

CALIFORNIA COASTAL COMMISSION

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**W14a**

Appeal Filed: 10/04/23
 49th Day: 12/15/23
 Staff: DC - V
 Staff Report: 11/21/23
 Hearing Date: 12/13/23

STAFF REPORT: APPEAL - NO SUBSTANTIAL ISSUE

APPEAL NUMBER: A-4-MAL-23-0041

APPLICANT: Tyler and Bridgette Muir

APPELLANT: Jyoti (Jo) Drummond

LOCAL GOVERNMENT: City of Malibu

LOCAL DECISION: Coastal Development Permit-Woolsey Fire No. 22-004 and Variance No. 22-007 approved by the City of Malibu on September 5, 2023

PROJECT LOCATION: 6244 Busch Drive, City of Malibu, Los Angeles County (APN: 4467-029-021)

PROJECT DESCRIPTION: Conversion of 508 sq. ft. of existing office/gym space within the second floor of an existing single-family residence into an attached second residential unit, and replacement of the on-site wastewater treatment system.

STAFF RECOMMENDATION: **No Substantial Issue**

MOTION & RESOLUTION: Page 7

Important Hearing Procedure Note: This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally, and at the discretion of the Chair, testimony is limited to three minutes total per side. Please plan your testimony accordingly. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify. Others may submit comments in writing. If the Commission determines that the appeal does raise a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony.

SUMMARY OF STAFF RECOMMENDATION: NO SUBSTANTIAL ISSUE EXISTS

The Commission’s role at the “substantial issue” phase of an appeal is to decide whether the appeal of the local government action raises a substantial issue with respect to the grounds on which the appeal was filed, which can include a claim that the approved development is not in conformity with the applicable provisions of the certified Local Coastal Program (LCP) or with the public access policies of the Coastal Act (Pub. Res. Code §§ 30210-14). Here, the appellant contends that the approved project is not consistent with the policies of the City of Malibu’s certified LCP regarding biological resource protection and land use. Staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeal has been filed. The **motion** and **resolution** for “no substantial issue” findings (for which a “yes” vote is recommended) are found on page 7.

The approved project consists of the conversion of 508 sq. ft. of existing office/gym space within the second floor of an existing 3,448 sq. ft. two-story single-family residence into an attached second residential unit, and replacement of the on-site wastewater treatment system, located on a 0.48-acre parcel at 6244 Busch Drive in western area of the City of Malibu. The property is bordered by Zuma Creek to the east and Busch Drive to the west, and nearly the entire parcel is located within 100 feet of Zuma Creek and its riparian habitat, which are considered an environmentally sensitive habitat area (ESHA).

The original residence on-site that was constructed in 1960 was destroyed in the 2018 Woolsey Fire. In 2019, the City approved a fire rebuild exemption for a 2,703 sq. ft. replacement residence and garage (in-kind replacement of the original structure plus 10 percent additional square footage over the size of the original structure that existed before the Woolsey Fire, as allowed by the disaster replacement exemption provisions of the LCP). The City issued the building permit for the replacement residence on November 20, 2020. However, before construction was completed, the City approved another exemption in April 2021 for an “improvement to an existing single-family residence” consisting of a 745 sq. ft. second-floor addition to add an office/gym and study/closet (no additional bedrooms). The approved replacement home, with the addition, has been constructed within the same footprint as the previously existing residence.

The appellant contends that the approved second unit and larger-capacity septic system within a 100 foot ESHA buffer is inconsistent with Local Implementation Plan (LIP) Section 4.6.1 regarding buffers to protect ESHA and LIP Section 13.9 regarding the least environmentally damaging feasible alternative. The appellant claims that the approved second unit and associated larger septic system would result in greater impacts to the adjacent stream ESHA. The appellant also asserts that the prior City actions to exempt an increase in the size of the home as an “improvement to an existing residence” before the exempt disaster replacement home was rebuilt had violated the City’s LCP exemption regulations and bypassed the requirements of a CDP for the larger home.

