

**CALIFORNIA COASTAL COMMISSION**

South Coast District Office  
301 E Ocean Blvd., Suite 300  
Long Beach, CA 90802-4302  
(562) 590-5071



# W14a

Filed: 11/16/2023  
49<sup>th</sup> Day: Waived  
Staff: M. Vaughn-LB  
Staff Report: 4/18/2024  
Hearing Date: 5/08/2024

## STAFF REPORT: APPEAL – NO SUBSTANTIAL ISSUE

**Appeal No.:** A-5-LGB-23-0047

**Applicant:** Laguna Royale HOA

**Agent:** Steve Kawaratani

**Local Government:** City of Laguna Beach

**Local Decision:** Approval with Conditions

**Appellant:** Catherine Jurca

**Project Location:** 31423 Coast Highway  
Laguna Beach, Orange County

**Project Description:** Repair of approximately 15,600 sq. ft. of elevated deck areas – including removal of specific framing members and sistering to existing framing due to water damage, dry rot and termite rot; removal and replacement of deck railings at all units and common deck areas – noncompliant metal railing to be replaced with code compliant, bird safe, glass railing; and after-the-fact approval of repairs and modifications to the structures and 30 residential units completed with Design Review approval and/or building permits, but no CDPs between 1989 through 2022.

**Staff Recommendation:** No Substantial Issue

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### IMPORTANT HEARING PROCEDURE NOTE:

At the hearing for this item the Commission will not take testimony on staff's "substantial issue" recommendation unless at least three Commissioners request it. Prior to determining

whether to take such testimony, the Commission may ask questions of the Applicant, aggrieved persons (i.e., generally persons who participated in some way in the local permitting process), the Attorney General, the Executive Director, and their proxies/representatives prior to determining whether to take such testimony. If the Commission does decide to take testimony, then it is generally limited to three minutes total per side (although the Commission's Chair has the discretion to modify these time limits). Only the Applicant, the appellant, persons who opposed the application before the local government, the local government, and their proxies/representatives shall be qualified to testify during this substantial issue phase of the hearing. Others may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, then the Commission takes jurisdiction over the underlying coastal development permit (CDP) application and will then review that application at a future Commission meeting, at which time all persons are invited to testify. If the Commission finds that the appeal does not raise a substantial issue, then the local government CDP decision stands, and is thus final and effective. It takes a majority of Commissioners present to find that the grounds for the appeal raise No Substantial Issue.

### SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission determine that **no substantial issue exists** with respect to the grounds upon which the appeal has been filed for the reasons described here and in the substantial issue analysis section of the staff report. The site is an oceanfront bluff site located between the first public road (Coast Highway) and the sea. The existing development, a 78 unit condominium complex, was constructed in 1962, prior to Coastal Commission jurisdiction (**Exhibits 1 & 2**). The appeal identifies three contentions, all of which are limited to the proposed replacement of metal picket railings with glass railings.

The first contention is that the City's eighth condition (**Exhibit 3**), which requires that the glass railings incorporate measures to avoid bird strikes, is unclear about what "equivalent" to Ornilux bird safe glass means. Second, the appeal contends that the City's condition No. 8 is also unclear as to when Ornilux bird safe glass is required, and when lesser bird safe measures, such as decals, tape, or external coatings, are allowed.

Ornilux bird safe glass is glass that incorporates UV reflective patterns into the glass. These UV patterns are visible to birds and so birds avoid them and do not fly into the glass. The phrase "Ornilux or equivalent" has been used in past Coastal Commission CDP approvals. However, Commission staff has recently learned that in addition to making UV reflective glass, Ornilyx also makes after-market anti-bird strike products such as decals, tapes, and external coatings. Due to their ephemeral nature, these after-market options are generally not preferred. However, Condition 8 also requires that the anti-bird strike measures be maintained for the life of the development to the satisfaction of the Director of Community Development. This additional language in Condition 8 adds an additional level of protection in addressing the ephemeral nature of the after-market anti-bird strike measures. In addition, the City based the condition language on past Coastal Commission accepted language.

