

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



W12a

Filed: 10/24/2022
49th Day: 01/04/2022
Staff: B. Warren-LB
Staff Report: 03/30/2023
Hearing Date: 04/12/2023

STAFF REPORT: APPEAL – NO SUBSTANTIAL ISSUE

Appeal No.: A-5-LGB-22-0060

Applicant: City of Laguna Beach

Agent: Tom Perez, Assistant Director of Public Works

Local Government: City of Laguna Beach

Local Decision: Approval with Conditions

Appellants: Mark & Sharon Fudge

Project Location: Westerly Terminus of Anita Street, Public-Right-of-Way, Laguna Beach, Orange County

Project Description: Installation of a new sewer lift station, demolition of the existing sewer lift station, stairway reconstruction, Anita Street end improvements, landscaping, and the installation of a permanent lifeguard tower.

Staff Recommendation: No Substantial Issue.

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 3 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

The City of Laguna Beach approved a local coastal development permit (CDP) and adopted a Mitigated Negative Declaration for the sewer lift station replacement and beach access improvements at Anita Street, including installation of a new sewer lift station, demolition of the existing sewer lift station, stairway reconstruction, Anita Street end improvements, landscaping, and the installation of a permanent lifeguard tower. The plans indicate the proposed stairway will generally follow the existing alignment with minor alterations and expansions. The proposed stairway, lift station, and lifeguard tower will be supported on existing caissons and concrete landings and new caissons and shallow concrete foundations will be constructed in bedrock.

The public stairway is located between two private residences (992 Ocean Front and 1007 Gaviota Drive) and supports a sewer lift station above the upper landing. The project area includes the Anita street end, the stairway structure built into the eastern slope, and the tow of the beach where the new lifeguard tower is proposed) (**Exhibit 2**). Each of the private residences encroaches into the approximately 60-foot wide public right of way, which is wider than the existing and proposed stairway. The subject project would expand public improvements nearer to both homes, most significantly the lift station and the upper landing, although private encroachments and existing landscaping would remain on both sides.

The project site is an ocean-fronting bluff consisting of an upper terrace and bluff face that descends into a narrow sandy beach (**Exhibit 1**). The stairs and other proposed improvements will consist of providing caissons, and footings where required along the bluff and lower shelf areas, building on existing stairways where possible to minimize destruction of the slope related to construction activities, also shortening the construction window. A caisson will be used at the proposed bottom step and at the proposed lifeguard tower to lock in the new landing into the bedrock, with any new required caissons located further up the slope to support proposed improvements. The proposed bottom stair portion and landing was purposefully proposed at 90 degrees to run parallel with the shoreline and existing protective bedrock outcroppings on either side of the existing stairs. The landing was placed to line up at the same elevation as the existing landing, which resides essentially at the extreme edge of the expected wave runup. The bottom landing is roughly at NAVD 88 elevation +12', and the expected extreme back beach wave run up is at NAVD 88 elevation +13'. Additionally, new stormwater features will be constructed for capturing and redirecting collected rainfall and runoff to assist with general site erosion control. No additional riprap/armoring is expected to be needed or used, considering the extreme wave run up elevation relative to new site features.

On October 21, 2022, Mark and Sharon Fudge filed an appeal of the local CDP. The appellants raise the following concerns with the City-approved development: 1) The project as presented prioritizes the private use of a public right of way by the adjacent landowner at 1007 Gaviota (where a proposed new home is the subject of appeal A-5-LGB-22-0025, which the Commission is reviewing separately but on the same day as this matter) over the consideration of expanding the scope of the current accessway further to the south for the benefit of the public; and 2) The City failed to consider revocation of a

Revocable Encroachment Permit (REP) (subject to the separate referenced appeal) granted to the adjacent property owner for landscaping and public improvements within the public right-of-way, which was not fully utilized in the subject project design.