As discussed in further detail in this staff report, the approved project to convert a portion of the home's second story into a second residential unit would not expand the footprint of the existing residence. While the City should not have granted a second CDP exemption for a 745 sq. ft. second floor addition to the home after granting a disaster replacement exemption to replace the existing residence (plus 10%) that had not yet been rebuilt and had not yet received a Certificate of Occupancy at the time of the second exemption approval, the addition occurred entirely within the footprint of the previously existing residence, did not encroach closer to the adjacent stream ESHA, and did not result in any new or additional impacts to coastal resources. Even if the 745 sq. ft. residential addition component were before the Commission as part of the subject CDP appeal, it is clear from the City's record that the replacement residential structure, including the 745 sq. ft. addition, complies with the relevant standards of the City's LCP and no coastal resources are adversely impacted. The majority of the site is within 100 feet of the adjacent stream ESHA and no alternatives exist for a replacement structure to provide a greater setback given the size and configuration of the parcel. Therefore, the additions to the residence and conversion of a portion of the second story to a second unit within the existing development envelope do not raise a substantial issue regarding conformance with the LCP provisions raised by the appellant.

Regarding the approved on-site wastewater treatment system (OWTS) replacement with an upgraded, advanced system, the approved replacement tank would be located in the same location as the existing tank, which is approximately 90 feet, and as far as feasible, from the stream and riparian ESHA. The approved replacement dispersal field would provide a greater setback from the stream and riparian ESHA than the existing dispersal field. The existing system's dispersal field is approximately 32 feet away from the adjacent stream ESHA (at closest point), and the approved dispersal field would be located 50 feet from the stream ESHA (at closest point), which would provide an approximately 18-foot increase in setback. Siting and design alternatives for the OWTS were analyzed by the City during the permit process and the approved project was determined to be sited as far from the stream ESHA as possible, given the size and configuration constraints of the site.

Although the approved replacement OWTS would have greater capacity than the existing system to accommodate the approved additional bedroom and fixtures for the second unit, the system is an environmentally improved system that would provide better water quality and meets current environmental protection standards in terms of treatment and disinfection, compared to the existing system installed in the 1970s. The existing OWTS is an older conventional system with a septic tank and a gravel dispersal field, designed for infiltration of all effluent into the soil, with no treatment (other than solids removal) or disinfection. The approved replacement system would be an advanced OWTS that uses both biological treatment and dual disinfection to ensure that the effluent is fully disinfected prior to discharge to the dispersal area. Both the primary and secondary disinfection systems will be monitored by the control panel and send remote alarms to the maintenance provider if one of the units fails. The subsurface drip dispersal system is micro-dosed and designed to promote transpiration of the water and further treatment of the effluent in the upper soil profile to reduce the amount of treated

effluent entering the lower soil profile. Further, the existing conventional septic system with concrete septic tanks with lids and risers is not watertight, while the approved advanced OWTS is designed with watertight fiberglass tanks, access risers, and lids. For these reasons, the City determined that the approved replacement system would be the environmentally superior design that would have water quality and ESHA protection advantages over the existing conventional system. The City's action in this case adequately demonstrates that the approved replacement OWTS provides the maximum feasible buffer from the stream ESHA and is the least environmentally damaging alternative. Further, the City's action adequately demonstrates that the project complies with the allowable development area limits of the LCP and the variance findings to approve a reduced ESHA buffer for the replacement OWTS, consistent with the relevant policies of the LCP.

Lastly, the appellant asserts that second units are not allowed in the Rural Residential (RR) land use/zoning designation because the maximum residential density standard in the zone is one dwelling unit. However, this maximum density standard of the LCP is for primary dwellings. Second residential units are permitted in the RR zone as an accessory use to a primary dwelling/single-family residence. Therefore, the LCP is clear in allowing a maximum of one second unit as an accessory use within the RR zone, and approved conversion of habitable space within the existing residence into a second residential unit is permitted and complies with the size and clustering development standards for such units under the LCP.

In summary, the City's record includes extensive factual evidence and legal support for the City's findings that the project is consistent with the relevant policies of the certified LCP. The extent and scope of the development is relatively small, and significant coastal resources would not be affected by this decision. In addition, the project does not raise issues of regional or statewide significance, and the City's decision will not have an adverse precedential value for future CDP decisions. Therefore, staff recommends that the Commission find that the appeal does not raise a substantial issue with respect to the grounds on which it was filed.

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EXHIBITS

Exhibit 1 – Vicinity Map

Exhibit 2 – Aerial Overview

Exhibit 3 – Project Plans

Exhibit 4 – Appeal by Jyoti (Jo) Drummond

Exhibit 5 – City Notice of Final Action for CDP-WF No. 22-004

I. APPEAL JURISDICTION AND PROCEDURES

A. APPEAL PROCEDURES

The Coastal Act provides that after certification of a local government's Local Coastal Program (LCP), the local government's actions on Coastal Development Permit applications for development in certain areas and for certain types of development may be appealed to the Coastal Commission. Local governments must provide notice to the Commission of their coastal development permit actions. During a period of ten working days following Commission receipt of a notice of local permit action for an appealable development, an appeal of the action may be filed with the Commission.