Regarding the second contention, it is confusing as to why the City's condition has

seemingly one standard for existing glass and another for new glass when the after-market measures are allowed for both. But this is perhaps based on the same misunderstanding of Commission staff regarding the meaning of “Onilux’ or equivalent”. It appears the City, in good faith, used the same language in an effort to be consistent with what had been accepted in the past by the Coastal Commission for bird strike prevention.

Finally, the third contention is that the glass railings will increase glare and suggests that will have an adverse impact on the public. However, the contention does not specify any potential impacts that glare from the glass would have on the public. The appeal does not assert the glare will adversely affect birds. The project site is adjacent to open ocean and sandy beach, both of which would produce a significant amount of glare in sunny conditions. No evidence has been provided to support the allegation that whatever increase to existing glare may be caused by the glass railings would be significant enough to produce adverse impacts. Moreover, how the public or birds would be adversely impacted has not been described.

As approved and conditioned by the City, the project includes protective measures to address potential bird strikes. In addition, the City’s approval includes other measures to assure consistency with the LCP, such as elimination of existing beach spotlights; requiring the adjacent public beach to remain open and accessible to the public during all project construction; prohibiting any construction staging on the beach; requiring water quality Best Management Practices during construction; and including a future improvements condition which explicitly states the approval is only for the development described and as conditioned, and that non-exempt future development requires an amendment to the subject CDP or a new CDP. Moreover, the City considered the two biological documents prepared for the development, neither of which recommend the glass railings be eliminated. The City incorporated the recommendations of the biological documents into its approval, including in the condition that requires anti-bird strike measures. Moreover, neither of the two biological documents identified glare from the glass railings as a risk to birds or the public. No development will occur outside the existing development footprint. Although the site is an oceanfront bluff lot, the appeal does not raise any issues regarding the bluff edge location or the percent alteration to existing development. The appeal is limited to the three described contentions, noted above, regarding the balcony railing replacements.

For these reasons, it is clear that the City considered the LCP policies regarding protection of habitat, including wildlife, in particular birds, in its approval of CDP 23-0702, and, relying on the supporting substantial evidence in the local record showing that the project did not have adverse impacts on birds, found the project, as conditioned, consistent with the LCP. Therefore, staff recommends the Commission find that the City’s approval of local Coastal Development Permit No. 23-0702 raises no substantial issue with regard to the grounds upon which the appeal was filed. The motion is on page 6.

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### **EXHIBITS:**

1. [Vicinity Map](#)
2. [Photo of Laguna Royale](#)
3. [Planning Commission Resolution No. 23-0701 \(with Conditions of Approval\)](#)
4. [Appeal of Catherine Jurca](#)
5. [Appeal Supplement](#)
6. [City of Laguna Beach Response to Appeal](#)
7. [Applicant’s Response to Appeal](#)

## I. MOTION AND RESOLUTION – NO SUBSTANTIAL ISSUE

**Motion:** I move that the Commission determine that Appeal No. A-5-LGB-23-0047 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the Commissioners present.

**Resolution:** The Commission hereby finds that Appeal No. **A-5-LGB-23-0047** presents **NO SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

## II. APPELLANT’S CONTENTIONS

The Commission received a Notice of Final Local Action for the City of Laguna Beach’s approval of local CDP No. 23-0702 on November 1, 2023. Local CDP No. 23-0702 approves primarily repair and maintenance activities to the existing Laguna Royale 78-unit condominium complex.

The Commission issued a Notification of Appeal Period on November 1, 2023. On November 16, 2023, Catherine Jurca filed an appeal during the ten (10) working day appeal period ([Exhibit 4](#)). No other appeals were received. Catherine Jurca opposed the project at the local Planning Commission hearing and thus qualifies as an “aggrieved person” pursuant to Coastal Act Section 30801 and Title 14, California Code of Regulations, Section 13111.

