris flow.

Project Site History

The single-family residence and detached garage were constructed in 1971 under Permit V-7607, Issued by the Orange County Planning Commission. The residence and structure were permitted prior to the passage of Proposition 20 in 1972; therefore, both structures are considered “pre-coastal.”

On January 4, 1972, the Orange County Planning Commission granted Use Permit UP-3227 for the location of underground pipelines and utilities for the single-family residence/garage, and for the removal of a dedication for an access easement. On August 1, 1972, the Orange County Planning Commission approved an amendment to UP-3227 for an addition to the garage, and construction of a rail-tram (i.e. funicular).

On January 5, 1973, the owner at the time filed another Use Permit application (UP-3383) for the following development: 1) one beach access stairway and two associated wooden decks at the top and bottom of the stairs; 2) a one-story addition to the residence not to exceed 34 ft. at its highest point; 3) a wooden deck and stairway; 4) a 20-ft. high concrete block/reinforced steel retaining wall associated with the proposed wooden deck; 5) a swimming pool to be located on the wooden deck; 6) a roof structure to be located over the swimming pool/deck; 7) a wooden stairway from the third-story deck to the second story; 8) a stair landing under the funicular; 9) 3.5 ft. high wooden fences along the property lines; and 10) a 10-ft. by 15-ft. wooden deck over a water drain pipe with an associated wooden staircase leading to the residence. On February 27, 1973, The Orange County Planning Commission issued a letter to the then-property owner stating that although the County approved UP-3383, “a permit from the Coastal Commission may be required before [you] can legally proceed with any development authorized by this application.” There is no evidence of Commission action for any of the development described in UP-3383. Based on aerial photographs taken between 1972 and the present, it appears that the only development described in UP-3383 that was actually constructed was the beach access staircase and associated decks (thus making these structures unpermitted development).

On February 25, 2015, the then-property owner (Summit Circle, LLC) submitted a CDP and Design Review application No. 15-0593 to the City for a 1,081 sq. ft. two-story addition to the single-family residence, lower and upper deck additions on the seaward side of the residence, a demolition and rebuild of the existing roof, conversion of garage storage to a new parking space, reconstruction of the funicular, a new spa, new hardscaping, new retaining walls, and new landscaping. Several public hearings were heard between

October 8, 2015 and September 14, 2017. However, it appears that the project was withdrawn from City review.

The City granted Building Permit RBP-2015-1327 “to repair and replace [the] existing beach access staircase, treads, and guardrails.” At the time, the City determined that the project was exempt from CDP requirements because the project was considered a repair/maintenance activity. Mark and Sharon Fudge wrote to the Coastal Commission Executive Director on October 19, 2018 to challenge the City’s exemption determination for the beach staircase repair/replacement. On October 22, 2018, the Executive Director determined that the stair replacement/reconstruction was new development and did not qualify as a “repair and maintenance” activity and therefore, required a CDP. To date, there is no evidence of a CDP for the beach staircase replacement, making that unpermitted development.

On July 26, 2016, the City issued a building permit RBP-2016-1065, but not a CDP, for “emergency slope stabilization.” The City incorrectly issued an “emergency permit”¹ for the work. Further, the City also determined that a CDP was not required because the project site is located “in a landlocked area.” In fact, any property in the coastal zone, whether or not it is landlocked, requires a CDP for such development, and in this area the permitting authority for an Emergency CDP is solely the Coastal Commission. This issue was brought up during review of a local CDP Application (17-0491) to authorize similar non-emergency slope stabilization activities on the adjacent 32005 Coast Highway Parcel. After Local CDP 17-0491 was approved by the City, Mark Fudge appealed the local permit to the Coastal Commission (Appeal No. A-5-LGB-17-0050), contending among other things that a portion of the slope stabilization occurred on the subject 32007 parcel (a soldier pile retaining wall along the northern side of the property that borders the 32001 Coast Highway parcel runs across both properties 32005 and 32007) and is unpermitted. The Commission found substantial issue with that appeal on November 9, 2017.

During the winter of 2018, storm conditions contributed to surficial instability leading to debris and mudflow onto the project site, the 32005 Coast Highway property, and the neighboring property to the north. On March 5, 2019, the Coastal Commission’s Executive Director issued Emergency Permit G-5-19-0011. The emergency permit authorized the grading and benching of soil, construction of a terrace and fill with a geogrid layer, construction of new subdrains, and construction of a temporary wood lagging retaining wall supported by gravel piles mid-way down the slope to protect the subject residence. On April 3, 2019, a corrected Emergency Permit was issued which clarified the amount of authorized grading (525 cubic yards), and was scheduled to expire on May 3, 2019. The Emergency Permit was granted two extensions. On September 10, 2019, the emergency work authorized under the Emergency CDP was determined to be complete.

