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STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

Appeal Number: A-5-DPT-23-0004

Applicants: John and Marcella Seidensticker

Local Government: City of Dana Point

Local Decision: Approval with Conditions

Appellants: Chair Donne Brownsey and Vice Chair Caryl Hart

Project Location: 35697 Beach Road, City of Dana Point, Orange County (APN: 691-162-25)

Project Description: Appeal of City of Dana Point Local Coastal Development Permit No. 20-0006 for the demolition of an existing 892 sq. ft., 11.5-ft.-high, one-story single-family residence and construction of a 2,710 sq. ft., 36-ft.-high, two-story single-family residence with a caisson foundation and an attached 1,258 sq. ft. three-car garage on a 2,476 sq. ft. beachfront lot. Existing seawall and boulders proposed to be retained.

Staff Recommendation: Find Substantial Issue

IMPORTANT HEARING PROCEDURE NOTE: The Commission will not take public testimony during the “substantial issue” phase of the appeal hearing unless at least three commissioners request it. The Commission may ask questions of the applicants, appellants, any aggrieved person, the Attorney General, or the Executive Director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally, and at the discretion of the Chair, limited to three minutes total per side. Only the applicants, appellants, persons who opposed the application before the local government (or their representatives), and the local

government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which the Commission will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

The City of Dana Point's action on Local Coastal Development Permit (CDP) No. 20-0006 approved the demolition of an existing one-story, 892 sq. ft. single-family residence with an attached one-car garage and the construction of a new, two-story, 36-ft.-tall,¹ 2,710 sq. ft. single-family residence and an attached 1,258 sq. ft., three-car garage on a 2,476 sq. ft. beachfront lot. The City's action approved construction of a caisson foundation to elevate the residence and garage above beach grade. As approved, the finished floor elevation of the lowest habitable floor will be +25.9 ft. NAVD88, and the proposed garage will be at approximately the Beach Road elevation of +16.5 ft NAVD88. The project includes 100 cu. yds. of soil excavation.

The City's Local Coastal Program (LCP) requires that the maximum seaward extent of residential structures and patios within the Residential Beach Road Zoning District be contained by a structure stringline and a patio stringline, respectively. Implementation Plan (IP) Section 9.09.040(a)(1) specifically provides that, for 35697 Beach Road, the structure stringline is 47 ft. seaward from the roadside property line along the west property line, and 48 ft. seaward from the roadside property line along the east property line. The patio stringline is 60 ft. seaward from the roadside property line along both the west and east property lines.

The LCP also allows for limited encroachments beyond the structure and patio stringline setback requirements outlined above. The City approved such encroachments for two balconies, on the first and second floors of the residence, which would extend 8 ft. beyond the structure stringline (5.5 ft. further seaward than the existing structure). In addition, new stairs on the seaward side of the residence would extend 3 ft. beyond the structure stringline ([Exhibit 2](#)).

The City's action approved retention of an existing seawall that the applicant and City contend was installed prior to the enactment of the Coastal Act, as well as boulders that were placed without a CDP in the late 2010s. The seawall and boulders are located seaward of the patio stringline prescribed by the LCP and encroach on the beach. At the seawardmost extent, the seawall encroaches 18 ft. and 5 ft. further seaward than the structure and patio stringlines, respectively, and the boulders encroach 27 ft. and 14.3 ft. further seaward than the structure and patio stringlines, respectively ([Exhibit 2](#)).

The project site is located between the first public road and the sea within the first line of development fronting Capistrano Beach, in the City of Dana Point's certified Coastal Overlay District (Coastal Zone) and the Coastal Commission appeal jurisdiction. The

¹ IP Section 9.05.110 sets the maximum height as 28 ft., as measured at 18 inches above the current base flood elevation (BFE). The total height from grade is 36 ft.

standard of review for this appeal is the certified LCP and the Chapter 3 public access and recreation policies of the Coastal Act.

On February 7, 2023, Chair Donne Brownsey and Vice Chair Caryl Hart filed an appeal of Local CDP No. 20-0006. In general, the appeal contends that the City's action does not adequately address whether the project has been designed to minimize risk and adverse impacts from shoreline hazards during the minimum 75-year development lifespan. The analysis by the applicants' geotechnical consultants, GeoSoils, Inc., notes that Beach Road, inland of this property, is at an elevation of approximately +16 ft. NAVD88 and that during future storms, water will flow across the road, greatly limiting safe access to and from the site. Beach Road is a private road, and limited access in the near future (ca. the year 2060-70, using the medium-high risk aversion sea level rise projection) will be a problem for the entire community of approximately 200 homes.

The appeal contends that the City's findings do not address the likelihood of public trust lands migrating under the proposed home with predicted sea level rise. The local CDP did not discuss this issue or specify whether removal of private development encroachments onto public trust lands will be required. Therefore, this contention raises a substantial issue as to whether the local CDP is consistent with public access policies of the Coastal Act and the certified LCP.

IP Section 9.09.040(a)(4) requires offers to dedicate easements for public pedestrian access laterally along the beach at Capistrano Beach as a condition of any new development along Beach Road, consistent with the IP Section 9.27.030 requirements of public access. The City deemed the project exempt from easement dedication requirements under IP Section 9.27.030(a)(5)(D), on the basis of sufficient existing access to the subject portion of Capistrano Beach from Poche Beach or Capistrano Beach County Park. The appeal contends that the City's decision to forgo the required lateral access easement is not consistent with the LCP or Coastal Act public access and recreation policies. These locations are approximately 1/3-mile downcoast and one mile upcoast from the project site, respectively, and may not constitute adequate vertical access to the site under current conditions. Furthermore, lateral public access to the project site may be increasingly difficult from these public beaches as sea level rise drives migration of the mean high tide line (MHTL) and public trust lands up to, and potentially landward of, the line of development. Therefore, this appeal contention raises a substantial issue.

The appeal also contends that Special Condition 12 of the local CDP, which requires removal of existing coastal armoring (seawall and boulders) only if removal is possible without threatening neighboring properties, does not adequately resolve possible unpermitted development onsite. The applicants and the City claim that the existing triangularly-shaped seawall was built in the 1940s along with the existing residence. The City has indicated that the boulders were placed in the late 2010s. Further analysis of historic photographs is necessary to determine when the seawall and boulders were installed, and no permit history is available for the boulders. Regardless of when the existing armoring was installed, Land Use Plan (LUP) (Conservation/Open Space Element, "COSE") Policies 2.5 and 2.14 prohibit new development, such as the proposed residence, from relying on shoreline protection, and any existing shoreline protection onsite must be

removed prior to construction of the new development. Implementation Plan (IP) Section 9.31.040(d)(3) further specifies that seawalls within the Floodplain Overlay District may be allowed to protect the existing neighboring structures, but only “as a last resort protective device for coastal areas.” The applicants have not provided, nor did the City require, an alternatives analysis that evaluates whether retention of the seawall and boulders would constitute the minimum necessary to protect existing structures and to eliminate adverse impacts on local shoreline sand supply. Thus, the proposed project is inconsistent with the coastal hazard policies of the certified LCP, and the contention raises a substantial issue.

The appeal further contends that the encroachments of the rear, seaward-facing balconies and stairs, as well as the seawall and boulders proposed to be retained, are inconsistent with the “appropriate boundary” for lateral access outlined in IP Section 9.27.030(a)(4)(G)(1). While the LCP allows for limited encroachments beyond the structure and patio stringline setback requirements for the Residential Beach Road Zoning District where this project is located, the existing seawall and boulder encroachments beyond the patio stringline, in particular, may already impinge upon existing public access along the beach seaward of the site under current conditions, and will continue to do so as the public trust migrates landward with sea level rise. The encroachments extend seaward of the applicable development stringlines and are thus likely to further exacerbate the “coastal squeeze” of the public beach area, while also preventing the City from imposing sufficient psychological setbacks (such as the 10-ft.-wide privacy buffer required in IP Section 9.27.030(a)(4)(I)). Therefore, this contention raises a substantial issue as to whether the local CDP is consistent with public access and setback policies of the Coastal Act and the certified LCP.

Finally, the appeal contends that the existing home is one-story, and that the construction of a new two-story home may result in significant adverse impacts on public views to the coast from the California Coastal Trail and Coast Highway. The applicants have not provided, nor did the City require, a visual impact study consistent with IP Section 9.69.050(b)(7)(F) that would satisfy the requirements in IP Sections 9.05.170 and 9.69.070(f). Therefore, this contention raises a substantial issue as to whether the local CDP is consistent with the visual resource policies of the certified LCP.

Thus, Commission staff recommends the Commission find that there is a substantial issue with respect to the grounds on which the appeal was filed and that the project is not consistent with Chapter 3 of the Coastal Act and the certified LCP. The motion and resolution to carry out the staff recommendation is on Page 6 of this report.

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EXHIBITS

- [Exhibit 1](#) – Project Location
- [Exhibit 2](#) – City Approved Plans
- [Exhibit 3](#) – Local CDP 20-0006
- [Exhibit 4](#) – Appeal
- [Exhibit 5](#) – Coastal Hazards Figures
- [Exhibit 6](#) – Beach Rd MHTL Survey (dated June 17, 2021)
- [Exhibit 7](#) – Current Site Views

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

Motion: I move that the Commission determine that Appeal No. A-5-DPT-23-0004 raises **NO SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

Staff recommends a **NO** vote. Following the staff recommendation on this motion will result in a future de novo review of the application, and adoption of the following resolution and findings. Conversely, passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution: The Commission hereby finds that Appeal No. A-5-DPT-23-0004 presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with Chapter 3 policies of the Coastal Act.

