

**CALIFORNIA COASTAL COMMISSION**

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**Th10b**

Appeal Filed:	4/16/14
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**STAFF REPORT: APPEAL - SUBSTANTIAL ISSUE & DE NOVO**

**Appeal Number:** A-5-LGB-14-0019

**Applicant:** Louis Longi

**Local Government:** City of Laguna Beach

**Local Decision:** Approval with Conditions

**Appellants:** Devora Hertz, Jackie Gallagher, Audrey Prosser, Clean Water Now (Roger Butow)

**Project Location:** 20412 & 20432 Laguna Canyon Road, Laguna Beach, Orange County  
APNs 629-051-23 and 629-051-02

**Project Description:** Construction of a 36-foot high (31 feet above base flood elevation), thirty-unit artists' work/live project with 17,242 square feet of interior work/live area, 11,421 square feet of exterior communal work area, a 513 square foot retail art gallery, and a 47-stall parking garage. Eight of the units are reserved for low-income artists.

**Staff Recommendation:** Substantial Issue - Approval with Conditions

**IMPORTANT NOTE**

The Commission will not take public testimony during the "substantial issue" phase of the appeal hearing unless at least three Commissioners request it. If the Commission finds that the appeal raises a substantial issue, the "de novo" phase of the hearing will follow, during which the Commission will take public testimony.

**SUMMARY OF STAFF RECOMMENDATION**

Commission staff recommends that the Commission determine that **a substantial issue exists** with respect to the grounds on which the appeals have been filed because the City-approved setback from the Blue-line stream raises a substantial issue as to project's consistency with the City of Laguna Beach certified Local Coastal Program (LCP). Staff also recommends that, after a public hearing, the Commission **approve the de novo permit** with special conditions.

The primary issue areas raised by the proposed development are adverse impacts to land and marine resources, including the required setback from a Blue-line stream (Laguna Canyon Creek), visual resources, community character, and water quality. The City's approval of a development with a

minimal setback from the Blue-line stream may adversely impact environmentally sensitive habitat along Laguna Canyon Creek, thereby failing to protect, preserve, and maintain the habitat as required by the City's LCP policies. The minimal setback from the Blue-line stream would limit the potential for future habitat restoration and enhancement activities to take place, and would also set an adverse precedent for future development along Laguna Canyon Creek.

The substantial issue recommendation is based on the Commission staff ecologist's determination that the segment of Laguna Canyon Creek that crosses part of the project site contains significant habitat value that merits protection. The City determined that the proposed development need only be set back fifteen feet (25-foot setback with a ten-foot balcony encroachment) from the centerline of the stream. The City found the minimal stream setback to be acceptable based on its determination that this segment of the stream was channelized and contains no significant habitat value. Commission staff, however, has determined that this segment of Laguna Canyon Creek is only partially channelized and does contain significant habitat value, since the streambed and banks support riparian habitat. Furthermore, Laguna Canyon Creek is a "Blue-line" stream, designated as such on the official USGS Map. Blue-line streams and their riparian habitat are rare in Southern California and are threatened. Pursuant to the Environmentally Sensitive Area (ESA) language in the City's LCP (and the Coastal Act), the existence of riparian habitat in this area, as well as Laguna Canyon Creek's status as a "Blue-line" stream, is sufficient to classify the habitat as ESA, and therefore, of significant habitat value. As such, the minimal stream setback approved by the City raises a substantial issue, as do those elements of the proposed development that may adversely affect land and marine resources.

The appellants have also raised issues concerning the proposed development's potential for adverse impacts to visual resources and community character. The appellants also contend that the proposed project adversely impacts water quality and hydrology. On these issues, based on the size and scale of the proposed development, and the fact that the project complies with the applicable development standards, a substantial issue finding is not recommended. In any case, since a substantial issues exists in regards to the setback from the stream and the habitat protection policies of the LCP, a de novo review of the proposed development by the Commission is warranted, at which time the proposed development can be reviewed for consistency with all the applicable standards set forth by the certified LCP.

