

CALIFORNIA COASTAL COMMISSION

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

**W15b**

Filed: 06/01/2022
49th Day: 07/20/2022
Staff: JD-LB
Staff Report: 06/30/2022
Hearing Date: 07/13/2022

STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

Appeal No.:	A-5-LGB-22-0025
Applicant:	Mike and Lori Gray
Agents:	Steve Kauffman and Glenn Gellatly
Local Government:	City of Laguna Beach
Local Decision:	Approval with Conditions
Appellants:	Mark & Sharon Fudge
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. 22-0121 to construct a new 3,552 square-foot single-family dwelling and attached 489 square-foot garage; a variance (No. 22-0122) to encroach into the front setback and additional building setback; and a revocable encroachment permit (No. 22-0123) to construct walls, irrigation, lighting, and walkways within the public right-of-way.
Staff Recommendation:	Determine that a substantial issue exists.

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.

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 approved Local CDP No. 22-0121 to construct a new 3,552 square-foot single-family dwelling and attached 489 square-foot garage; a variance (No. 22-0122) to encroach into the front setback and additional building setback; and a revocable encroachment permit (No. 22-0123) to construct walls, irrigation, lighting, and walkways within the public right-of-way on an ocean-fronting bluff.

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which appeal number A-5-LGB-22-0025 has been filed because the City's findings that the development is consistent with the provisions of the certified LCP regarding new development on a bluff 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 appropriate bluff edge was determined and consequently whether the bluff-edge setbacks were appropriately applied; the perpetuation of potentially obsolete bluff retention structures onsite; the encroachment of private yard area into the public right-of-way, and the potential reduction in residential density onsite. Further information is required to determine whether or not the proposed development complies with or may be conditionally approved consistent with the relevant policies of the LCP and the public access policies of the Coastal Act. 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.

TABLE OF CONTENTS

I. MOTIONS AND RESOLUTIONS	4
II. APPELLANTS' CONTENTIONS.....	4
III. LOCAL GOVERNMENT ACTION	5
IV. APPEAL PROCEDURES.....	6
V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE	7
A. PROJECT LOCATION AND DESCRIPTION	7
B. LOCAL COASTAL PROGRAM CERTIFICATION	7
C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS	8
D. SUBSTANTIAL ISSUE ANALYSIS.....	8
APPENDIX A – SUBSTANTIVE FILE DOCUMENTS.....	19
APPENDIX B – RELEVANT LCP POLICIES.....	19

EXHIBITS

[Exhibit 1 – Project Location and Aerials of Project Site](#)

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – Appeal](#)

[Exhibit 4 – City of Laguna Beach Design Review Board Staff Report](#)

[Exhibit 5 – Appeal Response from the City of Laguna Beach](#)

[Exhibit 6 – Appeal Response from the Applicant](#)

I. MOTIONS AND RESOLUTIONS

Motion: I move that the Commission determine that Appeal No. A-5-LGB-22-0025 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-22-0025** 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 1, 2022, Mark and Sharon Fudge 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. 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 and Chapter 3 policies of the Coastal Act. More specifically, they raise the following concerns with the proposed development:

1. The approved development does not comply with the public access requirements of Section 30210 of Chapter 3 of the Coastal Act such that the proposed development does not provide maximum access.
2. Review of the proposed development did not consider the certified LCP’s Land Use Element Glossary Entry 101 definition of a bluff edge and the proposed development does not comply with the LCP’s setback requirements from the correct bluff edge.
3. The three retaining walls are obsolete since new development cannot rely on existing protective devices per LUE Action 7.3.9 and must be removed per LUE Action 7.3.8.
4. Shoreline or bluff protective devices are limited to protecting existing development and not accessory structures per LUE Action 7.3.13. As such, the rear patio supported by the retaining wall and fill slope system is obsolete and must be removed.
5. The CDP did not address the (unpermitted) demolition of a pre-existing duplex.
6. The proposed development is inconsistent with SB330 and the LCP because it replaces an existing duplex with a single-family residence.