II. APPELLANTS' CONTENTIONS

On February 7, 2023, an appeal was filed by Chair Donne Brownsey and Vice Chair Caryl Hart ([Exhibit 4](#)). The appeal raises the following concerns with the City-approved development:

- 1) The City's findings do not adequately address preservation of lateral public access with migration of public trust lands below, or landward of, the development.
- 2) The City's decision to forgo the required lateral access easement is not consistent with the LCP or Coastal Act public access and recreation policies.
- 3) The local CDP condition requiring removal of existing coastal armoring only if removal is possible without threatening neighboring properties is insufficient in prohibiting reliance of the development on any existing shoreline protective devices.
- 4) The proposed encroachments, which are beyond the structure and patio stringline setback requirements, may further squeeze the lateral public access available along the beach near the site.
- 5) The proposed development, going from a one-story residence to a two-story residence, may result in significant adverse impacts to public views to the ocean from the California Coastal Trail and Coast Highway.

III. LOCAL GOVERNMENT ACTION

On January 9, 2023, a public hearing was held by the Dana Point Planning Commission for Local CDP No. 20-0006. The City record indicates that no members of the public spoke at the public hearing and no letters of opposition were received. On January 26, 2023, the Community Development Department Senior Planner issued a determination letter approving the local CDP for the proposed project ([Exhibit 3](#)). On February 7, 2022, the appellants filed a timely appeal of the City's local CDP approval ([Exhibit 4](#)). No other

appeals were received prior to the end of the appeal period on February 9, 2023.

IV. APPEAL PROCEDURES

After certification of an LCP, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on CDPs. Development projects approved by cities or counties may be appealed if they are located within certain geographic appealable areas, such as those located between the sea and the first public road paralleling the sea, or within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of a coastal bluff.

The project site is in an appealable area due to its location between the sea and the first public road paralleling the sea, and within 300 feet of the inland extent of any beach (Section 30603(a)(1)). The issues raised in the subject appeal apply to proposed development located in the appealable area.

Grounds for Appeal

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

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

Section 30625(b)(2) of the Coastal Act requires the Commission to conduct a de novo review of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a). If Commission staff recommends a finding that a substantial issue does exist, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered presumed, and the Commission will conduct the de novo portion of the public hearing on the merits of the project at a later time. A de novo review of the application on the merits uses the certified LCP as the standard of review (Section 30604(b)). In addition, for projects located between the first public road and the sea, a specific finding must be made at the de novo stage of the appeal that any approved project is consistent with the public access and recreation policies of the Coastal Act (Section 30604(c)). Sections 13110-13120 of Title 14 of the California Code of Regulations further explain the appeal hearing process.

Qualifications to Testify Before the Commission

If the Commission, by a vote of three or more Commissioners, decides to hear arguments and vote on the substantial issue question, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. The time limit for public testimony will be set by the chair at the time of the hearing. As noted in Section 13117 of Title 14 of the California Code of Regulations, the only persons qualified to testify

before the Commission at the substantial issue portion of the appeal process are the appellants, applicants, persons who opposed the application before the local government (or their representatives), and the local government. Here, only the appellants, applicants, and local government would qualify. Testimony from other persons must be submitted in writing.

Upon the close of the public hearing, the Commission will vote on the substantial issue question. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will follow at a later date during which the Commission will take public testimony.

V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

A. PROJECT LOCATION AND DESCRIPTION

The project site is a 2,476 sq. ft. ocean-fronting lot located on sandy beach in Capistrano Beach, City of Dana Point ([Exhibit 1](#)). The property extends approximately 60 ft. seaward from Beach Road, and the rear property line is ambulatory with the mean high tide line (MHTL). The property is located within the Capistrano Beach Community Association, an established row of ocean-fronting residential development with access to homes obtained solely through the private Beach Road located landward of the subject site. Further landward of Beach Road are railroad tracks, the California Coastal Trail, Pacific Coast Highway, and a coastal bluff supporting additional development.

The subject site is designated as “Residential 0-3.5” in the City’s certified Land Use Element (LUE) of the LUP and “Residential Beach Road 12” in the certified IP, and “Floodplain Overlay District (FP-3)” in the certified LUP of the LCP. The site is also located in the certified LCP “Coastal Overlay District” (California Coastal Zone) and the appeal jurisdiction of the Coastal Commission.

The proposed project includes the demolition of an existing one-story, 892 sq. ft. single-family residence with an attached one-car garage and the construction of a new, two-story, 36-ft.-tall,² 2,710 sq. ft. single-family residence and an attached 1,258 sq. ft., three-car garage on a 2,476 sq. ft. beachfront lot ([Exhibit 2](#)). The City’s action approved construction of a caisson foundation to elevate the residence and garage above beach grade, and will include 100 cu. yds. of soil excavation. The attached garage will be constructed less than one foot above the elevation of Beach Road, while the residence will be constructed approximately seven feet above the elevation of Beach Road ([Exhibit 2, Page 6](#)).³ The approved caisson foundation would feature eight (8) caissons with steel support columns directly underneath the residence at regular intervals along the periphery.

² IP Section 9.05.110 sets the maximum height as 28 ft., as measured at 18 inches above the current base flood elevation (BFE). The total height from grade is 36 ft.

³ As approved, the finished floor elevation of the lowest habitable floor will be +25.9 ft. NAVD88, and the proposed garage will be at the Beach Road elevation of +16.5 ft NAVD88.

The City's Local Coastal Program (LCP) requires that the maximum seaward extent of residential structures and patios within the Residential Beach Road Zoning District be contained by a structure stringline and a patio stringline, respectively. Implementation Plan (IP) Section 9.09.040(a)(1) specifically provides that, for 35697 Beach Road, the structure stringline is 47 ft. seaward from the roadside property line along the west property line, and 48 ft. seaward from the roadside property line along the east property line. The patio stringline is 60 ft. seaward from the roadside property line along both the west and east property lines.

The LCP also allows for limited encroachments beyond the structure and patio stringline setback requirements outlined above. The City approved such encroachments for two balconies, on the first and second floors of the residence, which would extend 8 ft. beyond the structure stringline, in addition to stairs on the seaward side of the residence that would extend 3 ft. beyond the structure stringline and provide access from the first floor to the finished grade. As compared to the existing structure, the balconies would encroach an additional 5.5 ft. further seaward ([Exhibit 2](#)).

The applicants are proposing to retain an existing seawall that they and the City contend was installed prior to the enactment of the Coastal Act, as well as boulders that were placed without the benefit of a CDP, both of which are located seaward of the patio stringline and encroach on the beach. The applicants and the City claim that the existing triangularly-shaped seawall was built in 1949 along with the existing residence. The City has indicated that the boulders were placed in the late 2010s. No permit history is available for the shoreline armoring. At the seawardmost extent, the seawall encroaches 18 ft. and 5 ft. further seaward than the structure and patio stringlines, respectively, and the boulders encroach 27 ft. and 14.3 ft. further seaward than the structure and patio stringlines, respectively ([Exhibit 2](#)).

B. LOCAL COASTAL PROGRAM

Dana Point is a shoreline community in southern Orange County that was incorporated as a city in 1989. The City of Dana Point presently has two groups of documents that serve as its certified Local Coastal Program (LCP). There is an older set of documents that were originally certified when Dana Point was unincorporated and which were adopted by the City when it incorporated, which still apply to the central geographic area of the City. These older documents have generally been referred to as the Dana Point Specific Plan Local Coastal Program or '1986' LCP, which the Commission certified on September 13, 1989. In addition, there is a more recent group of documents that includes three elements of the City's General Plan (the Land Use Element, Urban Design Element, and Conservation Open Space Element), the City's Zoning Code, the Monarch Beach Resort Specific Plan, the Headlands Development Conservation Plan, and the Dana Point Town Center Plan, which apply to those areas of the City that are not covered by the 1986 LCP. These more recent documents are referred to as the '1996 LCP.'⁴ At the project site, the applicable documents are the City's certified 1996 LCP, namely the relevant sections of the City's General Plan (referenced in this staff report as the Land Use Plan, or "LUP") and the

⁴ However, this is now a misnomer because the Headlands Development Conservation Plan and the Dana Point Town Center Plan were adopted after 1996.

certified portions of the City’s Zoning Code (referenced in this staff report as the Implementation Plan, or “IP”).

C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS

When determining whether an appeal raises a “substantial issue,” Section 13115(b) of the Commission’s regulations provide that the Commission may consider factors, including but not limited to:

1. The degree of factual and legal support for the local government’s decision that the development is consistent or inconsistent with the applicable standard of review;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government’s decision for future interpretations of its LCP; and
5. Whether the appeal raises local issues, or those of regional or statewide significance.

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

The Commission finds that **a substantial issue exists** with respect to whether the local government action conforms to the provisions of the City’s certified LCP and public access and recreation policies of the Coastal Act for the reasons set forth below.

D. SUBSTANTIAL ISSUE ANALYSIS

As stated in Section IV of this report, the local CDP may be appealed to the Commission on the grounds that the proposed development does not conform to the standards set forth in the City’s certified 1996 LCP or the public access and recreation policies of the Coastal Act. Pursuant to Section 30625(b) of the Coastal Act, the Commission must assess whether the appeal raises a substantial issue with respect to the grounds upon which the appeal was filed pursuant to Section 30603 of the Coastal Act. The primary issues raised by this appeal relate to coastal hazards, public access, and visual resource impacts.