1. Appeal Areas

Approvals of CDPs by cities or counties may be appealed if the development authorized will be located within the appealable areas, which include the areas between the sea and the first public road paralleling the sea; 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 greater; on state tidelands; or along or within 100 feet of natural watercourses and lands within 300 feet of the top of the seaward face of a coastal bluff. (Coastal Act Section 30603(a)). In this case, the City's CDP approval is appealable to the Coastal Commission because the project is located within 100 feet of a stream.

2. Grounds for Appeal

The grounds for appeal of a local government approval of development shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in the Coastal Act (See Public Resources Code § 30603(b)(1)).

3. Substantial Issue Determination

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed. When Commission staff recommends that no substantial issue exists with respect to the grounds of the appeal, the Commission will hear arguments and vote on the "substantial issue" question. A majority vote of the Commissioners present is required to determine that an appeal raises no substantial issue and that the Commission will therefore not review the coastal development permit de novo. If the Commission determines that no substantial issue exists, then the local government's coastal development permit action will be considered final.

4. De Novo Permit Hearing

Should the Commission determine that a substantial issue exists, the Commission will consider the CDP application de novo. The applicable test for the Commission to consider in a de novo review of the project is whether the proposed development is in conformity with the certified LCP and, if the development is between the sea and the

first public road paralleling the sea, the public access policies of the Coastal Act. If a de novo hearing is held, testimony may be taken from all interested persons.

B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

The project that is the subject of this appeal was approved by the City of Malibu Planning Commission on September 5, 2023. The City's Notice of Final Action for the project was received by Commission staff on September 20, 2023 (**Exhibit 5**). Commission staff provided notice of the ten working day appeal period, which began on September 21, 2023 and ended on October 4, 2023. An appeal of the City's action was filed by Jyoti (Jo) Drummond on October 4, 2023, during the Commission's appeal period (**Exhibit 4**). Commission staff notified the City, the applicant, and all interested parties that were listed on the appeal and requested that the City provide its administrative record for the permit. The City's administrative record was received on October 16, 2023. Pursuant to Section 30621(a) of the Coastal Act, a hearing on an appeal must be set no later than 49 working days after the date on which the appeal was filed with the Commission, which would be December 15, 2023.

II. STAFF RECOMMENDATION FOR NO SUBSTANTIAL ISSUE

MOTION: I move that the Commission determine that Appeal No. A-4-MAL-23-0041 raises **NO** substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act.

STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo, and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present (i.e., a tied vote results in a finding that a "substantial issue" is raised).

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. A-4-MAL-23-0041 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

III. FINDINGS AND DECLARATIONS FOR NO SUBSTANTIAL ISSUE

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION, SETTING, AND BACKGROUND

The subject CDP approved by the City of Malibu is for conversion of 508 sq. ft. of existing office/gym space within the second floor of an existing 3,448 sq. ft. two-story single-family residence into an attached second residential unit, and replacement of the on-site wastewater treatment system, located on a 0.48-acre parcel at 6244 Busch Drive in the western area of the City of Malibu (**Exhibits 1-3**). The property is located within a residential neighborhood on the north side of Pacific Coast Highway and Point Dume, in the Rural Residential (RR-2) zone. Existing residential development exists on all sides of the subject property. The property is also bordered by Zuma Creek to the east and Busch Drive to the west, and nearly the entire parcel is located within 100 feet of Zuma Creek.

According to the City's record, an approximately 2,464 sq. ft. single-story single-family home including attached garage was built on the subject property in 1960. The three-bedroom residence was served by a private on-site wastewater treatment system consisting of a septic tank and dispersal field. The home was destroyed by the Woolsey Fire in 2018. In July 2019, the City approved a fire rebuild exemption (PVWF No. 19-156) for a 2,703 sq. ft. replacement residence and garage (in-kind replacement plus 10 percent additional square footage than the original structure that existed before the Woolsey Fire, as allowed by the disaster replacement exemption provisions of the LCP). The City issued the building permit for the replacement residence on November 20, 2020. However, before construction was completed, the City approved another exemption (APR-WF No. 21-008) in April 2021 for an "improvement to an existing single-family residence" consisting of a 745 sq. ft. second-floor addition. The Certificate of Occupancy for the reconstructed three-bedroom residence was issued by the City after construction was complete on January 11, 2022.