Subsequent to the filing of the appeals in April 2014, the applicant has worked with Commission staff to address the issues raised by the proposed development. Accordingly, the applicant has proposed to revise the proposed project in order to increase the proposed development's setback from the streambed. The space between the streambed and the proposed structures (the Laguna Canyon Creek Setback) will be increased to 25 feet by deleting from the proposed plan the cantilevered decks that were proposed to encroach ten feet into the City-approved 25-foot setback. The applicant is also including in the proposal a five-year Habitat Restoration Plan to improve and enhance the riparian habitat along the stream and within the 25-foot setback area. The changes to the project proposed by the applicant adequately address staff's concerns over the project's impact to the sensitive habitat on the project site, and would not set an adverse precedent for future development along Laguna Canyon Creek.

In regards to the proposed thirty-unit artists' work/live project, the applicant points out that the proposal is a use permitted by the LCP that would provide an affordable working and living option (including eight units for low-income artists) in the City for artists that might otherwise commute daily

into the City on Laguna Canyon Road (State Route 133). Staff is recommending the Commission find that the proposed project is compatible in both scale and character of the surrounding community, and as conditioned, conforms to the certified LCP.

Staff is recommending the Commission **approve** the de novo coastal development permit application with special conditions. **Special Condition 1** requires the proposed project to provide for a 25-foot setback between the approved structures and the centerflow line of Laguna Canyon Creek. The special conditions require the applicant to submit revised final plans (**Special Condition 2**) that provide for a 25-foot setback from the center of the stream and removal of the cantilevered decks on the rear of the structures. **Special Condition 3** requires the applicant to submit a final Habitat Restoration Plan and provide annual monitoring reports. **Special Condition 4** requires an open space deed restriction over the restored portion of the property. **Special Condition 5** requires conformance with all conclusions and recommendations contained in the Geotechnical Reports. **Special Condition 6** requires the applicant to acknowledge and accept the assumption of risk, waiver of liability and indemnity. **Special Condition 7** requires the applicant to reimburse the Commission for attorneys' fees. **Special Condition 8** requires the applicant to submit an application for a Coastal Development Permit or an amendment to this permit for any future improvements. **Special Condition 9** requires the applicant to follow additional Best Management Practices. **Special Condition 10** requires the applicant to record a deed restriction referencing all of the special conditions of this permit.

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## **I. MOTION AND RESOLUTION - SUBSTANTIAL ISSUE**

**Motion:** *I move that the Commission determine that Appeal No. A-5-LGB-14-0019 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

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

### **Resolution to Find Substantial Issue:**

*The Commission hereby finds that Appeal No. A-5-LGB-14-0019 presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access policies of the Coastal Act.*

## **II. APPELLANTS' CONTENTIONS**

On April 1, 2014, the City of Laguna Beach City Council approved Local Coastal Development Permit No. 13-1376 for the construction of a thirty-unit artists' work/live project on two lots in Laguna Canyon (Exhibit #10). On April 7, 2014, the Coastal Commission's South Coast District Office received the Notice of Final Action for Local Coastal Development Permit No. 13-1376. On April 16, 2014, the Commission received a valid appeal from Devora Hertz (Exhibit #7). On April 18, 2014, the Commission received two valid appeals from: 1) Jackie Gallagher and Audrey Prosser (Exhibit #8), and 2) Clean Water Now -Roger Butow (Exhibit #9). April 21, 2014 was the last day of the ten working-day appeal period. The appeals assert that the City-approved development does not conform to the requirements of the certified City of Laguna Beach LCP.

### **A. Summary of Appeal Contentions Raised by Jackie Gallagher and Audrey Prosser**

1. The proposed project encroaches into the 25-foot setback requirement in the LCP.
2. The proposed project adversely impacts Environmentally Sensitive Habitat Areas.
3. The proposed project fails to comply with multiple elements of the City of Laguna Beach General Plan and Laguna Canyon Annexation Area Specific Plan
4. The proposed project violates the Scenic Highway protection policies.
5. The proposed project adversely impacts visual resources.
6. The proposed project would set unwanted and destructive precedent.
7. California Environmental Quality Act (CEQA). The appellant contends that no consideration has been given to cumulative impacts.