Section 30210 of the Coastal Act states, in relevant part:

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.

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212 of the Coastal Act states, in relevant part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby...

(b) For purposes of this section, "new development" does not include:...

(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure....

(c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

Section 30214 of the Coastal Act states, in relevant part:

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(1) Topographic and geologic site characteristics.

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

Relevant Certified LCP Policies

All certified LCP policies below are included, in relevant part, in [Appendix B](#) due to length.

A-5-DPT-23-0004 (Seidensticker)
Appeal – Substantial Issue

Certified IP Section 9.05.170, Coastal Views from Public Areas.

Certified IP Section 9.09.040, Special Development Standards.

Certified IP Section 9.27.030, Development Standards.

Certified IP Section 9.31.040, Prohibited Uses and Structures.

Certified IP Section 9.69.050, Application for Coastal Development Permit.

Certified IP Section 9.69.070, Basis for Action on Coastal Development Permit Applications.

Certified LUP (COSE) Goal 2 Policies., Beach Conservation Policies.

Certified LUP (LUE) Goal 3 Policies., Community Growth Policies.

Public Access and Recreation

Coastal Act sections 30210, 30211, and 30212 prioritize public access to the sea by prohibiting new development from interfering with any public access “acquired through use or legislative authorization.” Section 30214 additionally requires Chapter 3 public access policies of the Coastal Act be implemented in a manner that accounts for unique topographic site characteristics, the capacity of the site to sustain use, and the need for management of access areas to also protect property-owners’ privacy.

The certified LCP also includes policies which further specify the findings and easement dedications required for new development. IP Section 9.09.040(a)(4) requires offers to dedicate easements for public pedestrian access laterally along the beach at Capistrano Beach as a condition of any new development along Beach Road, consistent with the IP Section 9.27.030 requirements of public access. IP Section 9.27.030 defines lateral public access as passive or active recreational use of the shoreline (i.e. walking, swimming, fishing) and requires the dedication of a public easement as a condition of approval for new development located between the nearest public roadway and the sea. Section 9.27.030 requires analysis of the potential of providing access seaward of the site with at least a 10-ft. buffer between the private structure and the lateral access easement. IP Section 9.27.030(a)(3)(B) allows new development to forgo these easement requirements if: A) public access is inconsistent with public safety, military security, or vulnerable coastal resources, or B) adequate access methods exist nearby. Per IP Section 9.27.030(a)(3)(A), the City cannot impose any new easement requirements if the proposed development will not adversely affect (either individually or cumulatively) the ability of the public to reach and use the public tidelands, or that the access dedication would not alleviate the access burdens identified.

The appellants contend that the project may result in future adverse impacts to public access as the MHTL migrates further landward with sea level rise. The appellants contend that, given the narrowness of the beach and already-occurring wave uprush along this row of development, public trust lands (which extend seaward of the MHTL)

could migrate landward of the City-approved development footprint within the 75-year development lifespan. The appellants contend that the local CDP should have required partial or complete removal of the structure if it is located on public trust lands in the future. Finally, the appellants are concerned that as sea levels rise and the beach erodes over time, lateral access may be “squeezed” between the rising tides and the proposed development, leading to the gradual loss of the public’s ability to use and recreate on the beach.

The project site is located within an almost fully developed residential subdivision row with no vertical public beach access currently available, due to Beach Road being a private road. The closest vertical access points available are Capistrano Beach County Park and Poche Beach, located approximately one mile upcoast and 1/3-mile downcoast from the project site, respectively. Lateral public access to the sandy beach in front of the project site is available by walking along the shoreline from either of these beach entry points. The City indicated in its local CDP findings that these two entryways provide adequate public access to the subject beach, and the City exempted the project from easement dedication requirements required by 9.27.030.

IP Section 9.27.030(a)(3)(B)(2) does not define “adequate access”—however, these entry points, located 1/3 of a mile to one mile from the project site, may not be able to provide safe or adequate access to the beach seaward of site if the MHTL shifts landward; a MHTL survey of the area, performed by land surveyor Ralph W. Guida, IV and dated June 17, 2021, shows these entry points as already intermittently inundated and non-accessible under current tidal conditions, which will only be exacerbated by anticipated sea level rise ([Exhibit 6](#)).

Currently, the best available science on sea level rise projections in California is provided in the State of California Sea-Level Rise Guidance (OPC 2018) and is reflected in the Coastal Commission Sea Level Rise Policy Guidance (CCC 2018). As discussed further in the following “Coastal Hazards” subsection, the project site may experience between 3.6 and 7.1 ft. of sea level rise by the year 2100 based on best available science. This projected range of sea level rise is a result of various uncertainties, including the future rate of greenhouse gas emissions and the dynamics of ice sheet loss. Due to this uncertainty, planning and development decisions on the California coast must therefore be appropriately precautionary and made with the full understanding that sea level rise will change coastal landscapes, hazard conditions, and public access and recreation opportunities. To take this precautionary approach for projects with lower capacity to adapt to sea level rise (such as residential development), statewide guidance recommends analyzing the medium-high risk aversion sea level rise scenario for a minimum 75-year project lifespan, which equates to 7.1 ft. of sea level rise by the year 2100.

The U.S. Geologic Survey Coastal Storm Modeling System (CoSMoS), a regional sea level rise modeling tool, includes projected changes to the average mean high water (MHW) shoreline. It also provides predictions of wave runup and flooding that may be used to ascertain the potential effects from wave conditions. With no sea level rise and no coastal storm event, CoSMoS shows a maximum wave runup and sandy beach width

that appears generally consistent with onsite conditions that prevailed until recently ([Figure 1 of Exhibit 5](#)). In the past few years, however, chronic erosion in the larger stretch of beach from San Juan Creek through San Clemente has resulted in extremely narrow beach widths. Recent observations during high tides and south swells show little to no dry beach at the project site, suggesting that current shoreline retreat is further landward than shown by the CoSMoS model under a scenario of no sea level rise and no storm event. Even under the lower sea level rise projection ranges available on CoSMoS (e.g., 0.8 - 2.5 ft), the model shows significant landward shifts in maximum wave runup, flooding, and mean high water (MHW) shoreline in the project area. Under the higher sea level rise projection ranges available on CoSMoS (e.g., 3.3 – 6.6 ft), especially in combination with storm events, the potential inundation, shoreline retreat and beach loss in the project area is significant ([Figure 2 of Exhibit 5](#)). With 6.6 ft. of sea level rise and an annual storm event, CoSMoS projects inundation up to the line of existing development with no sandy beach visible; CoSMoS shows inundation even further inland in some other parts of Beach Road (such as further downcoast). The flooding shown in [Figure 2 of Exhibit 5](#) may be further exacerbated by beach erosion, as the applicants' elevated pile foundation could potentially allow erosion to continue below the home, not accounting for existing shoreline protection. Thus, the impacts of sea level rise are expected to arise well before the projected 7.1 ft. of sea level rise that may occur over the 75-year lifespan of the proposed development.

While the beach seaward of the subject site is becoming increasingly narrow, there are approximately 50 ft. of dry beach width under average contemporary conditions. In the wet sand areas of the beach, public recreation of various forms is available. The LCP protects the right of the public to conduct activities normally associated with beach use, such as walking, swimming, jogging, sunbathing, fishing, surfing, and picnicking. The Public Trust Doctrine also applies to certain portions of the beach seaward of the subject site. Title to lands under tide waters may be vested in the people of California as a public trust, to subserve and protect the public right to use for swimming, fishing, bathing, access, and engagement in other forms of water recreation, such as boating, surfing, and anchoring. The State holds its Sovereign Lands in Public Trust for the benefit of the people, freed from the obstruction or interference of private parties.

The impacts of sea level rise and coastal storm events on wave runup, flooding, and erosion are likely to result in at least partial inundation of the current beach profile, and could result in near-complete inundation of the beach area under higher sea level rise scenarios. This information suggests the appellants are correct in contending that public trust lands could migrate with the ambulatory MHTL landward of the proposed development footprint by the year 2100, which would result in direct impacts to the public access and recreation opportunities that are protected by the public trust doctrine, the Coastal Act, and the LCP at and along the beach fronting the project site.

Section 30211 of the Coastal Act states that development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. Furthermore, Section 30214 of the Coastal Act requires local governments to implement public access policies in a manner that considers the

appropriateness of access limitations based on site-specific factors, such as “the proximity of the access area to adjacent residential uses.” In the City’s certified Local Coastal Program, LUP (LUE) Policy 3.12 requires public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, or where adequate access exists nearby. LUP (COSE) Policy 2.15 also requires that public safety is provided in all new seaward construction of beachfront single-family structures in a manner that “does not interfere, to the maximum extent feasible, with public access along the beach.” Finally, IP Section 9.27.030(a)(5)(B) requires project-specific analysis of the City’s public access determinations, including identification of future beach profile changes unrelated to the proposed development.

In the City’s approval of the project, there is no mention of the potential loss of public use and recreation on the beach over time. In a more general sense, the City’s findings did not include discussion of the need to preserve lateral public access along the beach as the public trust moves landward. The City did not explore in depth the consequences of a changing shoreline over the 75-year lifespan of the proposed development, nor did they consider methods for preserving future public access seaward of the project site. The City did not include any conditions that would require re-assessment of the project approval at such time that the development may encroach upon public tidelands.