The appellant contends that the City’s approval does not comply with the City’s certified Local Coastal Program (LCP), specifically with LCP IP (Zoning Code) Section 25.05.040(H)(5), which requires that any Design Review approval comply with all applicable policies of the General Plan, including all of its elements and applicable specific plans; and also does not comply with LCP IP (Zoning Code) Section 25.07.012(F)(2), which requires that any CDP approval include a determination that “[t]he project will not adversely affect marine resources, environmentally sensitive areas, or archaeological or paleontological resources.” The appellant contends that these LCP Sections require that development approval be consistent with policies that protect marine and coastal resources. Of the project approved by the City, the appellant raises issue only with the railing replacements approved by the City. The appellant points out that the subject site is an oceanfront property, and as such, according to the LCP, is located within an Environmentally Sensitive Area. The appellant also states that Laguna Beach is a designated bird sanctuary (per Municipal Code Section 6.25.030).

More specifically, the appellant raises the following contentions regarding the railing replacements approved by the City:

- 1) Condition No. 8 imposed by the City requires the use of “Ornilux glass or equivalent” for the new glass railings, but it is not clear what constitutes the “equivalent” to Ornilux.
- 2) The City required “Ornilux glass or equivalent” for all *new* glass railings, and allowed less protective measures, outlined in the Biological Report, for *existing* glass railings. However, it is not clear in the City’s approval that the less protective measures are not also allowed for the new glass railings.
- 3) Glare impacts due to the glass railings (which replace metal picket railings) have not been studied.

The appellant’s contentions are discussed in the Substantial Issue Analysis section of this staff report.

The appellant also asserts that the City’s approval of a Class 1(a) Categorical Exemption from CEQA for the project is not appropriate because there will be adverse impacts to marine resources and mitigation measures are required by the City’s approval. The appellant contends that a Mitigated Negative Declaration should have been required. But this is not one of the grounds for appeal under Section 30603 of the Coastal Act.

The City of Laguna Beach provided a response to the appeal ([Exhibit 6](#)).

### **III. LOCAL GOVERNMENT ACTION**

On September 26, 2019, the Design Review Board held a public hearing on local CDP 19-4382. That hearing was continued to October 24, 2019. The applicant requested the project be tabled, and so it was not heard at the October 24, 2019 hearing. The same project was next scheduled for public hearing by the Planning Commission on October 4, 2023, under new CDP application No. 23-0702. On October 4, 2023, the Planning Commission approved the project subject to 16 conditions via Planning Commission Resolution No. 23-0701. Planning Commission Resolution No. 23-0701, which includes the conditions of approval, is attached as [Exhibit 3](#). No local appeal was filed. The appellant did not qualify to appeal at the local level because the City requires a local appellant to be a property owner within 300 feet of the subject project. The appellant does not own property within 300 feet of the subject site. In addition, a fee is charged for local appeals.

The Planning Commission determined that the project is exempt from the provisions of the California Environmental Quality Act (CEQA) in accordance with Class 1(a), Existing Facilities – Interior or Exterior Alterations because the project consists of alterations to an existing multi-family residential structure on a fully developed site with no intensification of use that would require additional off-street parking spaces; the project would not have a negative effect on biologically sensitive resources in that the property is fully developed within an urban area and surrounded by residential development; and there is no evidence of unusual environmental circumstances that might give rise to a reasonable possibility that the project will have a significant effect on the environment.

### **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 CDP applications. Development

approved by cities or counties may be appealed if 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 any coastal bluff; or if located within 300 feet of the inland extent of any beach or the mean high tideline of the sea where there is no beach, whichever is greater. Additionally, developments approved by counties may be appealed if they are not a designated "principal permitted use" under the certified LCP. Finally, any local government action on a proposed development that would constitute a major public work or a major energy facility may be appealed, whether approved or denied by the city or county [Coastal Act Section 30603(a)]. The project site is located between Coast Highway (the first public road paralleling the sea) and the sea. It is also within 300 feet of the inland extent of the beach ([Exhibit 1](#)). The local approval is therefore appealable.