B. SUMMARY OF APPEAL CONTENTIONS

The City's final action on the subject CDP was appealed to the Commission by Jyoti (Jo) Drummond on October 4, 2023 (**Exhibit 4**). The appeal contends that the approved second unit and larger-capacity septic system within a 100 foot environmentally sensitive habitat area (ESHA) buffer is inconsistent with Local Implementation Plan (LIP) Section 4.6.1 regarding buffers to protect ESHA and LIP Section 13.9 regarding the least environmentally damaging feasible alternative (cited below). The appellant claims that the approved second unit and associated larger septic system would result in greater impacts to the adjacent stream ESHA. Further, the appellant asserts that second units are not allowed in the Rural Residential (RR-2) land use/zoning designation because the maximum residential density standard in the zone is one dwelling unit per two acres per Land Use Plan (LUP) Chapter 5.C.2.

The appellant also claims the LCP fire-rebuild exemption process was violated in this case because the City processed a “disaster replacement” exemption and an “improvement to an existing residence” exemption that increased the size of the previously existing residence by 40%, rather than processing a full CDP for the entire larger project.

C. ANALYSIS OF SUBSTANTIAL ISSUE

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for an appeal is whether a substantial issue exists with respect to the grounds raised by the appellant relative to the locally-approved project’s conformity to the policies contained in the certified Local Coastal Program (LCP) or the public access policies of the Coastal Act (where applicable). In this case, the appellant cited the City’s LCP policies related to environmentally sensitive habitat protection and land use restrictions regarding second residential units.

The Coastal Act requires that the Commission shall hear an appeal unless no substantial issue exists with respect to the grounds on which the appeal was filed under Section 30603 (§ 30625(b)(2)). Section 13115(c) of the Commission’s regulations provides that the Commission may consider various factors when determining if a local action raises a significant issue, including but not limited to the following five factors:

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 and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of coastal resources affected by the decision;
4. The precedential value of the local government’s decision for future interpretation of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

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

In this case, for the reasons discussed below, the Commission determines that the appeal raises no substantial issue with regards to the grounds on which the appeal has been filed.

1. Environmentally Sensitive Habitat (ESHA) Protection

The appellant contends that the approved second unit and larger-capacity septic system within a 100 foot environmentally sensitive habitat area (ESHA) buffer is inconsistent with Local Implementation Plan (LIP) Section 4.6.1 regarding buffers to protect ESHA and LIP Section 13.9 regarding the least environmentally damaging feasible alternative,

cited below. The appellant also asserts that the approved second unit and associated larger septic system would result in greater impacts to the adjacent stream ESHA, and that the supplemental application requirement of LIP Section 4.4.1, cited below, was not provided to the City in this case.

City of Malibu LIP Section 4.6.1 (Buffers) states, in relevant part:

4.6.1. Buffers

New development adjacent to the following habitats shall provide native vegetation buffer areas to serve as transitional habitat and provide distance and physical barriers to human intrusion. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the habitat they are designed to protect.

Vegetation removal, vegetation thinning, or planting of non-native or invasive vegetation shall not be permitted within buffers except as provided in Section 4.6.1 (E) or (F) of the Malibu LIP. The following buffer standards shall apply:

A. Stream/Riparian

New development shall provide a buffer of no less than 100 feet in width from the outer edge of the canopy of riparian vegetation. Where riparian vegetation is not present, the buffer shall be measured from the outer edge of the bank of the subject stream.

...

City of Malibu LIP Section 4.6.4 (Variances) states, in relevant part:

- A. Variances that modify buffers or ESHA protection standards shall not be granted except where there is no other feasible alternative for siting the development and it does not exceed the limits on allowable development area set forth in Section 4.7 of the Malibu LIP.
- B. Modifications to required development standards that are not related to ESHA protection (street set-backs, height limits, etc.) shall be permitted where necessary to avoid or minimize impacts to ESHA.
- C. Protection of ESHA and public access shall take priority over other development standards and where there is any conflict between general development standards and ESHA and/or public access protection, the standards that are most protective of ESHA and public access shall take precedence.