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 local CDP 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.

After Commission staff published the staff report recommending substantial issue, the applicant withdrew their application prior to the appeal hearing scheduled for the Commission's August 2021 meeting.

On April 28, 2022, the DRB held a public hearing for consideration and subsequent conditional approval of a new local CDP (No. 22-0121), Design Review No. 22-0120, Variance No. 22-0122, Revocable Encroachment Permit No. 22-0123, and a Mitigated Negative Declaration pursuant to CEQA, authorizing the applicant's request to construct a new 3,552 square-foot single-family dwelling and attached 489 square-foot garage; a variance to encroach into the front setback and additional building setback; and a revocable encroachment permit to construct walls, irrigation, lighting, and walkways within the public right-of-way. The City's staff report is included as [Exhibit 4](#).

On May 18, 2022, the Commission received the City's Notice of Final Action for the approval of local CDP 22-0121 and opened a 10-working-day appeal period. On June 1, 2022, Mark and Sharon Fudge filed an appeal to the California Coastal Commission during the appeal period. No other appeals were received by the Commission by the end of the appeal period on June 2, 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 – 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 subject lot is located at the corner of Gaviota Drive between the first public road (South Coast Highway) and the sea (Anita Street Beach). There is a public beach access stairway at Anita Street approximately 30 feet north of the site. The existing 2,737-square-foot, 30-foot-high residential structure has been substantially demolished (more than 50%). The site is zoned R-2 (Residential Medium Density) and is surrounded by a mix of single-family residences and duplexes.

The City of Laguna Beach's action approved Local CDP No. 22-0121 to construct a new two-story, 30-foot high, 3,552 square-foot single-family dwelling including a subterranean floor and attached 489 square-foot garage ([Exhibit 2](#)); a variance (No. 22-0122) to encroach into the front setback and additional building setback; and a revocable encroachment permit (No. 22-0123) to construct walls, irrigation, lighting, and walkways within the public right-of-way.

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 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.

The Commission may, but need not, assign a particular weight to any factor. Staff recommends 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

Contention 1:

The appellants assert that the applicant's team and the City did not rely on the bluff edge definition as outlined in Land Use Element (LUE) Glossary Entry 101 of the certified LCP and, consequently, the City-approved development does not comply with LCP-required setbacks.

Land Use Element (LUE) Glossary Entry 101 of the certified LCP contains the following definition of Oceanfront Bluff Edge or Coastal Bluff Edge:

The California Coastal Act and Regulations define the oceanfront bluff edge as the upper termination of a bluff, cliff, or seacliff. In cases where the top edge of the bluff is rounded away from the face of the bluff, the bluff edge shall be defined as that point nearest the bluff face beyond which a downward gradient is maintained continuously to the base of the bluff. In a case where there is a step like feature at the top of the bluff, the landward edge of the topmost riser shall be considered the bluff edge. Bluff edges typically retreat over time as a result of erosional processes, landslides, development of gullies, or by grading (cut). In areas where fill has been placed near or over the bluff edge, the original bluff edge, even if buried beneath fill, shall be taken to be the bluff edge. [LUP Appendix pp. A-12, #101]

The applicant provided two bluff edge determination reports. The Geofirm report, dated October 22, 2021, states:

"it would be difficult at this time to determine precisely the location of the bluff edge when the Commission approved the bluff repair. However, the best evidence of its location is the description set forth in the coastal development permit, No. A-80-7442, "One retaining wall, at the top of the bluff, will be 32' across the site."

Geofirm states that in 1980, a "coastal bluff" was defined by Section 13577(h) of the California Code of Regulations as:

"Bluff line or edge shall be defined as the upper termination of a bluff, cliff, or seacliff. In cases where the top edge of the cliff is rounded away from the face of the cliff as a result of erosional processes related to the presence of the steep cliff face, the bluff line or edge shall be defined as that point nearest the cliff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff. In a case where there is a steplike feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the cliff edge."