### **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 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). De novo review of the merits of the project uses the certified LCP as the standard of review. (Section 30604(b).) Sections 13110-13120 of Title 14 of the California Code of Regulations further explain the appeal hearing process.

The grounds for the current appeal are that the approved development does not conform to the standards set forth in the certified LCP. (Section 30603(b)(1).)

## **V. FINDINGS AND DECLARATIONS – NO SUBSTANTIAL ISSUE**

### **A. PROJECT LOCATION AND DESCRIPTION**

The project site is located at 31423 Coast Highway, in the South Laguna area of the City of Laguna Beach, Orange County ([Exhibit 1](#)). The 1.78 acre, oceanfront property slopes from the level of Coast Highway to the beach below and is developed with 78 residential condominium units in four multi-story buildings ([Exhibit 2](#)). The grounds of the condominium complex include common area facilities such as subterranean parking and an outdoor pool. The building was constructed in 1962, prior to Coastal Commission jurisdiction.

Development approved by the City via local CDP 23-0702 includes repair of approximately 15,600 square feet of elevated deck area (primarily residential balconies, as well as some common area deck space) and removal of metal picket balcony railings and replacement

with glass<sup>1</sup> balcony railings at all units and common area decks. The metal picket railings are non-code compliant due to the width of the spacing between the pickets. CDP 23-0702 also includes “after-the-fact” CDP approval for repairs and modifications to the structures and individual units, completed with design review permits and/or building permits but without CDPs, from 1989 through 2022.

The City’s 10/4/2023 Planning Commission staff report describes the after the fact development included under this CDP as follows:

“Entire structure: Replace headers on the first level between two units, re-roof, epoxy injections into concrete slab cracks and provide reinforcement, 176 sq foot addition to office, new spa, trellis, deck resurfacing, pedestrian bridge repair, wood floor framing repairs, repair concrete column, repairs to steel stair framing, replacement of a limited slab on grade area to improve accessibility, install protective coating at exterior slab surfaces, spotlights on the beach side. A few units have had deck repairs and interior joists repaired and installed AC units. All other work is interior and is exempt from a Coastal Development Permit.

Based on the plans for these past repairs and the proposed repairs, the areas of repair were limited in size, staff is confident that the structure has not undergone a major remodel and has not exceeded 50% demolition of structural elements, and therefore, the structure can remain as existing non-conforming.

The elevated deck repairs include replacing waterproofing and removal of specific framing members and sistering to existing framing due to water damage and termite rot, and replacement of deck railings, is not shown on the plans to exceed 50% demolition, and therefore the accessory structures (decks) can remain as existing non-conforming.”

The City’s LCP Land Use Plan Land Use Element (LUE) considers all oceanfront property to be an “environmentally sensitive land/resource.” The subject site is an oceanfront property. Two biological documents were prepared for the proposed development at the subject site: Recommendations for Bird-Safe Glass, Laguna Royale Balcony Replacement Project, 12/11/2019 and Biological Assessment Laguna Royale Renovation Project, 11/19/2020, both prepared by Hamilton Biological. The Biological Assessment finds that: “Laguna Royale, an existing condominium complex on a property that lacks native plant communities, has very little potential to support plant or wildlife species of conservation concern, and the proposed actions do not involve changes to the existing landscaping. Therefore, renovation of the condominium complex would not entail any significant impacts to biological resources, including listed or otherwise “special-status” plant and wildlife species, or potentially significant impacts to nesting birds.” Both the Recommendations for Bird-Safe Glass and the Biological Assessment reports make recommendations to avoid bird strikes due to the use of glass balcony railings, but do not explicitly recommend against using glass for the railings. These recommendations have been incorporated into the City’s approval of the project. A condition of City approval requires that existing beach spotlights be removed and all oceanside lighting be replaced with dark-sky lighting and only allows lighting necessary for safe egress and access on the

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<sup>1</sup> The term “glass” in this report is intended to encompass glass or other visually permeable barriers, such as plexiglass, etc.



property.