The appellants contend that the proposed project does not provide maximum access to the coast as required by: Coastal Act Sections 30001.5, 30210, and 30255; certified LCP Land Use Element Policy 4.3 and Action 4.3.2; and Open Space/Conservation Element Policy 3A and Policy 3M. However, the City's proposed design of the Anita Street stairway improvements includes a less steep design than the existing stairway in order to provide increased public safety for people walking to the beach. The design also widens the stairway on both the south and the north side, includes a broader pedestrian approach, and designates space for City maintenance vehicle access, which supports maintenance of public amenities and beach safety. The proposed lift station would be expanded south and higher on the slope compared to the existing lift station, which will cut into the upper slope within the right of way. The appellants suggest the project should be expanded further to develop the entire right of way, but expanding the project area farther to the south would require new retaining walls and drainage elements, degrading the existing landscape. The proposed design enhances public access and improves the function of the sewer lift station, while minimizing landform alternation. The proposed design is also consistent with the visual resources and biological resources policies of the LCP because it preserves in place four mature trees and existing landscaping.

The Commission received additional comments from the Sierra Club, South Laguna Chapter, expressing concerns relating to the lack of access for the disabled community in the City's proposed design. The commenter and the appellants contend that the REP area would improperly benefit the neighboring owners at 1007 Gaviota and has precluded their suggested amenities at the Anita Street public accessway. They also state that disabled community access, including a bench or viewing area, would only be available on the portion of the ROW that has been granted to the adjacent landowner.

As proposed, the Anita Street end will be ADA accessible and represents an improvement over the current condition. The current street-end grade is a steep slope down toward the stairs, which is not wheel-chair safe. In order to improve accessibility to people with disabilities other than mobility, the City's design incorporates improvements such as new handrails, wider stairways, compliant maximum step heights, landings for resting, a bench, and warning stripes. The project includes leveling of the street end to improve the grade and provide a street end and viewing point that is ADA compliant. Grading or paving of the landscaped encroachment area on the side of the stairway would not improve ADA accessibility to the beach itself or provide enhanced viewing platforms because the area is directly behind the proposed electrical shed and lift station.

The appellants' contention over the REP is addressed through the separate appeal of a City-approved CDP for development of a new home and hardscape and landscape improvements at 1007 Gaviota, which the Commission will hear at the same meeting as the subject permit. Commission staff are recommending approval of the adjacent project with conditions requiring the applicant to remove an existing driveway and fence from the Anita Street end public right of way and provide public amenities adjacent to Anita Street along Gaviota (near the subject project area). The private property owner and the City

have collaborated on a design that would preserve existing landscaping while removing most private encroachments. The private property owner would still require an encroachment permit to access the new driveway along Gaviota, and for hardscape and landscape improvements that are consistent with the pattern of development on the street and would not reduce public access to either Anita or Gaviota streets. Through the City's issuance of a REP, the applicant would construct public amenities in the encroachment area, including a public vehicle drop off area and public bike racks (**Exhibit 2**). The applicant would also be responsible for maintenance of an existing mature tree and existing landscaping within the public right-of-way. Those elements are not part of the subject project, but should the Commission approve the adjacent project through a separate permit on appeal, they will improve public access adjacent to the public right of way.

The purpose of the REP is to allow the homeowners of 1007 Gaviota to construct amenities on public property and maintain existing landscaped areas and mature trees. The City continues to own and control all City property, even the areas within an REP. An REP is not avacation elimination of the public right-of-way and is not an abandonment or sale of City government land to a private party. Should the REP be revoked or voided, all improvements with the right of way could be removed or demolished and new improvements installed in place.

The public amenities along Gaviota are proposed to improve the public experience at the Anita Street Beach. The proposed amenities will not interrupt or conflict with continued public access through the proposed beach access or the ability for the City to continue to operate and maintain the critical wastewater facilities in the area. Additional public amenities accessible from Gaviota, as suggested by the appellant, could enhance access to the area, but ultimately are not necessary to implement the public stairway project and are not related to the proposed lift station replacement. The City is not proposing additional improvements at this time.