More specifically, in the Planning Commission Agenda Report dated January 9, 2023, there is very brief analysis of City Council Resolution 01-07-10-03, which states that no new dedication of public access along the beach may be required for new development between Capistrano Beach County Park and Poche Beach ([Exhibit 3](#)). In further discussions with City staff, the City pointed to additional language in a letter from attorney Sherman L. Stacey dated July 1, 2015, concerning public access easements along blufftop lots of Camino Capistrano. The City thus made findings that the subject proposed beachfront development will not adversely affect (either individually or cumulatively) the ability of the public to reach and use the public tidelands, and that any existing site-specific or regional access burdens will not be alleviated through the dedication of a new accessway at the site.

However, as discussed above, there is concern that the proposed development may interfere with the public’s rights under the Public Trust Doctrine as public tidelands migrate inland towards the proposed house over time as sea levels rise. The City’s lack of findings regarding the effects of sea level rise and beach erosion on public access and recreation along the coast, and the City’s approval of encroachments seaward of the patio stringline, taken together, may lead to a gradual loss of the public’s ability to use and recreate on the beach and the public’s legal right to access tidelands. The City-approved development may have an additional adverse impact on future interpretations of its LCP by following the same approach and disregarding the need to preserve public access along the beach in other developments on Beach Road, some of which may have a lateral public access easement or other public access stipulations. Therefore, the appellants’ contentions raise a substantial issue with regard to the project consistency with Coastal Act sections 30210-30212 and 30214, as well as IP Policy 9.27.030 and

LUP Policies COSE 2.15 and LUE 3.12 of the certified LCP.

Coastal Hazards and Road Access

Certified LUP (COSE) Policies 2.1 and 2.9 adopt the requirements of Section 30253 of the Coastal Act, which requires new development to be sited and designed to minimize risks in hazardous areas and avoid contributing to erosion or site instability. LUP (COSE) Policies 2.5 and 2.14 also prohibit reliance of new development on shoreline protective devices. Certified IP Section 9.69.070 bolsters this requirement by requiring that approval of CDPs be supported by findings analyzing the development for safety from undue risk.

The local CDP relies on the conclusion of the applicants' site-specific wave runup report that the future BFE (the elevation of water anticipated with a 100-year storm, accounting for SLR of at least 6.6 ft.) will be +23 ft. above the North American Vertical Datum of 1988 (NAVD88). The City's findings indicate construction of the primary residence foundation above +23 ft. NAVD88 will allow water to flow under the residence without contributing to beach erosion. The local CDP does not specify the difference in elevations between the future BFE and residence foundation, but the project plans show the residence finished floor elevation at +25.9 ft. NAVD88—approximately 3 ft. above the City's referenced, future BFE. The findings also state that the garage, which is proposed at +16.5 ft. NAVD88, will be constructed with breakaway panels to allow water to flow "through the garage to the street in the event of wave inundation."

The applicants' submitted coastal hazards analysis published by Geosoils, Inc., dated March 6, 2020, assumes that the beach crest (i.e., the highest elevation of sand/cobble material deposited by wave action) will remain at an elevation below the residence foundation in the future, accounting for medium-high sea level rise projections. A beach crest elevation below the foundation would facilitate wave uprush surging through the breakaway panels and out onto Beach Road, avoiding impacts to the elevated residence. Nevertheless, analyzing development for future shoreline hazards involves a large degree of uncertainty. In inherently hazardous areas, such as Capistrano Beach, it may not be feasible for development to be designed for safety from all risks. In any case, IP Section 9.69.070(d-e) and LUP (COSE) Policies 2.5, 2.9, and 2.14 require specific findings for new development which analyze the full scope of coastal hazards, as well as any future need for shoreline protection.

In a letter dated August 13, 2020, GeoSoils, Inc.'s hazards analysis provides suggested adaptation measures, such as flood shields during the incidence of very high tides, high waves, and eroded beach conditions. In Case C, which is the worst-case wave hazards scenario considering sea level rise analyzed by the hazards report, additional adaptation measures may include removal of threatened portions of the development, shoreline protection (if allowed), and removal of the entire development if necessary. While it's unclear whether any further planning action could be taken to protect against these scenarios without invoking a larger regional community resiliency plan for the Capistrano Beach community, the wave runup analysis illustrates that the City's CDP conditions and findings are inadequate in ensuring that the development is sited and designed to avoid coastal hazards. Since the local CDP did not discuss or specify whether removal of the

development will be necessary due to wave uprush, erosion, and flooding, the appellants' contentions raise a substantial issue with regard to the project's siting in a hazardous location and consistency with LUP (COSE) Policies 2.1 and 2.9 and IP Section 9.69.070 of the certified LCP.

Additionally, the appellants contend that the local CDP does not analyze the impacts of wave uprush flooding Beach Road via the garage breakaway panels. The City's findings suggest that inundation of the non-habitable garage may be an acceptable option to avoid impacts to the primary residence (which is proposed to be elevated approximately seven feet above the garage). In fact, IP Section 9.31.060(f)(3) requires that the garage be designed in this way, and IP Section 9.31.060(f)(8) requires ocean-facing decks to allow wave runoff to go over and under without obstruction. However, Commission staff's analysis of such design parameters at this site yields potential outsized effects on scour and flooding of Beach Road further landward of the site. As stated, Beach Road is at approximately +15 ft. NAVD88 elevation, and the erosion of the beach beneath the residence may increasingly direct wave action towards the road and nearby residences while sparing the elevated portions of the home. Beach Road is the only accessway for the Capistrano Beach Community Association, and flooding of the road may result in impacts to site ingress and egress, emergency vehicle access, public safety, and infrastructure. The garage may also be used for storage of electrical/mechanical equipment, cleaning chemicals, or other hazardous pollutants; inundation of the garage could thus result in release of harmful toxins into the water, and/or impacts to water quality and surrounding coastal habitats such as the creation of marine debris. There is little discussion as to the frequency the breakaway panels may break away in the future and how often the impacts mentioned above may occur. The City's findings and conditions of approval do not adequately address these concerns. Thus, this contention also raises a substantial issue with regard to consistency with LUP (COSE) Policy 2.16 and IP Section 9.69.070 the certified LCP.

Thus, the appeal contentions discussed above raise a substantial issue as to whether the project is consistent with coastal hazard policies of the certified LCP.

Shoreline Protection

Despite the applicants' assurances that the proposed residence would be designed and sited as to minimize risks from very high tides, high waves, and eroded beach conditions, coastal hazards, exacerbated by sea level rise, could significantly impact both the subject residence and the surrounding community if left unaddressed. It is unclear from the local CDP findings whether the subject development has actually been adequately sited and designed for safety from beach erosion, flooding, and wave impact resulting from sea level rise. Capistrano Beach is a narrow, sandy beach highly susceptible to coastal hazards associated with sea level rise, including wave uprush, erosion, and flooding.

Some existing residences located along Beach Road are already struggling with these hazards, exemplified by Emergency Permit Nos. G-5-20-0053 (35099 Beach Road) and G-5-21-0037 (35127 Beach Road) for residences located approximately one mile upcoast of the project site. The emergency work in both cases included installation of sand cubes

to protect existing single-family residences from wave action and erosion to their foundations and illustrates the need for projects in this area to be designed for safety against shoreline hazards in the present day, not just with sea level rise anticipated in the near- or long-term future. In addition, the Commission's Enforcement staff is tasked with identifying and correcting a huge scope of unpermitted development seaward of the homes along Beach Road, including potentially at the subject site; many of the unpermitted shoreline protective devices have been installed in response to the beach's chronic erosion over the past few years resulting in extremely narrow beach widths.

In a letter dated February 6, 2023, GeoSoils, Inc. discusses the extent of existing shoreline protection at the subject site and makes a case for its retention. The consultants state that the existing shoreline armoring at the site is a triangularly-shaped concrete retaining wall with a quarry stone toe, installed in the mid-1940s, and forms part of a contiguous shoreline protection system that extends to several properties on either side of the site. The consultants found that to the north and south of the subject site, the seawalls are made from a timber bulkhead, also with a quarry stone toe. The consultants claim that the existing seawalls fronting the properties may be structurally independent of one another, but together they protect the residential structures behind them. Since the consultants believe that there are no "adequate" seawall returns along the shared property lines, and the neighboring residences are built on slab-on-grade foundations and prone to flooding, then the geotechnical recommendation is for the applicants to retain the seawall. Nonetheless, the consultants' report states that "the proposed new pile-supported residence at 35697 Beach Road is designed such that a seawall (or other shore protection) will not be needed over the life of the development," and will instead act to minimize "adverse impact on the adjacent properties and contribut[ion] to the geologic instability of these properties." As part of its review process, the Commission will require further analysis of the consultants' claims for factual accuracy and corroboration.

The appellants contend that Special Condition 12 of the local CDP, which requires removal of any existing coastal armoring onsite only if possible without threatening neighboring properties, does not adequately resolve possible unpermitted development onsite. The City has indicated that they agree with the geotechnical consultants' analysis, but that they are unaware of when or how the boulders were placed in the late 2010s; the boulders can be still found seaward of the seawall to the present day. Furthermore, the Commission's archival and photographic research does not show any CDP history for shoreline protective devices onsite, and thus it has not yet been necessarily proven that even the seawall was built prior to the Coastal Act. Thus, the appellants are correct in claiming that at least some of the existing shoreline protective devices in the project area are unpermitted and constitute violations of the Coastal Act and the certified LCP. Special Condition 12 of the local CDP states, in relevant part [**emphasis added**]:

"a. The property owner(s) agrees on behalf of themselves and all other successors and assigns, that no new shoreline protective device which would substantially alter natural land form along bluffs and cliffs, cause beach erosion or adversely impact the local shoreline sand supply shall ever be constructed to protect the development approved pursuant to the permits issued hereunder including, but not limited to, the dwelling, foundation, decks and any other future improvements in

the event the development is threatened with damage or destruction from waves, erosion, storm conditions or other oceanographic hazards in the future.”

b. The property owner(s) shall be responsible for the removal of any and all pre-existing ocean protective devices directly fronting the subject property **at the time they are determined to no longer be required to protect surrounding properties**. The property owner shall assume all costs and responsibilities associated with the removal.”