**B. Summary of Appeal Contentions Raised by Clean Water Now**

1. The City of Laguna Beach incorrectly identified the development setback.
2. The proposed project encroaches into the 25-foot setback requirement in the LCP.
3. The proposed project adversely impacts Environmentally Sensitive Habitat Areas. The appellant contends that the cantilevered section of the project will completely eliminate the critical riparian and wildlife corridor foraging and migrational buffer zone. The appellant contends that there is a planned three-foot high, 310-foot long retaining wall that is approximately twenty feet from the centerline of flow of the creek, which will adversely impact the habitat by bifurcating the wildlife buffer zone. In addition, the appellant contends that the project will adversely impact biological resources due to the light, noise, and elimination of the buffer zone. The appellant contends that while no threatened or endangered species are present, the area in the vicinity of the proposed project has value which was memorialized in the LCAASP as a migration corridor, as well as a source of life-sustaining food and water for native fauna.
4. The proposed project adversely impacts visual resources. Appellant contends that the proposed project obliterates scenic and visual qualities of the hillsides and highway adjacent to a wilderness park.
5. The proposed project does not conform with the area's rural community character. Appellant contends that the proposed project fails to comply with the City's General Plan and LCAASP regarding preservation of the rural character of Laguna Canyon, and encouragement of small, rural development.
6. The proposed project should have required a California Fish and Wildlife Section 1602 SAA, U.S. Army Corps of Engineers 404 permit and Regional Water Quality Control Board 401 Water Quality Certification.
7. The proposed project does not satisfy the Water Quality Management Plan under the lead agency's National Pollutant Discharge Elimination System (NPDES). The appellant contends that the offered Best Management Practices (BMPs) are inadequate and insufficient. The appellant also contends that the project fails to preserve or maintain historical surface and sub-surface groundwater flows; does not comply with limitations on impervious surfaces, maximizing soil compaction, or biofiltration capacity metrics; and has site drainage deficiencies.
8. The proposed project does not protect receiving waters. Appellant contends that the proposed project does not incorporate feasible mitigation measures to reduce/attenuate water volume, flow rates, and pollutant loading into Laguna Canyon Creek, which is impaired by sediment toxicity and bacterial exceedences as determined by the State. In addition, appellant contends that the project has no pump or other emergency devices to lower or divert water to the MS4 system flood ingress water levels in the sub-surface parking lot.
9. The proposed project does not conform with the General Plan Land Use Implementation Programs regarding Sustainability and Conservation Element policies. The appellant contends that the proposed project makes no attempt to achieve LEED silver building

standards; fails to reduce energy demands, and recycle and conserve water; and does not incorporate a green roof design.

10. The proposed project has site drainage deficiencies. The appellant contends that the proposed area drains, and 47-stall subterranean parking lot utilize one single eight-inch pipe, which is insufficient to divert and/or control runoff. Appellant contends that no onsite advanced pre-treatment systems are incorporated into the project, and no diversion to the City's wastewater system is proposed.
11. California Environmental Quality Act (CEQA). The appellant contends that no consideration has been given to cumulative impacts.
12. The proposed project does not conform to the Conditional Use Permit policies under the Laguna Canyon Annexation Area Specific Plan.