The proposed design provides the necessary improvements to achieve the City's project objectives of increasing public safety, public access, and reliability of the sewer system. The appellants contention that the project prioritizes private use of the right of way is not supported by the evidence, as the project increases public access. The appellants contention about the encroachment permit granted by the City through a separate project may be resolved by the Commission through its action on that project, where staff is recommending elimination of the primary encroachments and significant public access enhancements. Therefore, Staff recommends that the Commission determine that **no substantial issue exists** with respect to the grounds on which appeal number A-5-LGB-22-0060 has been filed. The motion and resolution can be found on Page 5 of the staff report.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE6
II. APPELLANTS’ CONTENTIONS6
III. LOCAL GOVERNMENT ACTION6
IV. APPEAL PROCEDURES.....7
V. FINDINGS AND DECLARATIONS – NO SUBSTANTIAL ISSUE.....8
 A. PROJECT DESCRIPTION AND LOCATION 8
 B. LOCAL COASTAL PROGRAM CERTIFICATION..... 9
 C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS..... 9
 D. SUBSTANTIAL ISSUE ANALYSIS..... 10
APPENDIX A – SUBSTANTIVE FILE DOCUMENTS 18

EXHIBITS

Exhibit 1 - Vicinity Map

Exhibit 2 – Site Plan

Exhibit 3 – Appeal

Exhibit 4 – Current Encroachment and Renderings of Stairway

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

Motion: I move that the Commission determine that Appeal No. A-5-LGB-22-0060 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

Resolution: The Commission hereby finds that Appeal No. **A-5-LGB-22-0060** presents **no 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 and recreation policies of the Coastal Act.

II. APPELLANTS' CONTENTIONS

On October 21, 2022, an appeal was filed by Mark and Sharon Fudge (**Exhibit 3**). The appellants contend that the City's approval does not comply with the City's certified LCP. More specifically, the appellants raise the following concerns with the City-approved development:

- 1) The project, as presented, prioritizes the private use of a public right of way by the adjacent landowner at 1007 Gaviota (where a proposed new home is the subject of appeal A-5-LGB-22-0025) over the consideration of expanding the scope of the current accessway for the benefit of the public.
- 2) The City failed to consider revocation of the REP at this time and therefore approximately half (30 feet of 60 foot wide) of the public right-of-way was not utilized in the project design.

III. LOCAL GOVERNMENT ACTION

On September 21, 2022, the Laguna Beach Planning Commission approved Design Review 22-1721 and Coastal Development Permit 22-1722 and adopted a Mitigated Negative Declaration pursuant to the State CEQA Guidelines for the sewer lift station replacement and beach access improvements at Anita Street, including installation of a new sewer lift station, demolition of the existing sewer lift station, stairway reconstruction, Anita street end improvements, landscaping, and the installation of a permanent lifeguard tower.

On October 6, 2022, the Coastal Commission's South Coast District Office received a valid Notice of Final Action for the local CDP. The Commission issued a Notification of Appeal Period on October 10, 2022. On October 21, 2022, Mark and Sharon Fudge filed the appeal during the ten (10) working day appeal period (**Exhibit 3**). No other appeals were received. The City was notified of the appeal by Commission staff in a letter dated October 24, 2022.

IV. APPEAL PROCEDURES

After certification of LCPs, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on CDPs. Development approved by cities or counties may be appealed if it is located within certain geographic appealable areas, such as development located between the sea and the first public road paralleling the sea, or within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of a coastal bluff. Furthermore, developments approved by counties may be appealed if they are not a designated "principal permitted use" under the certified LCP. Finally, any local government action on a proposed development that would constitute a major public work or a major energy facility may be appealed, whether approved or denied by the city or county [Coastal Act Section 30603(a)]. Section 30603(a)(1) of the Coastal Act establishes the project site as being in an appealable area because it is located between the sea and the first public road and is within 300 feet of the inland extent of the beach.

Grounds for Appeal

The grounds for appeal under Section 30603 of the Coastal Act are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act.

Section 30625(b)(2) of the Coastal Act requires a de novo review of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a). If 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

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who opposed the project before the local government (or their representatives), and the local government. (14 CCR Section 13117.) In this case, the City's record reflects that Mark and Sharon Fudge opposed the project in person at the local hearing. Testimony from other persons regarding the substantial issue question must be submitted in writing. (Id.) Any person may testify during the de novo CDP determination stage of an appeal (if applicable). The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that the grounds for the appeal raise no substantial issue.