This condition does not specify which party is responsible for making the determination that the surrounding properties no longer require the unpermitted armoring. It also allows the property owner to retain any past unpermitted structures indefinitely if the neighboring properties are deemed at risk, which conflicts with Special Condition 12, subsection A prohibiting any shoreline protective devices that would substantially alter natural shoreline processes.

Certified LUP (COSE) Policies 2.5 and 2.9 require protection of natural erosion processes, while LUP (COSE) Policies 2.5 and 2.14 prohibit new coastal development from relying on protective devices. For consistency with these policies, all unpermitted shoreline protective devices onsite should be removed prior to construction of any new development; or, at the very least, be the minimum necessary to provide protection to the existing neighboring properties without impacting local shoreline sand supply.

IP Section 9.31.040(d)(3) further specifies that seawalls within the Floodplain Overlay District may be allowed to protect the existing neighboring structures, but only “as a last resort protective device for coastal areas.” The applicants have not provided, nor did the City require, a comprehensive alternatives analysis that evaluates whether retention of the seawall and boulders would constitute the minimum necessary to protect existing structures and to eliminate adverse impacts on local shoreline sand supply. The letter dated February 6, 2023 does briefly discuss an alternative design whereby the existing seawall would be removed, but in its place, return walls would be built perpendicular to the shoreline and along the side property lines. These walls would be 50 feet in length and 15 feet high in elevation above the scour elevation. Given the minimal setbacks along the side property lines and the difficulty in removing these walls in the future, this alternative was deemed “impractical.” However, other alternatives that reduce the footprint of the seawall and boulders, or that otherwise make modifications to the seawall and boulders to reduce their adverse impacts to coastal processes, were not considered.

Approval of development (directly or indirectly) reliant upon shoreline protective devices can contribute to erosion of the beach and adversely impact the ability of the public to traverse the beach. The local CDP approves development that encroaches seaward of existing development on a site that is subject to wave attack along a beach that is subject to erosion, and which will get increasingly narrower with sea level rise. Seawalls and beach erosion also have negative visual impacts. Approval of new development reliant upon shoreline protective devices which adversely impact the beach—without mitigation of identified impacts—would be inconsistent with Coastal Act and LCP policies regarding public access and recreation and LCP policies regarding hazards and public views. Thus,

the proposed project is inconsistent with the coastal hazard policies of the certified LCP, and the contention raises a substantial issue.

Therefore, this contention raises a substantial issue with regard to the City-approved project's consistency with LUP (COSE) Policies 2.5, 2.9, and 2.14 of the certified LCP.

Setbacks

The appellants contend that the encroachments of the balconies and stairs beyond the structural stringline, as well as the seawall and boulders seaward of the patio stringline, are inconsistent with the "appropriate boundary" for lateral access outlined in IP Section 9.27.030(a)(4)(G)(1). While the LCP allows for limited encroachments beyond the structure and patio stringline setback requirements for the Residential Beach Road Zoning District, the existing seawall and boulder encroachments, especially since they have not been demonstrated as having been sited or designed to be the minimum necessary for protecting the neighboring properties, may adversely affect (either individually or cumulatively) the ability of the public to reach and use the public tidelands, and to provide the adequate buffers and setbacks required by the certified LCP. The City's decision is further confounded by the fact that the project would be located adjacent to public trust lands, but the California State Lands Commission (CSLC) was not consulted prior to the local action.

Part of the basis for the City's determination regarding adequate setbacks relates to site conditions including the distance of the proposed development from the mean high tide line (MHTL). As the appellants point out, the basis for the location of the MHTL is unclear.

In most coastal locations, the MHTL is an ambulatory feature that varies with changes to the beach area. In general, as the beach erodes, the MHTL will move landward, and as the beach accretes, the MHTL will move seaward. In the subject approval, the location of the MHTL, and consideration for whether it ambulates or is adjudicated per a fixed boundary agreement, were not clear. It was also unclear whether the rear property line should be pegged to a fixed line, as surveyed by the County and the applicants, or to the ambulatory MHTL, as indicated in the map of Tract 889. Use of a fixed or ambulating rear property line would have profound implications for whether a) a lateral public access easement is even necessary, as required per IP Section 9.09.040(a)(4), b) the seawall and boulders, which are proposed to be retained, are already located seaward of the MHTL (i.e., on public trust lands), and c) if additional rear setbacks or buffers are required, as detailed in IP Section 9.05.190 (5 ft. minimum) or 9.27.030 (10 ft. minimum).

In cases where the location of the MHTL is in question, it is often necessary for applicants to provide a recent MHTL survey and past MHTL surveys for the project site/area. In addition to providing a record of all MHTL surveys, it is also often necessary for applicants to submit seasonal profiles of the subject beach (a storm season profile and a milder wave season profile). The location of the MHTL compared with the proposed development, and the availability of passable public trust beach area, would be further clarified by the provision of a project plan that overlays the proposed development footprint with all surveyed MHTLs, the seasonal profiles that show changes in beach

conditions, and a table showing elevations used to locate the MHTLs and elevations of Mean Higher High Water, referenced to a recognized tidal datum (MSL, NGVD, MLLW, etc.).

Therefore, this contention raises a substantial issue as to whether the local CDP is consistent with the setback policies and CDP filing requirements of the certified LCP.

Visual Resources

IP Section 9.05.170 states that in order to protect coastal scenic overlooks from public lands identified in the Conservation/Open Space Element (“COSE”), a detailed view impact study with recommendations on impact avoidance must be prepared and implemented for each project where proposed development might impact significant views. Furthermore, IP Section 9.69.070(f) requires that new development be visually compatible with the character of surrounding areas, and where feasible, will restore and enhance visual quality in visually degraded areas. These visual resource policies form one of the many bases for which the City acts on CDP applications.

In past City and Commission actions pertaining to development along Beach Road, there was consideration of adequate siting and design to protect views of the coast from public vantage points (e.g., public roads, trails and public recreational areas) and to minimize adverse view impacts to and along the coast. The viewshed from the California Coastal Trail (CCT) and Coast Highway, which are located approximately 100 ft. inland of the site, provide expansive views of major scenic resources across Beach Road including ocean white water and blue water, ocean horizon, shoreline and coastline, beach, and coastal bluffs.

The appellants contend that the existing home is one-story, and that the construction of a new two-story home may result in significant adverse impacts on public views to the coast from the California Coastal Trail and Coast Highway. Furthermore, the impacts would be compounded greatly if other neighboring one-story units along Beach Road were to be elevated in a similar fashion. Thus far, the applicants have not provided, nor has the City required, a comprehensive visual impact study consistent with IP Section 9.69.050(b)(7)(F) that would satisfy the requirements in IP Sections 9.05.170 and 9.69.070(f). As part of the Planning Commission Agenda Report dated January 9, 2023, current site photographs were included ([Exhibit 7](#)), which demonstrate that existing blue water views would very likely be obstructed once a two-story residence is erected, based on a side-by-side comparison with other taller neighboring structures.

The absence of an extensive visual impacts analysis does not support the finding that the proposed project design would have the least visual impacts feasible. At minimum, the applicants should provide various heights and roof pitches to substantiate whether certain alternative designs could pose less significant adverse view impacts. Since shoreline protection, and the retention thereof, also creates impacts to visual resources, then additional information about various plans and methods to mitigate the visual impacts of the retained seawall and boulders would also be needed.

Therefore, this contention raises a substantial issue as to whether the local CDP is consistent with the visual resource policies of the certified LCP.

SUBSTANTIAL ISSUE FACTORS:

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

1. The degree of factual and legal support for the local government’s decision that the development is consistent with the relevant provisions of the certified LCP and Coastal Act. The City’s analysis of site-specific coastal hazards failed to consider the full scope of risks facing the project, including increased erosion, sea level rise-related flooding, and undermining of Beach Road landward of the site. The City also did not consider that the approved encroachments seaward of the structure and patio stringline setback requirements would impinge upon lateral public access along the beach seaward of the project site. Additionally, the City’s findings to support a determination of project exception from easement requirements did not take into account the individual or cumulative impacts of the project on public access, the need to preserve lateral public access along the beach in the face of sea level rise and severe beach erosion, and the increasingly frequent inundation of the vertical public access entry points at Capistrano Beach County Park and Poche Beach. As described above, the local CDP included inadequate analysis of future coastal hazards and impacts to public access. The City’s findings would allow for retention of shoreline protective devices at the site, given that the shoreline armoring removal requirement is contingent upon the protection of neighbors’ properties, without any evidence that such protection is necessary. Therefore, the Commission finds that the City provided an inadequate degree of factual and legal support for its decision to approve the new single-family residence and garage supported on caissons in a hazardous area.

2. The extent and scope of the development as approved or denied by the local government. The project may contribute to the future loss of lateral public access to Capistrano Beach, as well as public safety concerns associated with the flooding of Beach Road. These issues have far-reaching consequences and thus, the scope of the project raises a substantial issue.