**C. Summary of Appeal Contentions Raised by Devora Hertz**

1. The proposed project encroaches into the 25-foot setback requirement in the LCP. The appellant contends that the project involves the shoring up of a natural (currently unchannelized) portion of Laguna Creek, which is a mapped blue line stream. The appellant contends that the story polls for the project are in Laguna Canyon Creek, and accordingly, the structure is within the 25-foot setback of the bluff of the watercourse. The appellant states that the City's determination of where the centerline of the creek is located is inconsistent with the land survey that has been completed for the property during the prior owners attempt to develop the property and that no new surveys have been completed during this project approval.
2. The proposed project adversely impacts Environmentally Sensitive Habitat Areas. The appellant contends that the watercourse itself is valuable habitat. In addition, the appellant contends that the subject site is surrounded by endangered habitats, and that wildlife are known to utilize the creek for survival and as a resource.
3. California Environmental Quality Act (CEQA). The appellant contends that the Mitigated Negative Declaration for the proposed project is grossly flawed in that the required traffic study has not been undertaken; no consideration has been given to pedestrian or bicycle traffic; and that no consideration has been given to cumulative impacts.
4. Further traffic evaluation is necessary. The appellant contends that further evaluation of traffic impacts are necessary.
5. The proposed project has not been granted permits from all required other agencies. The appellant contends that the City has not applied for a Streambed Alteration Agreement from the Fish and Wildlife Service. The appellant contends that the City has not contacted the Army Corps of Engineers for a permit. The appellant contends that no consideration has been given to Air Quality Management.

**D. Summary of Applicant's responses to Appeal Contentions**

In response to the Appellant Clean Water Now's (Butow) contention that that the cantilevered section of the proposed project adversely impacts the riparian habitat, wildlife corridor, and

migrational buffer zone, the project's biological consultant, Glenn Lukos Associates (GLA), states that the proposed project design has complied with the certified LCP setback requirements and avoids the resources within the jurisdiction of the U.S. Army Corps of Engineers, Regional Water Quality Control Board, and California Department of Fish and Wildlife.

In addition, GLA asserts that the cantilevered projection will not include supports to the ground within the setback areas and the projection will not encroach closer than fifteen feet from the centerline of flow. Therefore, according to GLA, the cantilevered projection will not result in impacts to riparian habitat associated with Laguna Canyon Creek.

GLA also states, as referenced in their Biological Habitat Assessment Report dated August 12, 2013, that the reach of Laguna Canyon Creek that extends along the eastern boundary of the subject parcels is characterized as being highly disturbed due to the predominance of non-native, ornamental, and ruderal vegetation associated with urbanization. Native plants occur on site, including herbaceous understory species adapted to disturbed and developed environments. The GLA asserts that the arroyo willow trees on the banks of the creek do not support the structure or density characterized by high value riparian habitats that are associated with less disturbance, and that the habitat is only capable of supporting common, urban-adapted species, which would continue to use the drainage and associated vegetation following construction.

In response to appellants Jackie Gallagher and Audrey Prosser's contention that the development is within 25 feet of a mapped blue line stream and fails to protect critical habitat, wildlife, and wildlife corridors, GLA asserts that the reach of Laguna Canyon Creek in question has been identified by the City as a channelized stream lacking significant habitat value. Moreover, GLA asserts that the City's determination is supported by the near-vertical to vertical banks of the channel that are fortified with concrete, steel sheet pile and other hardened or impervious materials. GLA states that within the reach of the creek, that is adjacent to the proposed project, a portion of the bank remains earthen, however, GLA claims that this portion of the bank supports low value habitat comprised of native and non-native plants that naturally stabilize the bank. According to GLA, the channelization and low value habitat occurs on the project site and extends approximately one hundred feet upstream and downstream of the parcel limits. In addition, GLA claims that the area does not support Critical Habitat for any listed species; the use of Laguna Canyon Creek for the movement of wildlife will not be impeded; the creek will remain unobstructed; and the creek bed, bank, and channel will not be altered.

The project's consultants also assert that as depicted on the City of Laguna Beach GIS, "Very High Value" habitats do not occur within the subject parcels; and, as depicted on the CDFW BIOS Viewer (5.16.23), the California Natural Diversity Database (CNDDB) does not identify any rare or endangered species within or adjacent to the subject parcels.

In response to appellants' contention that the proposed project does not satisfy the Water Quality Management Plan (WQMP) under the lead agency's National Pollutant Discharge Elimination System (NPDES), the project consultant (Toal Engineering, Inc.) states that the approved WQMP includes the installation of a "bio-retention" area which is an approved LID/BMP in accordance with the South Orange County Hydrology Model Guidance Document that is designed to mimic the natural environment and provide source control and storage for runoff. In addition, the bioretention area promotes infiltration of low flows, which addresses pollutants from the site; addresses hydromodification concerns on the Creek; and is designed to meet requirements set forth in the South Orange County Hydrology Model Guidance Document.