V. FINDINGS AND DECLARATIONS – NO SUBSTANTIAL ISSUE

A. PROJECT DESCRIPTION AND LOCATION

The City-approved project is described as the replacement and alteration of the existing beach access stairway that descends from the upper terrace level, across the bluff face, and onto the beach. In addition, the improvements include sanitary sewer and storm drain improvements including a new below-grade generator and a new sewer lift station. Other proposed improvements include retaining walls, a new lifeguard tower, and native landscaping. The plans indicate the proposed stairway will generally follow the existing alignment with minor alterations. The proposed stairway is to be structurally supported on caissons and shallow foundations constructed in bedrock. (**Exhibit 2**).

The public stairway is located between two private residences (992 Ocean Front and 1007 Gaviota Drive) and supports a sewer lift station above the upper landing. The project area includes the Anita street end, the stairway structure built into the eastern slope, and the tow of the beach where the new lifeguard tower is proposed) (**Exhibit 2**). Each of the private residences encroaches into the approximately 60-foot wide public right of way, which is wider than the existing and proposed stairway. The subject project would expand public improvements nearer to both homes, most significantly the lift station and the upper landing, although private encroachments and existing landscaping would remain on both sides.

The project site is an ocean-fronting bluff consisting of an upper terrace and bluff face that descends into a narrow sandy beach (**Exhibit 1**). The stairs and other proposed improvements will consist of providing caissons, and footings where required along the bluff and lower shelf areas, building on existing stairways where possible to minimize destruction of the slope related to construction activities, also shortening the construction window. A caisson will be used at the proposed bottom step and at the proposed lifeguard tower to lock in the new landing into the bedrock, with any new required caissons located further up the slope to support proposed improvements. The proposed bottom stair portion and landing was purposefully proposed at 90 degrees to run parallel with the shoreline and existing protective bedrock outcroppings on either side of the existing stairs. The landing was placed to line up at the same elevation as the existing landing, which resides essentially at the extreme edge of the expected wave runup. The bottom landing is roughly at NAVD 88 elevation +12', and the expected extreme back beach wave run up is at NAVD 88 elevation +13'. Additionally, new stormwater features will be constructed for capturing and redirecting collected rainfall and runoff to assist with general site erosion control. No additional riprap/armoring is expected to be needed or used, considering the extreme wave run up elevation relative to new site features.

The proposed location of the new lift station was determined based on increasing emergency storage, and providing a design that would allow the existing sewer lift station to operate while the proposed improvements are constructed. The lift station will be provided with emergency operating systems to prevent sewer overflow/surcharge in the event that the lead pump fails. The lift station will be provided with two pumps with the second pump automatically called to run if the

primary logic controller (PLC) detects that the lead pump has failed. In the event of utility power failure, the lift station will be installed with an automatic transfer switch (ATS) and standby emergency generator capable of operating the pump station until utility power is restored. The lift station will also be equipped with a manual transfer switch (MTS) and portable generator connection allowing the city to run the station off of a portable generator. Based on the limited footprint within the site, and the pad elevations of the nearby residential properties, the wet well will be oversized to provide emergency storage above the normal operating water levels but below the gravity sewer invert elevation. Operating set points and volume includes 6.5 feet from the 10 invert gravity sewer invert to the top of the primary level control level. The lead pump on set point will provide approximately 5,469 gallons of emergency storage volume. At the design peak wet weather flow (PWWF) of 91 gallons per minute (GPM), the wet well will be able to provide 1 hour of emergency storage.

The City conducted a geotechnical evaluation to relate onsite and regional geotechnical conditions to the project. Based on their evaluation, the City determined that the construction of the proposed improvements at the subject site is geotechnically feasible provided the recommendations related to the foundational elements are integrated as proposed into the design, construction, and long-term maintenance of the property. The design requires that fill be placed to blend in with the existing grades within Gaviota Drive and neighboring property area to the south. The design protects in place much of the existing slope and planting area to the south of the proposed stairway. The City states that proposed construction should not affect or be affected by adjacent properties provided appropriate construction methods and care is utilized.

B. LOCAL COASTAL PROGRAM CERTIFICATION

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

C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS

Section 30625(b)(2) of the Coastal Act requires the Commission to conduct a de novo review of the merits of an 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) of the Coastal Act. Section 13115(c) of the Commission

regulations provides that the Commission may consider the following five factors when determining if a local action raises a significant issue:

1. The degree of factual and legal support for the local government’s decision that the development is consistent or inconsistent with the 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 a factor.