No development will occur outside the existing development footprint. No work will occur from the public beach (West Street beach) adjacent to the Laguna Royale condominium complex. Conditions of the City's approval require that the public beach remain open and accessible to the public during approved development construction, and that no construction staging occur on the beach. Although the site is an oceanfront bluff lot, the appeal does not raise any issues regarding the bluff edge location or the percent alteration to existing development. The appeal is limited to the three contentions regarding the balcony railing replacements.

The City-approved project includes 16 special conditions ([Exhibit 3](#)). The relevant condition here is **Special Condition No. 8**, which requires that all new glass installed on balconies, decks, and other ocean-facing parts of the existing buildings (excluding glass sliding doors), shall be "Ornilux" or equivalent bird safe material. Under this condition, existing glass railings shall either be replaced as stated above, or treated with materials or coatings designed to minimize bird strikes as specified in the Biological Assessment prepared for the project.

## **B. LOCAL COASTAL PROGRAM CERTIFICATION**

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

## **C. FACTORS CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS**

Section 30625(b)(2) of the Coastal Act requires de novo review of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal has been filed pursuant to Section 30603(a) of the Coastal Act. Section 13115(c) of the Commission regulations provides that the Commission may consider the following five factors when determining if a local action raises a substantial issue:

1. The degree of factual and legal support for the local government's decision that the development, as approved, is consistent with the relevant provisions of the certified LCP;

2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

The Commission may, but need not, assign a particular weight to any factor. Staff is recommending that the Commission find that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a) of the Coastal Act.

#### **D. SUBSTANTIAL ISSUE ANALYSIS**

As stated in Section IV of this report, the grounds for an appeal of a CDP issued by the local government are the project's non-conformity with the policies of the LCP or the public access policies of the Coastal Act. The subject coastal development permit is appealable to the Commission due to the project's location between the sea and the first public road (Coast Highway) and because it is located within 300 feet of a beach. The appellant's contentions are contained within the appeal filed on 11/16/2023 ([Exhibit 4](#)) and supplemented in an email received on 1/9/2024 ([Exhibit 5](#)).

The appellant's contentions are detailed earlier in the staff report (Appellant's Contentions). More specifically, the appellant is concerned that the replacement of the metal picket railings with glass railings will result in increased bird strikes. The appellant also contends that the approved glass railings will increase glare. Though no specific bird protection policies are cited, the LCP does include a number of policies that generally protect habitat and wildlife. These include:

Open Space Conservation Element (part of the LCP Land Use Plan):

Policy 8-C Identify and maintain wildlife habitat areas in their natural state as necessary for the preservation of species.

Policy 8-L Preserve and protect fish and/or wildlife species for future generations.

Land Use Element (part of the LCP Land Use Plan):

Policy 7.3 Design and site new development to protect natural and environmentally sensitive resources, such as areas of unique scenic quality, public views, and visual compatibility with surrounding uses and to minimize natural landform alterations.

Appellant's Contention No. 1

The appellant contends that the City's condition No. 8 is not clear. Condition No. 8 requires that measures be incorporated into the project's glass railings to prevent bird strikes ([Exhibit 3](#)). In particular, the appellant contends that the requirement that all new glass railings shall be "Ornilux' or equivalent bird safe material" is unclear because the equivalent of Ornilux is not described. The appellant asserts that this alleged ambiguity as to what constitutes the equivalent to Ornilux bird safe glass could result in the use of less effective mediums, such as decals, tapes or external coatings, with potentially shorter-term effectiveness, on the new glass railings, not just the existing glass railings. And that that would result in decreased anti-bird strike effectiveness and greater impacts to birds.