Furthermore, according to the project's consultant, the proposed WQMP complies with the requirements of the City of Laguna Beach Urban Runoff Management Program and Storm Water Ordinance, as well as the Municipal Storm Water Permit and the intent of the National Pollutant Discharge Elimination System/MS4 Permit for Waste Discharge Requirements as authorized by the State and EPQA. The WQMP report has been peer reviewed by the City of Laguna Beach's peer review consultant who agreed that the plan met the National Pollutant Discharge Elimination System requirements.

Finally, in response to Clean Water Now's contention that the proposed project contains drainage deficiencies, the project's consultant states that the project area tributary to the eight-inch diameter line is 0.65 acres. The eight-inch diameter line has the hydraulic capacity to carry a 100-year storm event from the project tributary area, and it is not designed or intended to carry runoff due to flooding from the creek.

In response to appellants' contentions relating to flooding potential and hazards, the project's consultant states that the existing natural drainage channel adjacent to the site is already severely impaired due to the gradual development and urbanization upstream in the Laguna Canyon Creek watershed. Accordingly, the proposed project does not further damage the natural drainage channel and stream. The project's consultant also states that the proposed project does not fill, alter, divert or concentrate the existing stream; the source of deterioration of Laguna Creek adjacent to the property is the cumulative urbanization of the watershed upstream of the site; and no impacts to hydrology are expected as the peak flow, runoff volumes, and flood elevations are not increased. In addition, the proposed project minimally encroaches into the flood zone by elevating the structure above the corresponding base flood elevation; and the proposed project complies with Chapter 25.38 of the City of Laguna Beach municipal code relating to Flood Hazards and Flood Damage Protection.

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

On September 25, 2013, November 13, 2013, and January 8, 2014, the City of Laguna Beach Planning Commission held public hearings on the proposed project. At the conclusion of the public hearings on January 8, 2014, the City of Laguna Beach Planning Commission approved with conditions Local Coastal Development Permit No. 13-1376, Conditional Use Permit No. 13-1047, Design Review No. 13-1375, and the Mitigated Negative Declaration/Mitigation Monitoring Program for the construction of a thirty-unit artists' work/live project on two lots in Laguna Canyon. The Planning Commission's action was appealed to the City Council: one of the appeals was by the applicant, who simply desired to expedite the process, and the others were from members of the Board of the Laguna Canyon Property Owners Association and an individual property owner.

On April 1, 2014, the City Council heard the appeal of the Planning Commission's action and adopted City Council Resolution No. 14.027, denying the appeal and upholding the Planning Commission's approval of the proposed development (Exhibit#10). The City's action was then final. On April 7, 2014, the Coastal Commission's South Coast District Office received from the City the Notice of Final Action for Local Coastal Development Permit No. 13-1376, and the ten working-day appeal period commenced.

#### IV. APPEAL PROCEDURES

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea or within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff, or within one hundred feet of any wetland, estuary, or stream [Coastal Act Section 30603(a)]. In addition, an action taken by a local government on a coastal development permit application may be appealed to the Commission if the development constitutes a “major public works project” or a “major energy facility” [Coastal Act Section 30603(a)(5)].

Section 30603 of the Coastal Act states, in part:

- (a) After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:*
  - (1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.*
  - (2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.*
  - (3) Developments approved by the local government not included within paragraph (1) or paragraph (2) that are located in a sensitive coastal resource area.*

Section 30603(a)(2) of the Coastal Act establishes the project site as being appealable by its location within one hundred feet of a stream (Laguna Canyon Creek).

The grounds for appeal of an approval, by a certified local government, of a local coastal development permit authorizing development in the appealable area are stated in Section 30603(b)(1), which states:

- (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 [the Coastal Act].*

The grounds listed for the current appeals include contentions that the approved development does not conform to the standards set forth in the certified LCP regarding setbacks, biological resources and visual resources.

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed pursuant to section 30603. If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the

substantial issue question will be considered moot, and the Commission will proceed to the de novo public hearing on the merits of the project. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review.