D. SUBSTANTIAL ISSUE ANALYSIS

Appellants’ Argument No. 1: The project, as presented, prioritizes the private use of a public right of way by the adjacent landowner at 1007 Gaviota (where a proposed new home is the subject of appeal A-5-LGB-22-0025) over the consideration of expanding the scope of the current accessway for the benefit of the public.

The appellants assert that the City-approved project raises a substantial issue because it prioritizes the private use of a public right-of-way by the adjacent land owner, which is inconsistent with the Coastal Act, and specifically Public Resources Code § 30001.5, § 30210, and §30255, the Laguna Beach Certified LCP Land Use Element Policy 4.3 and Action 4.3.2, and the Open Space/Conservation Element Policy 3A and Policy 3M.

The abovementioned policies state the following:

Coastal Act Section 30001.5 Legislative findings and declarations; goals

The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:

...

- (c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.

(d) Assure priority for coastal-dependent and coastal-related development over other development on the coast.

...

Coastal Act Section 30210 Access; recreational opportunities; posting

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.

Land Use Element Policy 4.3 Maintain and enhance access to coastal resource areas, particularly the designated public beaches, by ensuring that access points are safe, attractive, and pedestrian friendly.

Land Use Element Policy 4.3 Action 4.3.2 Maintain and improve public pedestrian access to and along beaches and oceanfront bluffs using public rights-of-way and public easements. Protect, and where feasible, formalize, continued public use over areas used historically by the public (i.e. public prescriptive rights) to gain access to and along beaches, oceanfront bluffs, and other recreational areas

Open Space/Conservation Element Policy 3A Retain and improve existing public beach accessways in the City, and protect and enhance the public rights to use the dry sand beaches of the City.

Open Space/Conservation Element Policy 3M The provision, maintenance and enhancement of public non-vehicular access to the accessway shall be of primary importance when evaluating future improvements, both public and private.

The appellants assert that the City-approved project raises a substantial issue because it prioritizes the private use of a public right-of-way by the adjacent land owner. However, as further explained below, expanding the project area farther to the south would require new retaining walls and drainage elements, degrading the existing landscape. The proposed design enhances public access and improves the function of the sewer lift station, while minimizing landform alternation. Additionally, the REP that would address the private use of a public right-of-way is discussed through the separate appeal of a City-approved CDP, which the Commission will hear at the same meeting as the subject permit. Commission staff are recommending approval of the adjacent project with conditions requiring the applicant to remove an existing driveway and fence from the Anita Street end public right of way and provide public amenities adjacent to Anita Street along Gaviota (near the subject project area). The private property owner and the City have collaborated on a design that would preserve existing landscaping while removing most private encroachments.

The policies cited above provide that the proposed stairway design must be safe for the public to access and must maximize public access. In order to provide safe public access

now and in the future, the project design must minimize hazard, consistent with, among other things, public safety needs and the protection of natural resources. The proposed design intent is to improve public safety and functionality of the stairway and provide for the operation of the sewer lift station while improving the overall experience for visitors to the beach. As a result, the improvements are sited to limit the steepness of the existing beach access pathway, while providing an improved viewing experience, and also to provide safer maintenance access for operations personnel. This results in new site grade features (retaining walls and an upper terrace stairway) that integrate the new lift station infrastructure into the existing grades, and inherently allow for preservation of other existing area features, and trees.

The location of the lift station was determined based on increasing emergency storage, and the design would allow the existing lift station to operate while the proposed improvements are constructed. The lift station will be provided with emergency operating systems to prevent sewer overflow/surcharge in the event that the lead pump fails. The lift station will be provided with two pumps with the second pump automatically called to run if the primary logic controller (PLC) detects that the lead pump has failed. In the event of utility power failure, the lift station will be installed with an automatic transfer switch (ATS) and standby emergency generator capable of operating the pump station until utility power is restored. The lift station will also be equipped with a manual transfer switch (MTS) and portable generator connection allowing the city to run the station off of a portable generator. Based on the limited footprint within the site, and the pad elevations of the nearby residential properties, the wet well will be oversized to provide emergency storage above the normal operating water levels but below the gravity sewer invert elevation. Operating set points and volume includes 6.5 feet from the 10 invert gravity sewer invert to the top of the primary level control level. The lead pump on set point will provide approximately 5,469 gallons of emergency storage volume. At the design peak wet weather flow (PWWF) of 91 gallons per minute (GPM), the wet well will be able to provide 1 hour of emergency storage.