#### Appellant's Contention No. 2

The appellant further contends that the City's condition No. 8 ([Exhibit 3](#)) is also not clear because, requiring Ornilux or equivalent glass on the *new* railings, while requiring that *or* other anti-bird strike measures for the *existing* glass railings, may result in less protective measures being applied to the *new* glass railings. And, if that were to happen, the most protective anti-bird strike measures would not be implemented, which potentially could increase the risk to birds.

Ornilux glass is a bird safe glass that incorporates ultraviolet (UV)-reflective patterns directly into the glass. Birds see the UV patterns in the glass and avoid the glass. In using the phrase "Ornilux' or equivalent bird safe material," the language of the City's condition of approval is modeled on one of the special conditions that has often been used in past Coastal Commission actions. In the Coastal Commission condition, the use of the term "ornilux or equivalent" has been meant to impose a requirement that the glass in question be glass that incorporates UV-reflective patterns directly into the glass. By using glass with the UV-reflective patterns directly in the glass, anti-bird strike effectiveness remains for the life of the glass. Thus, this method is more effective at protecting birds in the long term. However, staff has recently discovered that the brand "Ornilux," in addition to making glass with the UV designs directly in the glass, also makes anti-bird strike after-market products such as decals, tapes or external coatings. Thus, as the appellant points out, the phrase "Ornilux' or equivalent" could be interpreted to encompass these after-market options as well.

After-market anti-bird strike products, such as decals, tapes or external coatings are generally not preferred due to uncertainty as to how long they will remain in place and be effective. However, in this case, the City's condition No. 8 requires "[a]ll materials or coating shall be maintained throughout the life of the development to ensure continued effectiveness at addressing bird strikes to the satisfaction of the Director of Community Development." ([Exhibit 3](#)) This adds an additional level of protection by giving the Director the ability to require replacement of any after-market materials that are removed, worn off or otherwise become less effective at addressing bird strikes.

Moreover, while use of glass with UV reflective patterns is preferred where possible, both the National Audubon Society<sup>2</sup> and the American Bird Conservancy<sup>3</sup> acknowledge the benefits of decals, tapes or external coatings in preventing bird strikes. The National

<sup>2</sup> <https://www.audubon.org/news/what-does-bird-safe-glass-even-mean>

<sup>3</sup> <https://abcbirds.org/solutions/prevent-home-collisions/>

Audubon Society website, while acknowledging the preference for designs directly in the glass, identifies a number of other measures that will also reduce bird strikes. These include applying a thin film to the outside of the glass or placing decals or tape strips on the glass, among others. This web page goes on to say that more important than the technique used to create the pattern, is the spacing. Likewise, the American Bird Conservancy website offers a number of options to prevent bird strikes on glass. These options include hanging cords placed against glass, adhesive squares installed in strips, or durable translucent tape applied to the glass. Other possibilities are also discussed on the website. The City's approval requires that the glass railing incorporate measures to address bird strikes, which may include UV-reflective glass or some of the measures described on the National Audubon Society and American Bird Conservancy websites.

In addition, in its approval of the project, the City considered the two biological documents<sup>4</sup> prepared for the development by the applicant's consultant, neither of which recommend that the glass railings be eliminated. The Bird Safe Glass Report states that tapes and decals can be used to establish bird-safe patterns on panes of regular glass. In the report, the biological consultant recommends application of anti-bird strike tape strips, decals or films to the glass railings, stating that any of these three options "would provide scientifically justified method[s] of reducing the incidence of bird collisions with the new glass panels on the renovated balconies." The Bird Safe Glass Report also refers to a past Coastal Commission approval allowing bird safe decal or stickers on glass railings as an option to reduce bird strikes.<sup>5</sup> In its approval of the project, the City considered the two site specific biological reports prepared for the development. The City incorporated the recommendations of the two biological reports into its approval, including imposition of condition No. 8 that requires implementation of anti-bird strike measures on the glass balconies.