In addition, for projects located between the first public road and the sea, findings must be made that any approved project is consistent with the public access and recreation policies of the Coastal Act. The project site is not located between the sea and the first public road paralleling the sea, therefore, public access considerations are not required. Sections 13110-13120 of the California Code of Regulations further explain the appeal hearing process.

### **Qualifications to Testify before the Commission**

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. The time limit for public testimony will be set by the chair at the time of the hearing. As noted in Section 13117 of Title 14 of the California Code of Regulations, the only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

Upon the close of the public hearing, the Commission will vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project. At the de novo hearing, the Commission will hear the proposed project de novo and all interested persons may speak.

## **V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE**

### **A. Project Description and Location**

The project site is located on the east side of Laguna Canyon Road (State Route 133), three miles inland of Main Beach (Exhibit #1). The site includes two lots totaling approximately 36,750 square feet. Laguna Canyon Creek flows across the rear of the property along its eastern side (Exhibit #2). The lots are located in the M-1B Light Industrial Zone of the Laguna Canyon Annexation Area Specific Plan. The southern lot is currently occupied by a single-family residence, with a detached garage and temporary storage container. The existing structures will be removed from the site as part of the proposed project. All mature trees on the site will be maintained.

The local coastal development permit authorized the construction of a 36-foot high (31 feet above base flood elevation), thirty-unit artists' work/live project with 17,242 square feet of interior work/live area, 11,421 square feet of exterior communal work area, a 513 square foot retail art gallery, and a 47-stall parking garage. Eight of the units are reserved for low-income artists (for 55 years). The proposed structure contains two separate building elements, which are connected by decks and roof components above the parking garage (Exhibit #4). The design includes two floors of work/live units arranged around exterior communal work spaces. The work/live units range in size from 485 square feet to one 1,640-square foot unit. The only exception granted by the City was a fifty-percent reduction in planning and building fees as an incentive for the project to provide eight low-income artist units (11/10/2010).

The building façade includes a variety of rustic materials and rural cladding. Mature trees will be maintained on-site and California Sycamores and Weeping Willows will be added to provide screening for the building. The roofs are multiple pitched.

The project site is surrounded by a mix of uses including residential, commercial and light industrial. The light industrial/commercial uses are located to the north and south, and commercial and residential uses are located to the east. An animal hospital abuts the northerly property line, Laguna Koi Ponds abuts the southerly property line, residential (Sun Valley neighborhood) and the Dog Ranch/Dog Daycare kennels abut the easterly property line, and Laguna Canyon Road – a candidate Scenic Highway – abuts the westerly property line. Vehicular access to the site is taken only from Laguna Canyon Road.

The site is located within a very-high fire hazard severity zone and within the floodway and 100-year floodplain. (The proposed two-story structures will be elevated above the 100-year floodplain elevation.) The easterly portion of the site is occupied by Laguna Canyon Creek and its banks, which has been designated as a “Blue-line stream” on the USGS 7.5 Minute Quadrangle Series Map. The local coastal development permit required that the proposed development need only be set back fifteen feet (25-foot setback with a ten-foot balcony encroachment) from the centerline of the stream. Laguna Canyon Creek is within the Laguna Canyon Watershed. Laguna Canyon cuts through the San Joaquin Hills, runs northeast to southwest, and is drained on the east side by tributaries of San Diego Creek and on the west side by Laguna Canyon Creek. A majority of the canyon is located within the Laguna Coast Wilderness; small portions are part of Aliso and Wood Canyons Regional Park and the cities of Irvine, Laguna Beach, Laguna Woods and Aliso Viejo. Laguna Canyon Creek begins as an ephemeral creek draining a mountainside west of the valley floor down into the canyon. It is briefly culverted alongside Laguna Canyon Road within a small developed area but most of the upper course flows in a natural channel.

## **B. Local Coastal Program (LCP)**

The City of Laguna Beach LCP was certified by the Coastal Commission on January 13, 1993. The City’s LCP is comprised of a variety of planning documents including the Land Use Element, Conservation/Open Space Element, and Laguna Canyon Annexation Specific Plan. The Implementation Plan (IP) portion is Title 25, the City’s Zoning Code.