City of Malibu LIP Section 13.9 (Findings) states:

All decisions on coastal development permits shall be accompanied by written findings:

- A. That the project as described in the application and accompanying materials, as modified by any conditions of approval, conforms with certified City of Malibu Local Coastal Program; and
- B. If the project is located between the first public road and the sea, that the project is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code).
- C. The project is the least environmentally damaging alternative.
- D. If the project is located in or adjacent to an environmentally sensitive habitat area pursuant to Chapter 4 of the Malibu LIP (ESHA Overlay), that the project conforms with the recommendations of the Environmental Review Board, or if it does not conform with the recommendations, findings explaining why it is not feasible to take the recommended action.

City of Malibu LIP 4.4.1. (Supplemental Application Requirements - California Department of Fish and Game) states:

Applications for new development on sites containing or adjacent to a stream or wetland shall include evidence of preliminary approval from the California Department of Fish and Game.

In this case, the subject property is bordered by Zuma Creek to the east and Busch Drive to the west, and nearly the entire site is located within 100 feet of Zuma Creek and its riparian habitat. Zuma Creek is a U.S. Geological Survey (USGS) blue-line stream that is designated as an Environmentally Sensitive Habitat Area (ESHA) under the City's LCP. The City's LCP requires that new development shall provide native vegetation buffer areas to serve as transitional habitat and provide distance and physical barriers to human intrusion, and ESHA buffers shall be of a sufficient size to ensure the biological integrity and preservation of the habitat they are designed to protect. For stream and riparian ESHA, LIP Section 4.6.1 states that new development shall provide a buffer of no less than 100 feet in width from the outer edge of the canopy of riparian vegetation, or from the outer edge of the stream bank where riparian vegetation is not present.

According to the City's record, an approximately 2,464 sq. ft. single-story, three-bedroom, single-family home including attached garage was built on the subject property in 1960 and was located less than 100 feet from Zuma Creek. The residence was served by a private on-site wastewater treatment system consisting of a septic tank and dispersal field. After the home was destroyed by the Woolsey Fire in 2018, the City authorized a replacement residence and garage to be built within the same footprint and no closer to the stream as the original home. The three-bedroom residence was rebuilt

and the Certificate of Occupancy for the reconstructed residence was issued by the City on January 11, 2022.

The approved project to convert a portion of the home's second story into a second residential unit would not expand the footprint of the existing residence. The appellant claims the prior City actions to exempt an increase in the size of the home as an "improvement to an existing residence" before the exempt disaster replacement home was rebuilt had violated the LCP fire-rebuild permit process and bypassed the requirements of a full CDP for the larger home. While the City's prior exemption determinations regarding the subject residence are not before the Commission in the subject City CDP action under appeal, they involved the same second floor area of the home that the subject permit authorized conversion to a second unit and are therefore related.

Under the Coastal Act and the City's LCP, no coastal development permit is required for the replacement of a residence (and accessory structures) destroyed by a disaster if the new residence is for the same use and conforms to zoning requirements, is located in the same location on the property, and does not exceed the floor area, height, or bulk of the previously existing structure by more than 10 percent. The Coastal Act and City's LCP also exempts certain improvements to existing single family residential structures from coastal development permit requirements. Pursuant to this exemption, once a house has been constructed, certain improvements that don't involve a risk of adverse environmental effects (including, but not limited to, their location on a beach, in a wetland, seaward of the mean high tide line, in an environmentally sensitive habitat area, or within 50 feet of the edge of a coastal bluff) are exempt from the need for a coastal development permit.

In this case, the City approved a fire rebuild exemption (PVWF No. 19-156) for a 2,703 sq. ft. replacement residence and garage (in-kind replacement of the original structure plus 10 percent additional square footage over the size of the original structure that existed before the Woolsey Fire, as allowed by the disaster replacement exemption provisions of the LCP). The City issued the building permit for the replacement residence on November 20, 2020. However, before construction was completed, the City approved another exemption (APR-WF No. 21-008) in April 2021 for an "improvement to an existing single-family residence" consisting of a 745 sq. ft. second-floor addition to add an office/gym and study/closet (no additional bedrooms). It is not consistent with the City's LCP exemption regulations, nor the Coastal Act, to allow a property owner to apply for, and obtain, an exemption for an addition to an "existing residence" if a residence has been permitted but not yet constructed (even if construction has commenced but is not yet complete). Therefore, the City should not have granted a second CDP exemption for an addition of square footage after granting a disaster replacement exemption to replace the existing residence (plus 10%) that had not yet been rebuilt and had not yet received a Certificate of Occupancy because the residence was not considered to be physically "existing" at the time of the second exemption approval.