Geofirm concludes that the definition has not changed, and the Commission's description of "top of bluff" in the 1980 CDP is consistent with the "upper termination of a bluff, cliff, or seacliff." The Geofirm report does not account for the certified LUE definition of a bluff edge that clearly states that the original bluff edge must be considered, even if buried beneath fill. The Geofirm report does not analyze the potential location of the bluff edge after the slope failure or account for the fill added to the site for slope repair. Geofirm did not support its conclusion that the retaining wall at the top of the bluff is the location of the original bluff edge.

A-5-LGB-22-0025 (Gray)
Appeal – Substantial Issue

The GeoSoils report, dated February 22, 2022, cites the definition of a bluff (not bluff edge) according to Land Use Element Glossary Entry 102 and the definition of a bluff edge according to the California Code of Regulations, Title 14, Section 13577 (h) (2). The GeoSoils report utilizes two aerial photographs of the site, one from 1947 and one from 1963 to locate the natural bluff edge prior to the grading of the slope and construction of the upper retaining wall and concludes the coastal bluff edge shown on Plate 1 represents

“the topographic inflection point between the mostly flat-lying to gently sloping coastal terrace and the more steeply sloping coastal bluff. In addition, per California Code of Regulations, Title 14, §13577(h)(2), the coastal bluff edge location shown on Plate 1 is considered the point nearest the cliff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff in effect when the 1980 permit was issued for bluff repair.”

The GeoSoils bluff edge determination analyzed the natural bluff edge prior to the slope failure. There is no indication that the analysis accounted for erosional processes that took place circa 1980 which may have shifted the bluff edge further landward. GeoSoils did not support its conclusion that the bluff edge location identified on Plate 1 is the original bluff edge.

The location of the bluff edge may not be accurate since the geotechnical reports inadequately relied on either the LUE Glossary Entry 102 for the definition of a bluff, the California Code of Regulations, Title 14, Section 13577 (h) (2) and the Commission’s 1980 CDP (issued prior to the current LUP standard of review) to determine the location of the bluff edge.

Furthermore, Policies 7.3 and 10.2 and Actions 7.3.3, 7.3.5, 10.2.6, and 10.2.8 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.

Given the questions as to the bluff edge determination, the City’s record does not demonstrate that the proposed development is wholly consistent with the policies of the LCP, particularly with the LUE’s definition of bluff edge, or that all the necessary and appropriate conditions (e.g., minimum bluff setbacks) have been imposed. 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. Therefore, the Commission finds that the appeal does raise a substantial issue with respect to the project’s conformance to the certified LCP.

Contention 2:

The appellants argue that obsolete and unpermitted development on the bluffs are not proposed to be removed as required. More specifically, the appellants assert that the three retaining walls on the bluff face below the proposed development are obsolete since new development cannot rely on existing protective devices per LUE Action 7.3.9 and must be removed per LUE Action 7.3.8. The appellants also state that the toe of the bluff is comprised of bedrock that acts like natural shore protection and as such, the lower retaining wall does not serve a purpose and is obsolete. The appellants also dispute the applicant's assertion that the walls provide ongoing support to the adjacent property.

Action 7.3.8 of the LUP states:

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

Action 7.3.9 of the LUP 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 of the property as a deed restriction.

Action 7.3.12 of the LUP 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). (Ongoing implementation.)

Action 10.2.6 of the LUP 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.