3. The significance of the coastal resources affected by the decision. Maximizing public access to the coast is one of the most important policies embodied in the Coastal Act. Capistrano Beach is highly valued as a public resource for both tourists and community members—the fate of this beach within the next 75 years, as well as the safety of the community living on this beach, is a significant priority for the Commission. Given the area’s vulnerability to coastal hazards such as flooding, wave scour, and erosion, the City should carefully evaluate development project applications along Beach Road in order to adequately protect life and property from the imminent threat. This factor thus raises a substantial issue.

4. The precedential value of the local government’s decision for future interpretations of its LCP. The subject project raises a fundamental question regarding

how local governments and the Commission should balance preservation of sandy beaches available to the public with the rights of property owners. Past locally approved CDPs in Dana Point have included similar project descriptions, with new residences approved for elevation on piles above +21 ft. NAVD88 and determined exempt from easement dedication requirements, even in cases where easements have already been present onsite.⁵ This project raises significant questions of safety and loss of public lands, as detailed above, and the City’s conditions of approval do not adequately address removal of existing shoreline protective devices or future removal of development that encroaches on public trust lands. In addition, the Commission’s Enforcement staff is tasked with identifying and correcting a huge scope of unpermitted development seaward of the homes along Beach Road—it is crucial that local governments support their efforts by researching underlying permit histories (including recorded public access easements) and investigating any unpermitted development and requiring removal prior to approving new development. In this case, removal of any unpermitted shoreline protection was required based solely on the safety of neighboring development, without findings discussing whether Coastal Act violations exist onsite. In addition, the City’s lack of findings concerning the need and preservation of a lateral public access easement onsite may result in future City decisions discounting the need for continued public use and recreation of the beach in the face of sea level rise and beach erosion. Finally, the City did not account for the project’s adverse impacts on visual resources, including public views to the ocean from nearby public access vantage points. Thus, the project, as approved by the City, may contribute to multiple adverse precedents and raises a substantial issue.

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

The State Legislature has acknowledged that sea level rise has already begun to impact public infrastructure. A U.S. Geologic Survey study from 2019 estimates that over \$150 billion of California property could be impacted by flooding associated with six feet of sea level rise and one extreme 100-year storm, with annual storms estimated to impact an additional \$119 billion in California property by 2100.⁶ The California Legislative Analyst’s Office published a report in August 2020 also indicating that with three to six feet of sea level rise, “up to two-thirds of Southern California beaches may become completely eroded by 2100.”⁷ The subject appeal raises issues of how to maintain public beaches and natural beach accretion while protecting existing communities and the safety of public infrastructure. As described above, this appeal may set a new precedent for new development built in hazardous shoreline areas. In addition to statewide and regional concerns, the project raises issues for the local Capistrano Beach Community Association. The project may contribute to flooding of Beach Road, the only accessway for the subject

⁵ [A-5-DPT-22-0037](#) (CDP 20-0007; 35525 Beach Road); [A-5-DPT-21-0056](#) (CDP 20-0024; 35275 Beach Road); [5-DPT-21-0424](#) (CDP 20-0028, 35537 Beach Road); [5-DPT-15-0795](#) (CDP 12-0006, 35537 Beach Road).

⁶ *Critical Infrastructure at Risk: Sea Level Rise Planning Guidance for California’s Coastal Zone*, adopted by the California Coastal Commission on November 17, 2021. https://documents.coastal.ca.gov/assets/slr/SLR%20Guidance_Critical%20Infrastructure_12.6.2021.pdf

⁷ Legislative Analyst’s Office, Gabriel Petek. “What Threat Does Sea-Level Rise Pose to California?” published on August 10, 2020. <https://lao.ca.gov/reports/2020/4261/sea-level-rise-081020.pdf>

row of residential development. Therefore, the appeal raises issues of local, regional, and statewide significance. This factor supports a finding of substantial issue.

Conclusion

Applying the five factors listed above clarifies that, on balance, the appeal raises a “substantial issue” with respect to the project’s consistency with Chapter 3 public access and recreation policies of the Coastal Act, as well as the certified LCP. There are significant questions of safety, public access, and unpermitted coastal armoring raised by the City’s findings. The City’s decision could contribute to an existing adverse precedent and influence future interpretations of the certified LCP. Therefore, staff recommends that the Commission find that the appeal raises a substantial issue as to the project’s conformity with Chapter 3 public access and recreation policies of the Coastal Act, as well as the certified LCP.

Appendix A – Substantive File Documents

- City of Dana Point certified Local Coastal Program (LCP)
- Wave Runup Analysis and Base Flood Elevation Determination, prepared by GeoSoils, Inc. dated March 6, 2020, and associated file documents
- City Council Resolution No. 01-07-10-03
- Letter to the City of Dana Point from Sherman L. Stacey dated July 1, 2015 regarding pending CDP for 24682 Camino Capistrano

Appendix B – Relevant Certified LCP Policies

Certified IP Section 9.05.170 Coastal Views from Public Areas states:

To protect the coastal scenic overlooks from public lands identified in the General Plan Urban Design and Conservation/Open Space Elements, a detailed view impact study which includes recommendations to avoid impacts to coastal views from public lands shall be prepared and incorporated into projects where the proposed development impacts such views.

Certified IP Section 9.09.040 Special Development Standards states, in relevant part:

- (a) Development in the Residential Beach Road 12 (RBR 12) and Residential Beach Road Duplex 18 (RBRD 18) Zoning Districts shall comply with the following standards:

(1) The following Table provides the requirements for structural stringlines, patio stringlines, and front yard setbacks for properties in the Residential Beach Road 12 (RBR 12) and Residential Beach Road Duplex 18 (RBRD 18) Districts...

| Beach Road Address | Tract 889 Lot Number | Measurement from roadside property line to structure stringline along: west property line/east property line (a) | Measurement from roadside property line to patio stringline along: west property line/east property line (b) | Front Setback (Ground Floor) (e)(f) |
|--------------------|----------------------|--|--|-------------------------------------|
| 35697 | 45 | 47/48 | 60/60 | 18 (6) |

...

Footnotes for Section 9.09.040(a)(1):

(a) No enclosed portion of any structure shall extend seaward of a straight line drawn between the structure stringline measurements set forth in this section for the east and west property lines of the subject property.

(b) No patio or unenclosed portion of any structure shall extend seaward of a straight line drawn between the patio stringline measurements set forth in this section for the east and west property lines of the subject property. Where vertical displacement exists between the lowest level patio and sandy beach, a stairway may

encroach seaward of the patio stringline no more than three (3) feet. Where the patio stringline lies inland of an ocean protective device (OPD), an accessway from the lowest level patio to the OPD may be constructed as necessary to link the patio with a stairway to the beach...

(2) Maximum Projections into Required Yards. The following Table provides the requirements for allowable projections into required yards for properties in the Residential Beach Road 12 (RBR 12) and Residential Beach Road Duplex 18 (RBRD 18) Districts.

SECTION 9.09.040 (a)(2)

MAXIMUM PROJECTION INTO REQUIRED YARDS

| Item | Maximum Projection | | | Minimum Distance From Property Lines (B) | Maximum Projection Above District Height Limit | Other Limitations |
|---------------|--------------------|---------------------------------|--------------------|--|--|-------------------|
| Item | Front Yard Area | Seaward of Structure Stringline | Side Yard Area (A) | | | |
| (c) Balconies | 5'0" | 8'0" | NP | 6'0" | NP | (E)(F) |

...

(4) Offers to dedicate easements for public pedestrian access laterally along the beach at Capistrano Beach will be required as a condition of any new development project, as defined in public access ordinance (Section 9.27.030(a)(2)(A) of this Zoning Code), requiring a coastal development permit along Beach Road, consistent with the requirements of the public access ordinance (Section 9.27.030(a) of this Zoning Code).

Certified IP Section 9.27.030 Development Standards states, in relevant part [emphasis added]:

(a) Coastal Access.

(1) The purpose of this section is to achieve the basic state goals of

maximizing public access to the coast and public recreational opportunities, as set forth in the California Coastal Act; to implement the public access and recreation policies of Chapter 3 of the Coastal Act; and to implement the certified land use plan of the Local Coastal Program which is required by Section 30500(a) of the Coastal Act to include a specific public access component. In achieving these purposes, the provisions of this subsection shall be given the most liberal construction possible so that public access to the navigable waters shall always be provided and protected consistent with the goals, objectives and policies of the California Coastal Act and Article X, Section 4, of the California Constitution...

(C) Character of Accessway Use...

2. Passive recreational use. As used in this section, "passive recreational use" refers to the right of the public to conduct activities normally associated with beach use, such as walking, swimming, jogging, sunbathing, fishing, surfing, picnicking, but not including organized sports, campfires, or vehicular access other than for emergencies or maintenance.

3. Active recreational use. As used in this section, "active recreational use" refers to the right of the public to conduct the full range of beach-oriented activities, not including horseback riding and use of motorized vehicles unless specifically authorized...

(3) Applicability.