While the City may have erred by not requiring a CDP for the 745 sq. ft. second-floor addition in 2021, the approved second-story addition occurred entirely within the footprint of the previously existing residence. The addition did not encroach closer to the adjacent stream ESHA and did not result in any new or additional impacts to coastal resources. Although the height of the residence increased from approximately 10 feet to 18 feet, the structure complies with the height requirements of the LCP and does not impact any scenic public viewing areas that are protected under the LCP. Further, the City considered the project's conformance with the setback, height, parking, square footage, and impermeable coverage development standards of the LCP as part of the subject CDP to convert the existing 508-square foot office/gym space to an attached second unit and found the project to be in conformance with those standards. Even if the 745 sq. ft. residential addition component (approved by the City as an exemption) were before the Commission as part of the subject CDP appeal, it is clear from the City's record that the replacement residential structure, including the 745 sq. ft. addition, complies with the relevant standards of the City's LCP and no coastal resources are adversely impacted. The majority of the site is within 100 feet of the adjacent stream ESHA and no alternatives exist for a replacement structure to provide a greater setback given the size and configuration of the parcel. Therefore, the additions to the residence and conversion of a portion of the second story to a second unit within the existing development envelope do not raise a substantial issue regarding conformance with the LCP provisions raised by the appellant.

The approved project also includes replacing the existing on-site 1,250-gallon septic tank and 792 sq. ft. dispersal field with a new upgraded on-site wastewater treatment system (OWTS) consisting of a 3,634-gallon septic tank with ultraviolet disinfection unit in the same location as the existing tank, and a 1,250 sq. ft. dispersal field. Since replacement of the OWTS would modify the footprint of the system and not provide the required 100 foot ESHA buffer in this case, the City approved a variance to this standard and made findings of fact supported by substantial evidence to support the variance, consistent with LIP Section 13.26.5, including demonstrating that there are special circumstances or exceptional characteristics applicable to the subject property. LIP Section 4.6.4 states that variances that modify buffers or ESHA protection standards shall not be granted except where there is no other feasible alternative for siting the development and it does not exceed the limits on allowable development area. Further, LIP Section 13.9 requires that the City make a finding for all CDP actions that the project is the least environmentally damaging alternative.

In this case, the approved replacement tank of the OWTS would be located in the same location as the existing tank, which is approximately 90 feet and as far as feasible from the stream and riparian ESHA. The approved replacement dispersal field would provide a greater setback from the stream and riparian ESHA than the existing dispersal field. The existing system's dispersal field is approximately 32 feet away from the adjacent stream ESHA (at its closest point), and the approved dispersal field would be located 50 feet from the stream ESHA (at its closest point), which would provide an approximately 18-foot increase in setback. Siting and design alternatives for the OWTS were analyzed by the City during the permit process and the approved project was determined to be

sited as far from the stream ESHA as possible, given the size and configuration constraints of the site.

Although the approved replacement OWTS would have greater capacity than the existing system to accommodate the approved additional bedroom and fixtures for the second unit, the system is an environmentally improved system that would provide better water quality and meets current environmental protection standards in terms of treatment and disinfection, compared to the existing system installed in the 1970s. The existing OWTS is an older conventional system with a septic tank and a gravel dispersal field, designed for infiltration of all effluent into the soil, with no treatment (other than solids removal) or disinfection. The approved replacement system would be an advanced OWTS that uses both biological treatment and dual disinfection to ensure that the effluent is fully disinfected prior to discharge to the dispersal area. Both the primary and secondary disinfection systems will be monitored by the control panel and send remote alarms to the maintenance provider if one of the units fails. The subsurface drip dispersal system is micro-dosed and designed to promote transpiration of the water and further treatment of the effluent in the upper soil profile to reduce the amount of treated effluent entering the lower soil profile. Further, the existing conventional septic system with concrete septic tanks with lids and risers is not watertight, while the approved advanced OWTS is designed with watertight fiberglass tanks, access risers, and lids. For these reasons, the City determined that the approved replacement system would be the environmentally superior design that would have water quality and ESHA protection advantages over the existing conventional system.