Since the local permit authorizes a major remodel of the residential structure, which qualifies as new development, the bluff retaining walls would no longer perform their intended function to serve the previously existing residence and as a result may become obsolete. Furthermore, the appellants also identified inconsistencies in the two geotechnical reports by Geofirm and GeoSoils that raise questions as to whether the lower retaining wall is necessary for shore protection given the natural bedrock formation at the toe of the bluff. As such, LUE Action 7.3.8 (cited in Appendix A) requires obsolete structures be removed and LUE Action 7.3.9 (cited in Appendix A) requires that major remodels on oceanfront bluff sites do not rely on existing bluff protection devices to establish geologic stability or protection from coastal hazards.

However, the City did not consider the retaining walls to be obsolete “as they protect the previously repaired bluff slope, adjacent neighbor’s property and public beach access stairs” consistent with Geofirm’s report, dated October 22, 2021, that indicates the three retaining walls, as a system, are providing ongoing slope stabilization and erosion protection to those areas. The City’s findings did not provide evidence that the adjacent property or the public access stairs would be affected by the removal of the retaining walls. Even in the case that the retaining walls do support nearby structures, 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. As such, the residence should be designed without relying on the retaining walls and as a result, the walls could be safely removed. The City did not make findings or require that the retaining walls shall be removed once the adjacent structures no longer rely on them.

Therefore, the appellants’ contention regarding the retention of protective devices onsite raises a substantial issue.

Contention 3:

The appellants assert that protective devices are limited to protecting existing development and not accessory structures per LUE Action 7.3.13. As such, the rear patio supported by the retaining wall and fill slope system is obsolete and must be removed.

LUE Action 7.3.13 states:

Action 7.3.13 Limit the use of shoreline/bluff protective devices to the minimum required to protect existing development in danger from 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 principle 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.

The proposed development includes a patio deck and planter area supported by the

existing retaining walls. Based on the City record, it appears the existing patio deck was revised to comply with a ten-foot setback from the bluff edge and as a result, a portion of the deck was converted to a planter area with landscaping. The remainder of the deck would remain as is. In a response letter ([Exhibit 5](#)) to the subject appeal, City staff indicated that the residence and patio are not supported by the retaining wall, in contradiction to the Geofirm report dated October 22, 2021 and the City's staff report. Geofirm states the "upper terraced walls also appear to be in good condition and continue to perform as intended and provide support to the middle slope and upper patio." The Geofirm report also adds that the "[permitted repair] has maintained the area in a stable equilibrium for the property and... provide global site stability." In the City's staff report, the City states that "these walls were constructed after a significant slope failure occurred on-site and were designed to stabilize not just the subject property but also the adjacent property at 1021 Gaviota Drive and adjacent public beach access stairs." The City's analysis raises questions as to whether the remaining portion of the deck is supported by the retaining wall and potentially inconsistent with LUE Action 7.3.13. Therefore, this contention raises a substantial issue.

Contention 4:

The appellants assert that the proposed development does not comply with the public access requirements of Chapter 3 of the Coastal Act. More specifically, the proposed encroachment of the private yard into the public right of way does not provide maximum access, inconsistent with Section 30210 of the Coastal Act. The appellants suggest that the encroachment area can be used for additional public amenities, such as parking or public viewing areas, and may be incorporated into the City's pending capital improvement project to design the Anita Street Sewer Lift Station and replace the beach access stairway.¹

Currently, a portion of the home, a private driveway to the home's attached garage, as well as hardscaping and landscaping are within the public right-of-way on Anita Street. The property owner (and predecessors-in-interest) of 1007 Gaviota Drive have benefited from the unpermitted encroachment since c. 1924 when the site was first developed. 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 City-approved development no longer includes a portion of the home and the private driveway in the encroachment area on Anita Street and instead provides driveway access directly from Gaviota Drive. With the removal of the driveway from the encroachment area on Anita Street, the applicant proposes a public pick-up and drop-off area which will include bicycle and surfboard racks, bench seating, and enhanced landscaping. In addition to the new pick-up and drop-off area, the applicant proposes to install a water filling station on the south side of Anita Street, new lighting in the encroachment area, as well as maintain the remaining hardscape and landscape encroachments along Anita

¹ Project authorized by the Laguna Beach City Council at their meeting on November 2, 2021, design not yet finalized and CDP not yet issued.