Additionally, the influent manhole, located at the bottom of the beach access ramp, is the only location in the local area collection system where all sewer flows combine prior to entering the existing wet well. Since the existing lift station is required to remain in service during construction, the proposed location of the lift station is the only feasible location where the new lift station could be installed given the alignment, according to the City. This location will allow for the station to provide the requested emergency sewage storage without surcharging the upstream pipeline system, which could lead to sewer spills into the adjacent properties.

In addition to the proposed improvements to increase storage, and overhaul mechanical and electrical components for the lift station, the project was designed with additional capacity along the upper stairway to improve beach access. The proposed design is much less steep than the existing stairway. The design requires that fill be placed to blend in with the existing grades within Gaviota Drive and the neighboring property area to the south. The design protects in place much of the existing slope and planting area to the south of the proposed stairway. The design also widens the stairway on both the south and the north side, includes a broader pedestrian approach, designates space for City

maintenance vehicle access, and preserves a mature tree and existing landscaping. The proposed lift station is farther south and higher on the slope than the existing lift station, but expanding the project area even farther to the south (as would be necessary to achieve the goals articulated by the appellants) would increase the amount of disturbed area and would require an increase in slope protection devices, degrading the existing landscape.

The Commission received additional comments from the Sierra Club, South Laguna Chapter, expressing concerns relating to the lack of access for the disabled community in the City's proposed design. The City contests that the proposed project is consistent with providing ADA accessibility at the top of the stairs, which is the same approach that the City took during construction of the Pearl Street beach stairs. During review of the Pearl Street stairs application, the Coastal Commission found that the improvements at the top of the stairway improved ADA accessibility on the site. An ADA compliant direct accessway from the top of the street to the beach below was not feasible on Pearl Street, and according to the City it is not technically feasible at Anita street. Regardless, the project would improve ADA accessibility and accessibility for non mobility challenged people to the area (**Exhibit 4**).

The Sierra Club stated that, due to the challenging topography of the project site, the only feasible place to provide amenities that can be used by people with disabilities is the encroachment area. However, the City argues that type of development would be destructive to the slope stability and would conflict with the goal of preserving and maintaining the existing mature trees.

As proposed, the Anita Street end will be ADA accessible and represents an improvement over the current condition. The current street-end grade is a steep slope down toward the stairs, which is not wheel-chair safe. The project includes leveling of the street end to improve the grade and provide a viewing point that is ADA compliant. In addition, use of the the encroachment area would not improve ADA accessibility to the beach itself or provide enhanced viewing platforms because the area is directly behind the proposed electrical shed and lift station.

The City's proposed design does provide a large viewing area approximately thirty-five feet above the bottom step prior to reaching the stairways (**Exhibit 4**). In order to construct an accessible ramp to the beach level from this point, the design would require a ramp at least 400' in length. Constructing a ramp of this length is not feasible in this location. In order to improve accessibility to people with disabilities other than mobility, the City's design incorporates improvements such as new handrails, wider stairways, compliant maximum step heights, landings for resting, a bench, and warning stripes.

The proposed project provides three levels with large viewing areas. The highest area is ADA accessible from Gaviota and the Anita Street end. The lower areas require stairs to access as a result of the steep terrain. The proposed REP area would not provide an opportunity to improve access to the lower viewing areas. As shown in **Exhibit 4**, the project incorporates an area with a bench at a lower landing. The reason benches are not provided at the upper landing areas is because the areas need to provide sufficient space for maintenance staff and their vehicles in order to be able to safely maintain and operate the lift station.