The appellant asserts that maintaining the existing OWTS, or installing a smaller replacement system, would be the least environmentally damaging alternative because it would discharge less effluent into the stream ESHA than the approved replacement system. However, for the reasons described above, the approved replacement OWTS would be less environmentally damaging than maintaining the existing conventional system. In terms of the replacement system size/capacity, according to the City, the approved OWTS is a common, mid-range advanced treatment system that meets the minimum size standards for the number of bedrooms and fixtures approved in this case and was designed by a professional engineer in consideration of the site percolation and geologic conditions. The dispersal field is larger than the existing field and sized to keep the drip rate and percolation rate low so that more treated discharge evaporates and remains in the upper soil profile of the field, which ensures stability and containment of the treated effluent. A smaller dispersal field would have a higher discharge rate, which means more percolation into the soil and less evaporation and may not meet the required factor-of-safety for sizing. According to the OWTS design engineer, the lateral spread of discharge in the dispersal field is expected to be minimal, maybe six inches, since the water is infiltrated vertically through the soil due to low infiltration rates or used by the upper strata vegetation. The City's Environmental Health Department also reviewed and approved the replacement system design as being set back adequately from the stream ESHA given site constraints to prevent impacts and conforming with the requirements of the City's LCP and City codes. In addition, the City's Environmental Review Board (ERB), in consultation with the City Biologist, reviewed the project and recommended approval with guidance to plant the site using native plant species

compatible with the dispersal field, the adjacent ESHA, and the City's landscaping requirements, and the applicant incorporated their guidance into the proposed project.

For the reasons described above, the City's action adequately demonstrates that the approved replacement OWTS provides the maximum feasible buffer from the stream ESHA and is the least environmentally damaging alternative. Further, the City's action adequately demonstrates that the project complies with the allowable development area limits of the LCP and the variance findings to approve a reduced ESHA buffer for the replacement OWTS in this case were appropriately made, consistent with LIP Sections 4.6.4, 13.9, and 13.26.5.

The appellant also contends that the project did not comply with the supplemental application requirement of LIP Section 4.4.1 in obtaining California Department of Fish and Wildlife preliminary approval for new development applications on sites containing or adjacent to a stream or wetland. Although preliminary approval from the California Department of Fish and Wildlife was not submitted to the City as a filing requirement in this case, this contention does not raise a substantial issue given that the project consists of the conversion of existing habitable space within the existing residence to a second unit and the replacement OWTS would provide a greater setback from the stream than the existing system. As such, it is unlikely that California Department of Fish and Wildlife review of the project (if required) would result in any significant changes to the approved project. The applicant is still responsible for obtaining any required agency approvals and should such approvals require significant changes to the approved project, the applicant will need to seek an amendment to the approved CDP.

2. Land Use

The appellant asserts that second units are not allowed in the Rural Residential (RR-2) land use/zoning designation because the maximum residential density standard in the zone is one dwelling unit per two acres per LUP Chapter 5.C.2, which states the following regarding the RR land use designation:

RURAL RESIDENTIAL (RR): The RR designation allows sensitively designed, large lot single family residential development, with a range of maximum densities from one dwelling per acre to one dwelling unit per 40 acres. Minimum lot sizes range from 1 to 40 acres, with agricultural uses and animal keeping as accessory uses to approved residential development. Public open space and recreation may be permitted. The following maximum residential density standards shall apply:

- RR1 One dwelling unit per acre
- RR2 One dwelling unit per 2 acres
- RR5 One dwelling unit per 5 acres
- RR10 One dwelling units per 10 acres
- RR20 One dwelling unit per 20 acres
- RR40 One dwelling unit per 40 acres

While LUP Chapter 5 includes maximum density standards in the RR zone for primary dwelling units, the LCP allows second residential units as an accessory use to a primary dwelling/single-family residence. LUP Policy 5.21 states that the maximum number of structures permitted in a residential development shall be limited to one main residence, one second residential structure, and accessory structures such as stable, workshop, gym, studio, pool cabana, office, or tennis court provided that all such structures are located within the approved development area and structures are clustered to minimize required fuel modification. LIP Section 3.3(A)(2) refers to Table B of the LIP for permitted and conditionally permitted uses within the RR zone, and LIP Table B indicates that second units are permitted as an accessory use within the RR zone. Also, LIP Section 3.6(N) states that a maximum of one second residential unit may be permitted as an accessory to a permitted or existing single-family dwelling if it meets certain development standards, such as being located within the approved development area and not exceeding 900 sq. ft. of living area. In this case, the approved conversion of habitable space within the existing residence into a second residential unit is permitted use within the RR zone and complies with the size and clustering development standards for such units under the LCP. While the City's current LCP refers to these units as "second residential units," they are essentially the same as those units that more recent state laws call "accessory dwelling units" (ADUs). The City has been working on an LCP amendment to update their LCP to account for current State ADU law and are expected to locally adopt an ADU LCP amendment this year and submit it to the Coastal Commission for certification.