A-5-LGB-22-0025 (Gray)
Appeal – Substantial Issue

Street, seaward of the drop-off area. The applicant and all future owners of the property are required to complete such public enhancements prior to the receipt of a certificate of occupancy and must provide long-term maintenance for the amenities so long as the revocable encroachment permit remains valid. The newly proposed drop-off area and the remaining private yard encroachment were granted under Revocable Encroachment Permit 22-0123. Therefore, the City has the authority to revoke the permitted encroachment if it so chooses.

In approving the local CDP, the City described the existing public amenities adjacent to the property, including two metered parking spaces, a walkway, and the public stairs down to the beach, and added that the proposed enhancements would not impact existing public access. As a result, the City made a finding that the proposed development will “conform with all applicable policies of Chapter 3 of the Coastal Act, including public access; recreation; marine environment; land resources; and development.”

Section 30210 of Chapter 3 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

However, the City did not provide an analysis of the project's impacts on public access by permitting the remaining encroachment and extension of the yard for continued private enjoyment, nor did the City provide an alternatives analysis that included additional public access benefits and/or uses. Moreover, the potential benefits of a water filling station and small gathering area may not offset the burden the public bears regarding the remaining private encroachment on public land adjacent to the beach and bluff stairway. Without proper signage, hardscape and landscape to match adjacent public areas, or conditions for maintenance of the area, the proposed public gathering area may appear to be private given that most of the encroachment area would remain unavailable for public use. Consequently, the proposed development does not provide maximum access and is inconsistent with Section 30210 of Chapter 3 of the Coastal Act. Therefore, this contention raises a substantial issue.

Furthermore, the appellants assert that fencing was installed circa 2013 without the benefit of a coastal development permit and constitutes a violation of the Coastal Act. The appellants ask that this violation be forwarded to the Commission's enforcement unit. Based on street images, it appears that there are two installed fences within the encroachment area, including a 5-foot-high wood fence built prior to 2007 and an approximately 6-foot-high chain link construction fence built circa 2014-2015 located on the interior of the wood fence. Based on this information, it appears the appellants are referring to the construction fence. It is likely the construction fence was installed when the applicant initially began renovations of which are on hold due to the ongoing CDP and

appeals process. Furthermore, the other, more permanent, wood fence located in front of the chain link fence was built prior to 2007 and was included in the plans approved by the City. To note, the City's revocable encroachment permit allowed "walls, irrigation, lighting, and walkways within the public right-of-way," yet there was no mention or condition requiring the removal of the wood fence in the encroachment area. According to the applicant, the wood fence was not included in the rendering submitted to the City and mistakenly included in the set approved by the City. Therefore, the inclusion of an approximately 5-foot-high fence in the encroachment area, as approved on the plans, would raise questions regarding the City's approval of the fence and the effect it could have on the perception of available public amenities, as previously discussed. Additionally, a portion of the fence appears to be on the bluff face, which is inconsistent with LCP policies prohibiting development (even temporary) on the bluff face.

Contention 5:

The appellants assert that the existing structure is a duplex and the City-approved development is not consistent with SB 330 (Housing Crisis Act of 2019) and LBMC 25.12.002 which outlines the intent for medium density residential use of the R-2 zone. More specifically, the appellants state that evidence the structure is a duplex exists in City records, previous findings by the CCC (A-5-LGB-21-0043) staff report, plans and permits, email acknowledgement, and Multiple Listing Service (MLS) evidence (marketing materials for the sale of the property in 2013).

The loss of housing density is an issue of Statewide concern. The Coastal Commission has also reviewed applications for new development for consistency with policies that encourage density to be accommodated in existing developed areas, where allowed by zoning. The Laguna Beach Zoning Code and Implementation Plan portion of the certified LCP appear to designate the site as R-2 (medium density) and both single-family and two-family dwellings can be accommodated at this site [LBMC §25.12.004(A) and (E)].