(A) Access Required. As a condition of approval and prior to issuance of a permit or other authorization for any class of new development as identified in Sections 9.27.030(a)(3)(A)1. through 9.27.030(a)(3)(A)4. below, except as provided in Section 9.27.030(a)(3)(B), an offer to dedicate an easement (or other legal mechanism pursuant to Section 9.27.030(a)(4)(J)2. for one or more of the types of access identified in Sections 9.27.030(a)(2)(D)1. through 9.27.030(a)(2)(D)5. shall be required and shall be supported by findings required by Sections 9.27.030 (a)(5)(A) through 9.27.030(a)(5)(C); provided that no such condition of approval for coastal access shall be imposed if the analysis required by Sections 9.27.030(a)(5)(A)1. through 9.27.030(a)(5)(A)4. establishes that the development will not adversely affect, either individually or cumulatively, the ability of the public to reach and use public tidelands and coastal resources or that the access dedication requirement will not alleviate the access burdens identified....

2. New development between the nearest public roadway and the sea.

3. New development on any site where there is substantial evidence of a public right of access to the sea acquired through use or a public right of access through legislative authorization...

(B) Exceptions. Section 9.27.030(a)(3)(A) above shall apply to all new development except in the following instances:

1. Projects excepted from the definition of "new development" in Section 9.27.020(a)(2).

2. Where findings required by Sections 9.27.030(a)(5)(A) and 9.27.030(a)(5)(B) establish any of the following:

a. Public access is inconsistent with the public safety, military security needs, or protection of fragile coastal resources; or

b. Adequate access exists nearby.

(4) Standards for Application of Access Conditions. The public access required pursuant to Section 9.27.030(a)(3)(A) shall conform to the standards and requirements set forth in Section 9.27.030(a)(4) herein.

(A) Lateral Public Access (Minimum Requirements).

1. A condition to require lateral access as a condition of approval of a coastal development permit (or other authorization to proceed with development) pursuant to Section 9.27.030(a)(3)(A) shall provide the public with the permanent right of lateral public access and passive recreational use along the shoreline (or public recreational area, bikeway, or blufftop area, as applicable); provided that in some cases controls on the time, place and manner of uses may be justified by site characteristics including sensitive habitat values or fragile topographic features, or by the need to protect the privacy of residential development located immediately adjacent to the accessway.

2. Active recreational use may be appropriate in many cases where the development is determined to be especially burdensome on public access. Examples include cases where the burdens of the proposed project would severely impact public recreational use of the shoreline, where the proposed development is not one of the priority uses specified in Public Resources Code Section 30222 and the policies of the certified land use plan, where active recreational uses reflect the historic public use of the site, where active recreational uses would be

consistent with the use of the proposed project, and where such uses would not significantly interfere with the privacy of the landowner. In determining the appropriate character of public use, findings shall be made on the specific factors enumerated in Section 9.27.030(a)(5)(B). Lateral access shall be legally described as required in Section 9.27.030(a)(4)(G).

(B) Vertical Public Access (Minimum Requirements)...

3. Each vertical accessway shall extend from the road to the shoreline (or bluff edge) and shall be legally described as required in Section 9.27.030(a)(4)(G). The access easement shall be a minimum of 10 feet wide. If a residential structure is proposed, the accessway should not be sited closer than 10 feet (or another distance if specified in the certified land use plan) to the structure....

(F) Protection of Historic Public Use.

1. Substantial Evidence Determination. Substantial evidence that the area used by the public has been impliedly dedicated shall be determined based on evidence of all of the following:

- a. The public must have used the land for a period of five years or more as if it were public land,
- b. Without asking for or receiving permission from the owner,
- c. With the actual or presumed knowledge of the owner,
- d. Without significant objection or bona fide attempts by the owner to prevent or halt the use, and
- e. The use must be substantial, rather than minimal, and
- f. The applicant must not have demonstrated that the law has prevented the property from being impliedly dedicated.

2. Siting and Design Requirements. Development shall be sited and designed in a manner which does not interfere with or diminish any public right of access which may have been established based on historic public use. Only when site constraints are so severe that siting of the accessway or recreational use area in its historic location would significantly impair the proposed development and alternative development siting is not feasible, development may be sited in the area of

public right of access based on historic use provided that the applicant provides an equivalent area of public access or recreation to and along the same destination and including the same type and intensity of public use as previously existed on the site. Mechanisms for guaranteeing the continued public use of the area or equivalent area shall be required in accordance with Sections 9.27.030(a)(4)(A) through 9.27.030(a)(4)(E) above.

3. Minimum Requirements. An access condition shall not serve to extinguish or waive public prescriptive rights. In permits where evidence shows the possibility of such prescriptive rights, the following language shall be added to the access condition:

"Nothing in this condition shall be construed to constitute a waiver of any prescriptive rights which may exist on the parcel itself or on the designated easement."

(G) Legal Description of an Accessway (Recordation).

1. An access dedication required pursuant to Section 9.27.030(a)(3)(A) shall be described in the condition of approval of the permit in a manner that provides the public, the property owner, and the accepting agency with the maximum amount of certainty as to the location of the accessway. As part of the condition of approval, easements shall be described as follows:

a. for lateral access: along the entire width of the property from the mean high tide line to (as applicable): the toe of the bluff, the toe of the seawall, or other appropriate boundary such as structural and patio stringlines as described in Section 9.09.040(a)(1) of this Zoning Code (the Residential Beach Road 12 (RBR 12) and Residential Beach Road Duplex 18 (RBRD) Zoning Districts)...

2. Prior to the issuance of the coastal development permit, the landowner shall execute and record a document in a form and content acceptable to the Director of Community Development, consistent with provisions of Section 9.27.030(a)(6), irrevocably offering to dedicate to a public agency, non-profit organization, or private association approved by the Coastal Commission an easement for a specific type of access as described in Section 9.27.030(a)(2)(D) and a specific character of use as described in Section 9.27.030(a)(2)(E), as applicable to the particular condition.

3. The recorded document shall provide that the offer to dedicate shall not be used or construed to allow anyone, prior to acceptance of the dedication, to interfere with any rights of public access acquired through use which may exist on the property.

4. The recorded document shall include legal descriptions of both the applicants' entire parcel and the easement area and a map to scale. The offer shall be recorded free of prior liens and any other encumbrances which the Coastal Commission [or local agency authorized by the Commission] determines may affect the interest being conveyed. The offer to dedicate shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

(H) Management Plan (Minimum Requirements). A management plan may be required in conjunction with a dedication of public access in any case where there is substantial evidence of potential conflicts between public access use and other uses on or immediately adjacent to the site. Examples include access in areas of...significant hazards, or adjoining residential neighborhoods or military security areas. The plan shall be prepared by the accepting agency and approved by the City of Dana Point prior to the opening of the access to public use. Where applicable, the plan should specify management controls on time and intensity of use, standards for privacy buffers, and requirements for maintenance of aesthetic values through such measures as litter control.

(I) Privacy Buffers (Minimum Requirements). Separation between a public accessway and adjacent residential use may be provided when necessary to protect the landowner's privacy or security as well as the public's right to use of the accessway. Any such buffer shall be provided within the development area. Access should not be sited closer to any residential structure than the distance specified in the certified LUP amendment, or where there is no distance specified, no closer than 10 feet. The buffer can be reduced where separation is achieved through landscaping, fences or grade separation...

(5) Required Findings And Supporting Analysis For Public Access Dedications.

(A) Required Overall Findings. Written findings of fact, analysis and conclusions addressing public access must be included in support of all approvals, denials or conditional approvals of projects between the first public road and the sea (whether development or new development) and of all approvals or conditional approvals of projects (whether development or

new development) where an access dedication is included in the project proposal or required as a condition of approval. Such findings shall address the applicable factors identified by Section 9.27.030(a)(5)(B) and 9.27.030(a)(5)(C) and shall reflect the specific level of detail specified, as applicable. Findings supporting all such decisions shall include:

1. A statement of the individual and cumulative burdens imposed on public access and recreation opportunities based on applicable factors identified pursuant to Section 9.27.030(a)(5)(B). The type of affected public access and recreation opportunities shall be clearly described.
2. An analysis based on applicable factors identified in Section 9.27.030(a)(5)(B) and 9.27.030(a)(5)(C) of the necessity for requiring public access conditions to find the project consistent with the public access provisions of the Coastal Act.
3. A description of the legitimate governmental interest furthered by any access condition required.
4. An explanation of how imposition of a public access dedication requirement alleviates the access burdens identified and is reasonably related to those burdens in both nature and extent.

(B) Required Project-Specific Findings. In determining any requirement for public access, including the type of access and character of use, the City of Dana Point shall evaluate and document in written findings the factors identified in Sections 9.27.030(a)(5)(B)1. through 9.27.030(a)(5)(B)4. below, to the extent applicable. The findings shall explain the basis for the conclusions and decisions of the City of Dana Point and shall be supported by substantial evidence in the record. If an access dedication is required as a condition of approval, the findings shall explain how the dedication will alleviate or mitigate the adverse effects which have been identified and is reasonably related to those adverse effects in both nature and extent. As used in this section, "cumulative effect" means the effect of the individual project in combination with the effects of past projects, other current projects, and probable future projects, including development allowed under applicable planning and zoning. The following factors shall be analyzed:

1. Project Effects On Demand For Access And Recreation:
 - a. Identification of existing and open public access and coastal recreation areas and facilities in the regional and local vicinity of the development.
 - b. Analysis of the project's effects upon existing public access and recreation opportunities.

c. Analysis of the project's cumulative effects upon the use and capacity of the identified public access and recreation opportunities, including public tidelands and beach resources, and upon the capacity of major coastal roads from subdivision, intensification or cumulative buildout.

d. Projection of the anticipated demand and need for increased coastal access and recreation opportunities for the public.

e. Analysis of the contribution of the project's cumulative effects to any such projected increase.

f. Description of the physical characteristics of the site and its proximity to the sea, tideland viewing points, upland recreation areas, and trail linkages to tidelands or recreation areas.

g. Analysis of the importance and potential of the site, because of its location or other characteristics, for creating, preserving or enhancing public access to tidelands or public recreation opportunities.