The City provided sufficient findings and analytical support for its decision to approve the proposed project, and the appellants' contention does not raise a substantial issue because the record includes adequate support for the City's conclusion that the proposed project retains the access point and maximizes public access by expanding the scope of the current accessway for the benefit of the public, while simultaneously limiting the project area so as to protect natural resources and ensure the stability of the sewer system, thus protecting public safety.

Appellants' Argument No. 2: City failed to consider revocation of the REP at this time and therefore approximately half (30 feet of 60 foot wide) of the public right-of-way was not utilized in the project design.

The appellants contend that the REP area would benefit the owners of 1007 Gaviota and has precluded the city from incorporating a superior set of amenities in coordination with the work currently being proposed at the Anita Street public accessway. Other commenters state that the areas easily accessible to the disabled community, including a bench or viewing area, would only be available on the portion of the ROW that has been granted to the adjacent landowner. However, as described below, the Anita Street end will be ADA accessible and represents an improvement over the current condition. Additionally, the project expands the footprint of the stairway into the existing REP landscaped area and maintains and enhances the public access at Anita Street Beach.

The City asserts that the REP has been mischaracterized as a private encroachment area. The City's Design Review Board approved the REP with the purpose not to grant private access to public land, but to allow the homeowners of 1007 Gaviota to construct public amenities on public property. The City continues to own and control all City property, even with an REP. An REP is not a vacation of the public right-of-way and is not an abandonment or sale of City government land to a private party. The fact that an REP has been approved is immaterial to the City's ability to plan for the area because the permit itself is revocable and can be revoked at any point. Should the REP be revoked or voided, all improvements with the right of way could be removed or demolished and new improvements constructed. However, the public amenities along Gaviota are proposed to improve the public experience at the Anita Street Beach. The proposed amenities will not interrupt or conflict with continued public access through the proposed beach access or the ability for the City to continue to operate and maintain the critical wastewater facilities in the area. Additional public amenities accessible from Gaviota could enhance access to the area, but ultimately are not necessary to implement the public stairway project and are not at all related to the lift station replacement.

The design of the City project is not impacted by the adjacent driveway and landscaped area. The City's design provides all of the improvements required to provide and maintain enhanced access to the coast and significantly improves access over the current condition. The beach access and the REP area (driveway and landscaped hillside) are at different elevations separated by an existing wood retaining wall and slope as shown in **Exhibit 1**. In order to eliminate the grade difference and maximize usable space, a large cast-in-place concrete or masonry retaining wall would be required between the Anita Street right of way and the property at 1007 Gaviota. In doing so, the site grading would result in the loss of at

least four existing mature trees. In addition, the effort would not improve ADA accessibility to the beach itself or provide enhanced viewing platforms because the area is directly behind the proposed electrical shed and lift station (**Exhibit 4**). Realistically this area could be an expanded version of the proposed temporary drop-off zone, include tandem public parking, or could be converted to a pocket park, which could be ADA accessible itself but would not necessarily enhance or create new ADA access related to the beach.

As described above, the Anita Street end will be ADA accessible and represents an improvement over the current condition. Additionally, the project expands the footprint of the stairway into the existing REP landscaped area and maintains and enhances the public access at Anita Street Beach. While the proposed public amenities along Gaviota are outside of the City's scope of work, they have been evaluated and found to work cohesively with the City's proposed project. Therefore, the proposed improvements will improve the public experience at the Anita Street Beach and they will not interrupt or conflict with continued public access through the proposed beach access or the ability for the City to continue to operate and maintain the critical wastewater facilities in the area.

The City's proposed design of the Anita Street stairway improvements includes a less steep design than the existing stairway in order to provide increased public safety for people walking to the beach. The design also widens the stairway on both the south and the north side, includes a broader pedestrian approach, and designates space for City maintenance vehicle access, which supports maintenance of public amenities and beach safety. The proposed lift station would be expanded south and higher on the slope compared to the existing lift station, which will cut into the upper slope within the right of way. The proposed design enhances public access and improves the function of the sewer lift station, while minimizing landform alternation. The proposed design is also consistent with the visual resources and biological resources policies of the LCP because it preserves in place four existing mature trees and does not preclude any additional or future public access to the public right-of-way.