As provided below, the City of Laguna Beach certified LCP contains a number of coastal resource policies that are applicable to this proposed development including, but not limited to, the management and protection of biological and visual resources.

### **Open Space/Conservation Element Policies:**

*4-A: Protect fresh water lakes, streams, waterways and riparian habitats, and preserve the borders and banks of lakes and streams in their natural state.*

*4-I: Promote the protection and restoration of offshore, coastal, lake, stream or wetland waters and habitats and preserve them to the maximum extent practicable in their natural state. Oppose activities that may degrade the quality of offshore, coastal, lake, stream or wetland waters and habitat and promote the rehabilitation of impaired waters and habitat.*

*7-A: Preserve to the maximum extent feasible the quality of public views from the hillsides and along the city's shoreline.*

*7-C: Inventory and map positive and negative visual resources from Coast Highway and Laguna Canyon Road for use in reviewing development projects which might impact the viewshed of these designated scenic highways, pending funding availability.*

*7-F: As a condition of approval for new building construction, require the dedication of open space easements, development rights, or the use of some similar instrument for the purpose of protecting unusually significant natural features. Preserve and provide an optimum setting for prominent site features such as natural rock outcroppings, promontories and ridges.*

*7-K: Preserve as much as possible the natural character of the landscape (including coastal bluffs, hillsides and ridgelines) by requiring proposed development plans to consider scenic and conservation values, impacts on soil mantle, vegetation cover, water resources, physiographic features, erosion problems, and recontouring and replanting where the natural landscape has been disturbed.*

*8-A: Preserve the canyon wilderness throughout the city for its multiple benefits to the community, protecting critical areas adjacent to canyon wilderness, particularly stream beds whose loss would destroy valuable resources.*

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

*8-I: Environmentally Sensitive Areas (ESA's) as defined in section 30107.5 of the California Coastal Act shall be identified and mapped on a Coastal ESA map. The following areas shall be designated as Environmentally Sensitive Areas: Those areas shown on the Biological Resource Values Map in the Open Space/Conservation Element as "Very High" habitat value, and streams on the Major Watersheds and Drainage Courses Map which are also streams as identified on the USGS 7.5 Minute Quadrangle Series and any other areas which contain environmentally sensitive habitat resources as identified through an on-site biological assessment process, including areas of "High" and "Moderate" habitat value on the Biological Resources Values Map and areas which meet the definition of ESA's in Section 30107.5 of the Coastal Act, including streams, riparian habitats, and areas of open coastal waters, including tidepools, areas of special biological significance, habitats of rare or endangered species, near-shore reefs and rocky intertidal areas and kelp beds.*

*8-J: Detailed biological assessments shall be required for all new development proposals located within areas designated as Environmentally Sensitive Areas on the Coastal ESA Map. To protect these resources, the following shall be required:*

- 1. No new development proposals shall be located in areas designated as "Environmentally Sensitive Areas" on the Coastal ESA Map except for uses dependent upon such resources.*
- 2. When new development proposals are situated in areas adjacent to areas designated as "Environmentally Sensitive Areas" on the Coastal ESA Map and where these are confirmed by subsequent on-site assessment, require that development be designed and sited to prevent impacts which would significantly degrade such areas.*

3. *Where development is proposed on an existing subdivided lot which is otherwise developable (i.e., able to be served by utilities and access, and on slopes able to accommodate development consistent with City provisions on slope/density, grading, hazards, subdivisions and road access), and is consistent with all other policies of this Land Use Plan except for its location entirely within an identified ESA as confirmed by a site-specific assessment, the following shall apply:*