3. Conclusion

For the reasons described above, the City's action on the CDP included findings and evidence in support of their conclusion that the approved development is consistent with the relevant ESHA protection and land use policies and provisions of the City's LCP. As such, the Commission finds that the appeal contentions regarding biological resources and land use do not raise a substantial issue.

4. Factors Considered in Substantial Issue Analysis

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for an appeal is whether a substantial issue exists with respect to the grounds raised by the appellants relative to the locally-approved project's conformity to the policies contained in the certified LCP or the public access policies of the Coastal Act. In this case, the appellants cited policies contained in the certified LCP as grounds for appeal.

The Coastal Act requires that the Commission shall hear an appeal de novo unless no substantial issue exists with respect to the grounds on which the appeal was filed under Section 30603. (§30625(b)(2).) Section 13115(c) of the Commission's regulations provides that the Commission may consider various factors when determining if a local action raises a significant issue, including but not limited to the following five factors:

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 and, where applicable, the public access and recreation provisions of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretation of its local coastal program; and
5. Whether the appeal raises only local issues as opposed to those of regional or statewide significance.

The Commission may, but need not, assign a particular weight to a factor. In this case, the Commission determines that the appeal raises no substantial issue with regard to the grounds on which the appeal has been filed, as discussed below.

The first factor in evaluating the issue of whether the appeal raises a substantial issue is the degree of factual and legal support for the local government's decision that the development is consistent with the relevant standard of review. In this case, as discussed in detail above, the Commission finds that the City had substantial factual and legal support for its conclusion that the approved project is consistent with the subject provisions of the certified LCP. For these reasons, this factor weighs heavily against finding substantial issue.

The second factor in evaluating the issue of whether the appeal raises a substantial issue is the extent and scope of the development as approved. As described above, the approved project involves conversion of 508 sq. ft. of existing office/gym space within the second floor of an existing single-family residence into an attached second residential unit, and replacement of the OWTS with an improved system that provides a greater buffer from an adjacent stream and habitat area. The approved project complies with the development standards and resource protection policies of the LCP, the City adequately justified a reduced buffer for the replacement OWTS given site constraints as allowed by the LCP, and the approved project is not large in size or scope. For these reasons, the Commission finds that the extent and scope of the development is not significant and this factor weighs heavily against finding substantial issue.

The third factor in evaluating the issue of whether the appeal raises a substantial issue is the significance of coastal resources affected by the decision. In this case, while streams and ESHA are considered significant coastal resources, the approved improvements will not impact ESHA, water quality, public views, public access, or any other significant coastal resources. In fact, the approved replacement OWTS will significantly reduce the existing system's non-conformity with regard to its buffer from the adjacent stream ESHA and will serve to better protect water quality and habitat values of the adjacent resources. As such, significant coastal resources would not be affected by this decision. Therefore, this factor weighs heavily against finding substantial issue.

The fourth factor in evaluating the issue of whether the appeal raises a substantial issue is the precedential value of the local government's decision for the future interpretation of its LCP. In this case, the Commission finds that the City applied the LCP policies correctly in finding that the project will not adversely impact coastal resources and is consistent with the policies of the LCP with respect to the grounds of the appeal¹. As such, the City's decision will have no adverse precedential value for future CDP decisions and this factor weighs against finding substantial issue.

The final factor in evaluating the issue of whether the appeal raises a substantial issue is whether the appeal raises issues of regional or statewide significance. This project is for conversion of existing space within a residence to a second unit and replacement of the OWTS with an advanced system that is consistent with the policies and provisions of the LCP, will not result in any adverse impacts to significant coastal resources, and does not raise significant regional or statewide issues. Thus, this factor also weighs against finding substantial issue.

In conclusion, the Commission finds that none of the factors listed above, used to evaluate the question of substantial issue, favor a finding that a substantial issue exists. For the reasons discussed above, the Commission finds that the appeal raises no substantial issue with respect to the consistency of the approved development with the policies of the City's certified LCP.

¹ This finding is limited to the City's action on the CDP which is the subject of the appeal, and not on the City's prior exemption determinations in this case.