On August 8, 2019, the City approved Local CDP 18-2660 for an interior remodel of the existing single-family residence, replacement of exterior doors and windows in the same openings, stucco repair and patching, and interior floor plan reconfiguration with no foundation work. On September 10, 2019, Mark and Sharon Fudge appealed the local CDP

¹ The authority to issue emergency permits on ocean-fronting lots in Laguna Beach rests with the Coastal Commission, not the local government.

to the Coastal Commission. On November 13, 2019, the Commission found substantial issue with the project because the City's findings did not consider the bluff edge setback and redevelopment policies, the City did not determine whether the proposed development constitutes "new development," and the City did not identify the existing beach access staircase as unpermitted development that is subject to Land Use Element Policy 7.3.8.

Pursuant to the conditions of the Emergency CDP, the applicant obtained Local CDPs DRA 20-20 and DRA 20-22 to request permanent authorization of the structures constructed under the emergency permit. Mark and Sharon Fudge appealed these local CDPs to the Coastal Commission on October 13, 2020. The applicant provided a 49-day waiver on October 27, 2020. To date, these appeals have not been scheduled for a hearing because the proposed permanent slope repair is still being evaluated and the property has new ownership.

B. LOCAL COASTAL PROGRAM CERTIFICATION

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

C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS

Section 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 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 a factor.

Staff is recommending that the Commission find that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a) of the Coastal Act.

D. SUBSTANTIAL ISSUE ANALYSIS

Section 25.07.008 of the Title 25 Zoning Code (Exemptions) states, in part:

(A) Certain types of development, described as follows, are considered to be without risk of adverse environmental effect on coastal resources, including public access, and therefore do not require a coastal development permit unless indicated otherwise.

(1) Improvements to Single-family Dwellings. Improvements to single-family dwellings and mobile homes including structures located on the same lot as the single-family dwelling are normally associated with a single-family dwelling such as garages, swimming pools, fences, storage sheds and landscaping are exempt unless classified as one of the following:

(a) Guest houses and self-contained accessory dwelling units;

(b) Improvements to any structure where the structure or the improvement is located on a beach, in a wetland or stream, seaward of the mean high tide line, within fifty feet of a coastal bluff edge, in an environmentally sensitive habitat area, and/or in an area designated as highly scenic in the certified Land Use Plan;

(c) Improvements to any structure where the structure or the improvement is located between the sea and the first public roadway paralleling the sea, or within three hundred (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 when such improvements would constitute or result in any of the following:

(1) An increase of ten percent or more of an internal floor area of the existing structure on the building site or an additional increase in floor area (meaning an improvement to the structure had previously occurred pursuant to an exemption) bringing the aggregate increase to ten percent or more cumulatively over time,

(2) An increase in height of more than ten percent of any structure,

(3) The construction, placement or establishment of a detached structure such as a garage, fence, shoreline protective works, or docks;

...

(g) Any significant alteration of land forms including removal or placement of vegetation on a beach, wetland, or sand dune, or within fifty feet of the edge of a coastal bluff or stream, or in areas of natural vegetation or in other environmentally sensitive areas.

(3) Repair and Maintenance Activities. Repair and maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of such repair and maintenance activities, except the following types of development, which are not exempt:

...

(d) Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within fifty (50) feet of the edge of a coastal bluff or environmentally sensitive habitat area; or within twenty (20) feet of any coastal waters and streams that include:

1. The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials.
2. The presence, whether temporary or permanent, of mechanized equipment (excluding small hand tools, such as power saws, hand drills, nail guns) or outdoor storage of construction materials within the areas identified above in this subsection . . .

As stated in Section IV of this report, the grounds for an appeal of an exemption issued by the local government are the project's conformity with the policies of the LCP. The primary basis of the appeal rests on the assertion that the proposed project is not eligible for a CDP exemption pursuant to the City of Laguna Beach's LCP. The appellants raise a substantial issue as discussed in detail below.

The City granted a CDP exemption for the following work: replacement of all existing doors and windows; replacement of existing decks at main house and garage; repair of gutters and downspouts of existing roofs, upper decks, and lower decks; repair of side yard stairway (including treads, risers, stair stringers, railing, and landing decks); remodel room below garage; repair of existing funicular; removal of wood siding and replacement with stucco; interior repairs to main house; re-roof repair of driveway deck; replacement of mechanized equipment; and replacement of existing hardscape. The remodel of the room below the garage can be classified as an improvement to an existing single-family residence, while the rest of the work would be classified as repair and maintenance activities.