In this case, the City imposed this special condition language in good faith based on language that has been accepted by the Coastal Commission. The City's condition requires the anti-bird strike measures to be maintained for the life of the development, addressing the concerns raised by the otherwise potentially non-permanent nature of the after-market treatments. It was also suggested by the applicant's representative at the local hearing that existing landscaping on the site will also help to reduce bird strikes. This does seem likely on some of the condominium complex's lower levels. Although use of UV-reflective glass is generally the preferred method for reducing bird strikes, other measures can also be effective and acceptable. Thus, the City's approval did consider potential adverse impacts to birds and did impose adequate measures to address them. Therefore, the City's approval is consistent with habitat and wildlife protection policies of the LCP. Thus, these contentions do not raise a substantial issue.

### Appellant's Contention No. 3

Finally, the appellant contends that the City's approval of the project did not consider the effects of glare resulting from replacing metal picket railings with glass railings. Regarding glare, the appellant refers to Section 25.05.040(H)(8) of the LCP IP/Zoning Code<sup>6</sup>, which

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<sup>4</sup> Recommendations for Bird-Safe Glass Report (Hamilton Biological, 12/11/2019) and Biological Assessment, Laguna Royale Renovation Project (Hamilton Biological, 11/19/2020).

<sup>5</sup> Special Condition 8, CDP 5-17-0037 (Freedman), 5/12/2017.

<sup>6</sup> The appellant also cites the Landscape and Scenic Highways Element of the General Plan, but that element is not a part of

states (in part):

Lighting and Glare. ... Reflective materials and appurtenances that cause glare or a negative visual impact (e.g. skylights, white rock roofs, high-gloss ceramic tile roofs, reflective glass, etc.) should be avoided or mitigated to a level of insignificance in those locations where those surfaces are visible from the neighboring properties.

The appellant's concern is that "the oceanfront location of this project and the popularity of this beach suggest potential adverse impacts on the public." The concern regarding impacts to visitors to the adjacent beach is not specified. The appellant recognizes that the City's staff report acknowledges that the glass barriers have the potential to cause an increase in glare, but asserts that the City did not study the issue. The appellant contends the City's confidence that the measures applied to glass to prevent bird strikes will also reduce glare is erroneous. However, the appellant does not explain what the adverse impacts from potential increased glare would be. The project site is adjacent to open ocean and sandy beach, both of which would produce a significant amount of glare in sunny conditions. No evidence has been provided to support the allegation that whatever increase to existing glare may be caused by the glass railings would be significant enough to produce greater impacts, if any, than the glare already present in the vicinity. Beach visitors would expect there to be glare at the beach on a sunny day and would also be expected to predominately direct their attention towards the ocean, not inland towards the subject building.

It is also worth noting that the IP/Zoning Code section cited by the appellant (above) applies to the standards for the Design Review Board's consideration of Design Review applications, not CDP applications. This section is concerned with impacts to neighboring properties. Consideration of glare on its own is not included in the review criteria for Coastal Development Permits (Section 25.07.12(F)). Which is not to say that glare cannot be considered when reviewing CDPs. CDP review criteria include, for example, whether a project will have impacts to coastal scenic resources or to marine resources or environmentally sensitive areas, among many others. The appellant has not indicated what adverse impact glare would have on these resources, or on any others. Without a description of the adverse impacts resulting from the potential increase in glare and without evidence to support the allegation, there is no basis to find that this contention raises a substantial issue.