2. Shoreline Processes (for accessways on sites subject to wave action, such as beachfront and coastal blufftop accessways):

a. Description of the existing shoreline conditions, including beach profile, accessibility and usability of the beach, history of erosion or accretion, character and sources of sand, wave and sand movement, presence of shoreline protective structures, location of the line of mean high tide during the season when the beach is at its narrowest (generally during the late winter) and the proximity of that line to existing structures, and any other factors which substantially characterize or affect the shoreline processes at the site.

b. Identification of anticipated changes to shoreline processes and beach profile unrelated to the proposed development.

c. Description and analysis of any reasonably likely changes, attributable to the primary and cumulative effects of the project, to wave and sand movement affecting beaches in the vicinity of the project; the profile of the beach; the character, extent, accessibility and usability of the beach; and any other factors which characterize or affect beaches in the vicinity.

d. Analysis of the effect of any identified changes of the project - alone or in combination with other anticipated changes - will

have upon the ability of the public to use public tidelands and shoreline recreation areas.

e. The rate of blufftop erosion due to wave action as the base of the bluff....

4. Physical Obstructions: Description of any physical aspects of the development which block or impede the ability of the public to get to or along the tidelands, public recreation areas, or other public coastal resources or to see the shoreline.

5. Other Adverse Impacts On Access And Recreation.

a. Description of the development's physical proximity and relationship to the shoreline and any public recreation area.

b. Analysis of the extent to which buildings, walls, signs, streets or other aspects of the development, individually or cumulatively, are likely to diminish the public's use of tidelands or lands committed to public recreation.

c. Description of any alteration of the aesthetic, visual or recreational value of public use areas, and of any diminution of the quality or amount of recreational use of public lands which may be attributable to the individual or cumulative effects of the development...

(D) Required Findings For Public Access Exceptions. Any determination that one of the exceptions of Section 9.27.030(a)(3)(B) applies to a development shall be supported by written findings of fact, analysis and conclusions which address all of the following:

1. The type of public access potentially applicable to the site involved (vertical, lateral, bluff top, etc.) and its location in relation to the fragile coastal resource to be protected or the public safety concern which is the basis for the exception, as applicable.

2. Unavailability of any mitigating measures to manage the type, character, intensity, hours, season or location of such use so that fragile coastal resources or public safety, as applicable, are protected.

3. Ability of the public, through another reasonable means, to reach the same area of public tidelands as would be made accessible by an accessway on the subject land.

(E) Findings For Management Plan Conditions. Written findings in support of a condition requiring a management plan for regulating the time and manner

or character of public access use must address the following factors, as applicable.

1. Identification and protection of specific habitat values including the reasons supporting the conclusion that such values must be protected by limiting the hours, seasons, or character of public use.
2. Topographic constraints of the development site.
3. Recreational needs of the public.
4. Rights of privacy of the landowner which could not be mitigated by setting the project back from the accessway or otherwise conditioning the development.
5. The requirements of the possible accepting agency, if an offer of dedication is the mechanism for securing public access.
6. Feasibility of adequate setbacks, fencing, landscaping, and other methods as part of a management plan to regulate public use...

Certified IP Section 9.31.040 Prohibited Uses and Structures states, in relevant part:

The following uses and structures are specifically prohibited in the Floodplain Overlay Districts:...

(d) FP-3 District only:...

(3) Seawalls, revetments, and shoreline ocean protective devices or construction that alters natural shoreline processes, unless required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and only when positioned, designed and constructed to eliminate adverse impacts on local shoreline sand supply as provided for in Section 9.27.030(f) of this Zoning Code. Seawalls, revetments, and other shoreline protective devices or construction that alters natural shoreline processes shall only be permitted as a last resort protective device for coastal areas. Shoreline protective devices need not be subject to the elevation requirements of the FP-3 district.

Certified IP Section 9.69.050 Application for Coastal Development Permit states, in relevant part:

(b) Application for a Coastal Development Permit shall be made on forms provided by the Community Development Department, and shall include, at a minimum, the following information:...

(7) The following additional, current information (which may be in both written and graphic form), specific to the subject site, shall be required if

applicable. In addition, plans to mitigate adverse impacts, plans to monitor the mitigation, and an alternatives analysis shall be required where applicable...

(F) For proposed development which would result in significant adverse impacts to public views, a visual impact study prepared pursuant to the requirements of the Urban Design Element of the General Plan.

Certified IP Section 9.69.070 Basis for Action on Coastal Development Permit Applications states, in relevant part [emphasis added]:

(a) Approvals of Coastal Development Permits. In order for a Coastal Development Permit to be approved, all the following findings must be made, in writing, in addition to the findings required to approve other applications being considered concurrently:

(1) That the proposed development is in conformity with the certified Local Coastal Program as defined in Chapter 9.75 of this Zoning Code. (Coastal Act/30333, 30604(b); 14 Cal. Code of Regulations/13096).

(2) That the proposed development, if located between the nearest public roadway and the sea or shoreline of any body of water, is in conformity with the public access and public recreation policies of Chapter Three of the Coastal Act. (Coastal Act/30333, 30604(c); 14 Cal. Code of Regulations/13096).

(3) That the proposed development conforms with Public Resources Code Section 21000 and following and that there are no feasible mitigation measures or feasible alternatives available which would substantially lessen any significant adverse impact that the activity may have on the environment. (Coastal Act/30333; 14 Cal. Code of Regulations/13096).

(b) Denials of Coastal Development Permits. In order for a Coastal Development Permit to be denied, all the following findings must be made, in writing, in addition to the findings required to deny other applications being considered concurrently:

(1) That the proposed development is not in conformity with the certified Local Coastal Program as defined in Chapter 9.75 of this Zoning Code. (Coastal Act/30333, 30604(b); 14 Cal. Code of Regulations/13096).

(2) That the proposed development, if located between the nearest public roadway and the sea or shoreline of any body of water, is not in conformity with the public access and public recreation policies of Chapter Three of the Coastal Act. (Coastal Act/30333, 30604(c); 14 Cal. Code of Regulations/13096).

(c) Additional findings for public access are found in Section 9.27.030(a) of the Zoning Code.

(d) That the proposed development will be sited and designed to prevent adverse impacts to environmentally sensitive habitats and scenic resources located in adjacent parks and recreation areas, and will provide adequate buffer areas to protect such resources.

(e) That the proposed development will minimize the alterations of natural landforms and will not result in undue risks from geologic and erosional forces and/or flood and fire hazards.

(f) That the proposed development will be visually compatible with the character of surrounding areas, and, where feasible, will restore and enhance visual quality in visually degraded areas.

(g) That the proposed development will conform with the General Plan, Zoning Code, applicable Specific Plan, Local Coastal Program, or any other applicable adopted plans and programs.

Certified LUP (COSE) Goal 2 Policies, in relevant part:

Policy 2.1: Place restrictions on the development of floodplain areas, beaches, sea cliffs, ecologically sensitive areas and potentially hazardous areas. (Coastal Act/30235, 30236, 30240, 30253)

Policy 2.2: Site and architectural design shall respond to the natural landform whenever possible to minimize grading and visual impact. (Coastal Act/30250)

Policy 2.3: Control erosion during and following construction through proper grading techniques, vegetation replanting, and the installation of proper drainage, and erosion control improvements. (Coastal Act/30243)

Policy 2.4: Require the practice of proper soil management techniques to reduce erosion, sedimentation, and other soil-related problems. (Coastal Act/30243)

Policy 2.5: Lessen beach erosion by minimizing any natural changes or man-caused activities which would reduce the replenishment of sand to the beaches. (Coastal Act/30235)

Policy 2.6: Encourage public acquisition of significant land resources for open space when funds or opportunities are available. (Coastal Act/30240)

Policy 2.8: Minimize risks to life and property, and preserve the natural environment, by siting and clustering new development away from areas which have physical constraints associated with steep topography and unstable slopes; and where such areas are designated as Open space or include bluffs, beaches, or wetlands, exclude such areas from the calculation of net acreage available for determining development intensity or density potential. (Coastal Act/30233, 30253)

Policy 2.9: Preserve significant natural features as part of new development. Permitted development shall be sited and designed to minimize the alteration of natural landforms. Improvements adjacent to beaches shall protect existing natural features and be carefully integrated with landforms. (Coastal Act/30240, 30250, 30251, 30253)

Policy 2.14: Shoreline or ocean protective devices such as revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply and minimize adverse impacts on public use of sandy beach areas. (Coastal Act/30210-12, 30235)

Policy 2.15: Assure that public safety is provided for in all new seaward construction or seaward additions to existing beachfront single family structures in a manner that does not interfere, to the maximum extent feasible, with public access along the beach. (Coastal Act/30210-212, 30214, 30253)

Policy 2.16: Identify flood hazard areas and provide appropriate land use regulations, such as but not limited to the requirement that new development shall have the lowest floor, including basement, elevated to or above the base flood elevation, for areas subject to flooding in order to minimize risks to life and property. (Coastal Act/30235, 30253)

Certified LUP (LUE) Goal 3 Policies, in relevant part:

Policy 3.11: Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. (Coastal Act/30211)

Policy 3.12: Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, or where adequate access exists nearby, including access as identified on Figures UD-2 and COS-4. (Coastal Act/30212)