Section 25.07.008(A)(1) states that improvements to single-family structures are not exempt if the structure is located on a beach, wetland or stream, or located where the structure or proposed improvements would encroach within fifty feet of a coastal bluff

edge. Section 25.07.008(A)(3) states that repair and maintenance activities may be exempt from CDP requirements if the structure meets a certain set of criteria detailed in its corresponding subsections.

As mentioned earlier, the subject site is located on a bluff-top lot. The proposed scope of work consists of a series of repairs of and a minor improvement to an existing single-family residence. In a 2019 appeal for a similar repair and maintenance project at this site, the Commission's staff geologist determined the bluff edge to be at the 150 ft. contour of the slope, which is closer to Coast Highway and completely landward of the residence. Thus, the proposed room remodel would be classified as development described in Section 25.07.008(A)(2) that would not be eligible for a CDP exemption.

Section 25.07.008(A)(3)(d) states that repair and maintenance actions located within 50 ft. of a coastal bluff edge are not exempt from CDP requirements if the proposed work includes temporary or permanent placement or removal of any solid material, the temporary or permanent presence of mechanized equipment, or the outdoor storage of construction materials. The proposed repair and maintenance actions would include removal and placement of solid materials and mechanized equipment along a coastal bluff face, which would thus preclude the project from being eligible for a CDP exemption. It is also unlikely the repair and maintenance could be carried out with only hand tools and there is no evidence in the City record to suggest the usage of hand tools is planned or required. Finally, the new hardscape on the bluff is not exempt.

In its incorrect application of Section 25.07.008 regarding CDP exemptions, the City did not provide adequate factual support for its decision to approve a CDP exemption for the project.

The appellants also contend that the City did not clarify whether the extent of approved demolition and alterations meets or exceeds the 50 percent threshold used to characterize major remodels.

The certified LCP defines a major remodel as follows:

Major Remodel -Alteration of or an addition to an existing building or structure that increases the square footage of the existing building or structure by 50% or more; or demolition, removal, replacement and/or reconstruction of 50% or more of the existing structure; greater specificity shall be provided in the Laguna Beach Municipal Code.

The proposed project consists of a series of repairs and small improvements to an existing single-family residence. Although the scope of work appears to describe only minimal remodels, the City did not provide any project plans with its exemption determination to confirm that approve scope of work would not cumulatively result in a major remodel pursuant to the certified LCP's definition. Therefore, the City did not adequately support its decision to approve an exemption for the proposed project, and the appellants' contention raises a substantial issue.

The appellants' third contention is that the project site has a history of unpermitted

development, and thus, the City should not have approved an exemption for the site. As described above, the project site does contain development that was undertaken without the benefit of a CDP, including a nine-caisson wall located along the northern property line. However, onsite unpermitted development is not in itself a basis for appeal. Therefore, this contention does not rise to the level of substantial issue.

The appellants' final contention is no repair or maintenance, exempt or otherwise, should occur on the project site until a permanent slope repair project is approved. As mentioned earlier in this report, the subject slope has been eroding for decades. Although a temporary repair was authorized on the site pursuant to Emergency Permit G-19-0293, a permanent slope repair has not been authorized for this site. The applicant sought two local CDPs for a permanent slope repair, which were subsequently appealed to the Commission in 2020. At this time, staff has not scheduled a hearing for a permanent slope repair because analysis is still ongoing for the proposed method of slope repair as well as potential project alternatives, and there is a new property owner which may change the proposed development that was previously appealed. In this case, the applicant is proposing minor repairs and maintenance to an existing residence, which is an entirely separate project. The appellants' contention is not a basis of appeal, and therefore 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's decision to exempt the proposed project was not substantiated by the relevant exemption provisions of the LCP. Therefore, there is inadequate factual and legal support for the local government's decision, and this factor supports a substantial issue finding.

2. The extent and scope of the development as approved or denied by the local government. The local government granted a CDP Exemption for the replacement of all existing doors and windows; replacement of existing decks at main house and garage; repair of gutters and downspouts of existing roofs, upper decks, and lower decks; repair of side yard stairway (including treads, risers, stair stringers, railing, and landing decks); remodel room below garage; repair of existing funicular; removal of wood siding and replacement with stucco; interior repairs to main house; re-roof repair of driveway deck; replacement of mechanized equipment; and replacement of existing hardscape. Although the extent and scope of the project appears to be a relatively minor repair and maintenance to an existing structure, the City did not provide project plans for public review. Thus, it is not possible to determine whether the proposed work would alter the primary residence or any of its accessory structures (including the decks, stairways, and funicular) by 50 percent or more. Therefore, this factor supports a finding of substantial issue.