The appellants' contention over the REP is addressed through the separate appeal of a City-approved CDP for development of a new home and hardscape and landscape improvements at 1007 Gaviota, which the Commission will hear at the same meeting as the subject permit. Commission staff are recommending approval of the adjacent project with conditions requiring the applicant to remove an existing driveway and fence from the Anita Street end public right of way and provide public amenities adjacent to Anita Street along Gaviota (near the subject project area). The private property owner and the City have collaborated on a design that would preserve existing landscaping while removing most private encroachments. The private property owner would still require an encroachment permit to access the new driveway along Gaviota, and for hardscape and landscape improvements that are consistent with the pattern of development on the street and would not reduce public access to either Anita or Gaviota streets. Through the City's issuance of a REP, the applicant would construct public amenities in the encroachment area, including a public vehicle drop off area and public bike racks (**Exhibit 2**). The applicant would also be responsible for maintenance of the mature trees and existing landscaping within the public right-of-way. The proposed improvements in the REP are complementary to the City's proposed beach access improvements. REP elements are not part of the subject project, but should the Commission approve the adjacent project

through a separate permit on appeal, they will improve public access adjacent to the public right of way.

The City provided sufficient factual and legal support for its decision to approve the proposed project, and the appellants' contention does not raise a substantial issue.

SUBSTANTIAL ISSUE FACTORS:

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

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP. As is explained above, the City's findings supported its approval of the project as being consistent with applicable policies of the certified LCP (specifically the visual impact and public access policies). Therefore, there is a high degree of factual and legal support for the local government's decision that the project, as conditioned, is consistent with the LCP, and this factor supports a no substantial issue finding.

2. The extent and scope of the development as approved or denied by the local government. The sewer lift station replacement and beach access improvements at Anita Street are significant, but do not include significantly greater development or development impacts than the existing condition. Therefore, this factor supports a finding of no substantial issue.

3. The significance of the coastal resources affected by the decision. The resources affected by the City's approval are views and landforms, access, safety, and native plants, but each of those resources is either adequately protected or better protected by the proposed design than they would be by an alternative expanded project design that appellants suggest the City should pursue. The proposed design requires that fill be placed to blend in with the existing grades within Gaviota Drive and neighboring property area to the south, but an expanded project would require additional fill and landform alteration to avoid destabilizing the upper slope. The design protects much of the existing slope and native planting area to the south of the proposed stairway. The design will not significantly encroach onto the public beach or into any sensitive habitat areas. Expanding the project to the south (as appellants urge), which the City elected not to do, would increase the amount of disturbed area and would require increase slope protection devices and degrade the existing landscape. Therefore, this factor supports a finding of no substantial issue.

4. The precedential value of the local government's decision for future interpretations of its LCP. The proposed project is an improvement to the existing public infrastructure, including public access features and public services which are both allowable uses under the City's certified LCP). As is explained above, the proposed project is consistent with the policies of the certified LCP, and City interpreted the LCP in a manner that is consistent with the Coastal Act. Thus, the City's decision will not set an adverse precedent for interpretation of the LCP. This factor supports a finding of no substantial issue.

5. Whether the appeal raises local issues, or those of regional or statewide significance. The appeal does not raise issues of regional, or statewide significance. The applicant is proposing a sewer lift station replacement and beach access improvements at Anita Street, which the appellants do not object to. The project constitutes an improvement that will not adversely impact public access, public coastal views, or the character of the surrounding area. The appellants' contention is a local issue related to a project on the adjacent property that overlaps with the subject project but does not disrupt it or reduce its public benefits. The appeal raises local issues and does not demonstrate inconsistency with any certified LCP policies; it argues for a project alternative that the City is not pursuing. Therefore, this factor supports a finding of no substantial issue.

Conclusion

In conclusion, the Commission finds that the appeal raises **no substantial issue** as to conformity with the policies of the City's certified LCP and the public access policies of the Coastal Act.

A-5-LGB-22-0060 (City of Laguna Beach)
Appeal – No Substantial Issue

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

1. Updated Geotechnical Evaluation (DRAFT) Beach Access Rehabilitation Improvements by Geofirm, dated November 22, 2022.
2. Anita Street Civil Plan by PACE Advanced Water Engineering, dated June, 2022.