The evidence regarding the residential use of the property is scattered. An assessment prepared by ESA, dated May 2017, provided the historical background of the home and surrounding area. According to the assessment, the home was constructed in 1924 as a single-family residence and converted to a duplex in the late 1960s based on a two-family occupancy provided in the Orange County Directory in 1968. On City permit No. 80-491, issued on November 19, 1980, the existing use of the building was listed as a duplex. The 1980 coastal development permit application for CDP A-80-7442 also indicated two units but that the site was owner occupied. Additionally, during the local hearing for the subject CDP, the City stated that there was a reference in the City record to two units related to a short-term lodging permit that was issued in 2012 in error and was withdrawn two years later. According to LandVision, which collects data from the County Assessor, the project site is listed as a duplex. Currently, the property has only one set of utility meters for gas, water and electric service according to the appeal response letter provided by the applicant ([Exhibit 6](#)).

The evidence available would suggest that there were two units at one point in time and more information is needed to determine whether there would be a loss of one unit onsite.

A-5-LGB-22-0025 (Gray)
Appeal – Substantial Issue

Therefore, the contention regarding the reduction in density and consistency with SB 330 (Housing Crisis Act of 2019) and the underlying medium density residential land use referenced in certified LCP does raise a substantial issue.

Additional Issues Raised by Appellants:

The appellants contend that the new permit did not consider the unpermitted demolition of more than 50% of the structure. In the City's staff report, the City identified it to be a major remodel.

The certified LCP defines a "Major Remodel" as:

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... [LUP Appendix pp. A-10-11, #89]

The certified Laguna Beach Municipal Code 25.10.008 of the Implementation Plan (IP) states, in relevant part:

A major remodel is a structural renovation and/or addition, which equals or exceeds fifty percent of the original gross floor area of the structure on the lot.

The City properly identified the unpermitted development that occurred in 2014 in the Background and Project Description section of the City's staff report. The report also properly identified the project as new development given that it is a major remodel under the LCP definitions above. Therefore, it appears the City did consider the unpermitted demolition of the structure.

The appellants also state the slope was repaired (geo-sculpted) without the benefit of a CDP. The appellants did not provide any further information. The Commission did issue CDP A-80-7442 for the construction of three retaining walls in order to stabilize the site.

The appellants also raise an additional issue, not as grounds for an appeal but as an issue 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 request upon de novo review that the size of the retaining walls be reviewed for consistency with the 1980 Coastal Commission permit, A-80-7442.

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 edge 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 single-family residence 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 for the removal of the retaining walls and bluff edge 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 the bluff edge, 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 – SUBSTANTIVE FILE DOCUMENTS

1. City of Laguna Beach Design Review Board Staff Report dated April 28, 2022.
2. Review of Slope Retaining Walls and Bluff Edge Determination by Geofirm dated October 22, 2021.
3. Final Coastal Bluff Edge Evaluation, 1007 Gaviota Drive, Laguna Beach, Orange County, California 92651 by GeoSoils, Inc. dated February 22, 2022.
4. Final Historic Resource Assessment and Impacts Analysis for 1007 Gaviota Drive Laguna Beach, California by ESA dated May 2017.
5. 1007 Gaviota Drive – Coastal Appeal Response from Chris Dominguez of City of Laguna Beach dated June 7, 2022.
6. Commission Appeal No. A-5-LGB-22-0025 (Gellatly/Mike & Lori Gray) from Steven H. Kaufmann dated June 13, 2022.
7. Coastal Commission staff report for Appeal No. A-5-LGB-21-0043 dated July 22, 2021.

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

Action 7.3.5 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 7.3.8 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 7.3.12 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 from 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 principle 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 10.2.6 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 10.2.8 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.