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

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

4. The precedential value of the local government’s decision for future interpretations of its LCP. The majority of ocean-fronting development in Laguna Beach is located on bluff top properties, and the exemption of this project may influence the City’s decisions on future CDP applications – specifically regarding the necessity of coastal permits as opposed to exemptions. Allowing the local government’s decision to authorize improvements and significant repair and maintenance activities on a bluff top home without a CDP could set a negative precedent for future LCP interpretations. If the subject exemption is found to be consistent with the LCP, there is a possibility that future project applicants will reference this action if they wish to perform more substantial bluff top or bluff face developments without a CDP. There are hundreds of these potential project locations in Laguna Beach. This factor supports a finding of substantial issue.

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

Bluff top developments, and correct application of permit requirements pursuant to a certified LCP, are an issue of statewide significance, given that bluff top and bluff face structures are present and in need of repair throughout the state. Requiring local governments to make decisions consistent with their certified LCP is a matter of statewide importance.

Unsubstantiated application of these policies could have regional or statewide ramifications regarding similar LCPs and their policies regarding bluffs (e.g. repair and replacement of bluff face decks, stairs, and other accessory structures without a permit). This factor supports a finding of substantial issue.

Conclusion

In conclusion, 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.

VI. MOTION AND RESOLUTION – CLAIM OF EXEMPTION

Motion: I move that the Commission **approve** Claim of Exemption No. A-5-LGB-22-0017 for the development proposed by the applicant.

Staff recommends a **NO** vote. Failure of this motion will result in denial of the claim of exemption and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby denies the Claim of Exemption for the proposed development on the ground that the development is not exempt from the permitting requirements of the Laguna Beach LCP and Coastal Act and adopts the findings set forth below.

VII. FINDINGS AND DECLARATIONS – CLAIM OF EXEMPTION

Note: The Findings and Declarations in the Substantial Issue section of this staff report are hereby adopted by reference into the Findings and Declarations for the De Novo Permit.

A. PROJECT DESCRIPTION

The applicant is proposing the following work to a blufftop single-family residence: replacement of all existing doors and windows; replacement of existing decks at main house and garage; repair of gutters and downspouts of existing roofs, upper decks, and lower decks; repair of side yard stairway (including treads, risers, stair stringers, railing, and landing decks); remodel room below garage; repair of existing funicular; removal of wood siding and replacement with stucco; interior repairs to main house; re-roof repair of driveway deck; replacement of mechanized equipment; and replacement of existing hardscape.

B. COASTAL DEVELOPMENT PERMIT REQUIREMENTS

Section 30604(b) of the Coastal Act states:

(b) After certification of the local coastal program, a coastal development permit shall be issued if the issuing agency or the commission on appeal finds that the proposed development is in conformity with the certified local coastal program.

In addition, Section 30604(c) of the Coastal Act states:

(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

The grounds for this appeal are that the project is not exempt development as defined in the local coastal program and, as such, the applicant must obtain a coastal development permit for the proposed development. Specifically, the appeal asserts that the development is located on a coastal bluff face and is thus not exempt per Title 25 Section 25.07.008. The applicant is proposing to repair certain exterior areas of the residence, repair accessory structures (including a funicular, decks, and stairways), and remodel one room under the existing garage.

The proposed improvement to the single-family residence (the remodel of the room below the garage) does not qualify for an exemption under Section 25.07.008 of Title 25 (certified as the Implementation Plan portion of the LCP), which is cited above. In a previous appeal action on the site, the Commission's staff geologist determined the bluff edge to be located at approximately the 150 ft. contour, which is landward of the proposed development. This bluff edge places the subject residence completely on the bluff face. Pursuant to Section 25.07.008(A)(1), the project would not qualify for an exemption because the proposed room remodel would encroach beyond the bluff edge for the subject property.

Likewise, the proposed repair and maintenance would not be eligible for an exemption pursuant to Section 25.07.008(A)(3)(d). This section states that repair and maintenance actions located within 50 ft. of a coastal bluff edge are not exempt from CDP requirements if the proposed work includes temporary or permanent placement or removal of any solid material, the temporary or permanent presence of mechanized equipment, or the outdoor storage of construction materials. The proposed repair and maintenance actions would include removal and placement of solid materials along a coastal bluff face, which would thus preclude the project from being eligible for a CDP exemption.

Because the evidence does not support exempting the proposed project from Coastal Act permitting requirements, Coastal Exemption No. A-5-LGB-22-0017 is denied.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

1. Appeal No. A-5-LGB-22-0017 and associated file documents.