### Conclusion

As approved by the City, the project includes protective measures that address potential bird strikes. In addition, the City's approval includes other measures to assure consistency with the LCP, such as elimination of existing beach spotlights; requiring the adjacent public beach to remain open and accessible to the public during project construction; requiring water quality Best Management Practices during construction; and including a future improvements condition which explicitly states the approval is only for the development described and as conditioned, and that non-exempt future development requires an amendment to the subject CDP or a new CDP. Moreover, the City considered the two biological documents prepared for the development, neither of which recommended that glass railings be eliminated. The City

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the certified LCP. Because it has not been certified by the Coastal Commission as part of the LCP, it is not part of the standard of review for appeals, regardless of whether it is mentioned in a separate, certified document.

incorporated the recommendations of the two biological documents into its approval, including the condition that addresses bird strikes by requiring anti-bird strike measures be incorporated into the glass. Neither of the two biological documents identified glare as a risk to birds. No evidence supporting the contention that the project would create adverse impacts to the public or to birds due to glare was provided by the appellant. Therefore, the City did consider the LCP policies regarding protection of habitat, including wildlife, in particular birds, in its approval of CDP 23-0702, and found the project, as conditioned, consistent with the LCP. Therefore, the Commission finds that the City's approval of local CDP No. 23-0702 is consistent with the LCP, including LCP policies that protect habitat and wildlife, including birds, and that the appeal raises no substantial issue with regard to the grounds upon which the appeal was filed.

### **SUBSTANTIAL ISSUE FACTORS:**

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

#### **1.The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP.**

The City's conclusion was adequately supported by sufficient evidence and findings. The City required preparation of site-specific biological and geologic reports, and conditioned the project to include measures necessary to assure consistency with the certified LCP, including provisions regarding natural resource protection. The local coastal development permit contains a high degree of factual and legal support. The appellant has not provided factual evidence supporting inconsistency with the LCP.

#### **2.The extent and scope of the development as approved or denied by the local government.**

The scope of the approved development is largely repair and maintenance to a condominium complex that is over 60 years old. There will be no change to the development footprint, height, or use. The City considered the extent of the proposed project and found, based on the project plans, that the project is well below the 50% threshold and therefore does not constitute a major remodel. Meaning, although the existing site development is large (78 residential condominium units), the changes to it resulting from this project are relatively minimal. Therefore, the scope of the approved development supports a finding that the appeal raises no substantial issues.

#### **3.The significance of the coastal resources affected by the decision.**

Two biological documents were prepared in conjunction with the proposed project and included in the City's review. According to the more recent study, the Biological Assessment (11/19/2020), the project would not entail any significant impacts to biological resources, including listed or otherwise special-status species, or potentially significant impacts to nesting birds. It does recognize that the installation of glass railings may increase the potential for birds to collide with the railings. The Assessment offers a number of mitigation measures to address this, which the City has incorporated into its approval of the project. The Assessment finds, that with implementation of the mitigation measures, the project impacts are reduced to a less than significant level. The Recommendations for Bird-Safe Glass (12/11/2019) recommends the use of tape or decals, stating that these options "provide a scientifically justified method of reducing the incidence of bird collisions with new glass panels on the renovated balconies." The City's

approval includes protective measures to address potential bird strikes. No information to support the contention that the project will significantly increase glare or that glare due to the project would adversely affect beach goers or birds has been provided. The project approved by the City is consistent with LCP policies that protect habitat and wildlife, including birds.

**4. The precedential value of the local government’s decision for future interpretations of its LCP.**

In numerous past Commission actions, the Commission has approved glass railings with conditions almost identical to the one imposed by the City to reduce bird strikes. Thus, the City’s decision in this case will set no new adverse precedent regarding anti-bird strike measures.

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

As described above, this project is a routine repair and maintenance project, and the City imposed special conditions very similar to conditions routinely imposed by the Coastal Commission. There is nothing associated with the project approved by the City that rises to a regional or statewide level of significance.

Substantial Issue Factors Conclusion

In conclusion, the issues raised by the appellant do not demonstrate that the City’s action is inconsistent with the certified LCP. Therefore, staff recommends that the Commission find that no substantial issue exists with respect to the grounds upon which the appeal has been filed.

**APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

1. Recommendations for Bird-Safe Glass, Laguna Royale Balcony Replacement Project, Hamilton Biological, 12/11/2019.
2. Biological Assessment, Laguna Royale Renovation Project, Hamilton Biological, 11/19/2020.