- (a) Resource Management uses including estuaries, nature centers and other similar scientific or recreational uses are permitted subject to a Conditional Use Permit to assure that uses are sited and designed to prevent degradation of the resource value; or alternatively,*
- (b) Transfer of a density bonus to another property in the vicinity able to accommodate increased density consistent with the policies of the Land Use Plan concurrent with the recordation of an open space easement or other similar instrument over the habitat area of the parcel;*
- (c) Existing dwellings shall be designated as nonconforming uses but shall be allowed to be rebuilt or repaired if damage or destroyed by natural disaster provided however, that the floor area, height and bulk of the structure not exceed that of the destroyed structure by more than 10 percent.*
- (d) No new parcels shall be created which are entirely within a coastal ESA or which do not contain a site where development can occur consistent with the ESA policies of this Plan.*

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

*8-M: Preserve a continuous open space corridor within the hillsides in order to maintain animal migration opportunities*

*8-N: Encourage the preservation of existing drought-resistant, native vegetation and encourage the use of such vegetation in landscape plans.*

*9-A: Promote the preservation and restoration of Laguna's natural drainage channels, freshwater streams, lakes and marshes to protect wildlife habitat and to maintain watershed, groundwater and scenic open space.*

*9-C (a): Streams on the Major Watershed and Drainage Courses Map which are also "Blue-line" streams identified on the USGS 7.5 Minute Quadrangle Series, shall be identified and mapped on the Coastal Environmentally Sensitive Areas Map of the Land Use Plan. For these streams, a minimum setback of 25 feet from the top of the stream banks shall be required in all new developments. A greater setback may be necessary in order to protect all riparian habitat based on a site-specific assessment. No disturbance of major vegetation, or development, shall be allowed within the setback area. This provision shall not apply to channelized sections of streams without significant habitat value. Where development is proposed on an existing subdivided lot which is otherwise developable consistent with all City ordinances and other policies of this Plan except that application of this setback would result in no available building site on the lot, the setback may be reduced provided it is maintained at a width sufficient to protect all existing riparian habitat on the site and provided all other*

*feasible alternative measures, such as modifications to the size, siting and design of any proposed structures, have been exhausted.*

*9-C(b): Require a setback of a minimum of 25 feet measured from the centerflow line of all natural drainage courses other than streams referenced in 9-C(a) above. Such setback shall be increased upon the recommendation of the City engineer and environmental planner through the environmental review process. However, a variance may be given in special circumstances where it can be proven that design of a proposed structure on an affected lot will preserve, enhance or restore the significance of the natural watercourse. At no time shall grubbing of vegetation, elimination of trees, or disturbance of habitat be allowed within the setback area before or after construction.*

*9-D: Permit extensions of decks and other portions of a structure within the required setback for significant natural drainage areas only if:*

- a. There are no supports to the ground within the setback areas; and*
- b. The extensions do not encroach closer than fifteen feet from the centerline of flow.*

*9-F: Where possible, require restoration of deteriorated significant natural drainage courses that have been disturbed by development, but which retain potential for natural function.*

*9-I: Require new development projects to control the increase in volume, velocity and sediment load of runoff from the greatest development areas at or near the source of increase to the greatest extent feasible.*

*9-J: Require new developments to maintain runoff characteristics as near as possible to natural discharge characteristics by maintaining the natural conditions of the watershed.*

*9-K: Promote preservation and enhancement of the natural drainage of Laguna Beach*

*9-Q: Oppose new development within the City's surrounding areas that would result in significant adverse impacts to the City's hydrology.*

*10A: Require that plan review procedures recognize and avoid geologically unstable areas, flood-prone lands, and slopes subject to erosion and slippage.*

*10C: Require projects located in geological hazard areas to be designed to avoid the hazards, where feasible. Stabilization of hazard area for purposes of development shall only be permitted where such stabilization is necessary for public safety. The more unstable areas should be left ungraded and undeveloped, utilizing land use designations such as open space.*

*10F: To minimize risk to life and structures, new development located in established floodprone lands shall incorporate all appropriate measures pursuant to the City's "Flood Damage Prevention and Prohibition Ordinance."*

### **Laguna Beach Land Use Element Policies:**

***Goal 2: Preserve, enhance and respect the unique character and identity of Laguna's residential neighborhoods.***

*Policy 2.1: Maintain the diversity and uniqueness of individual neighborhoods. Development standards and design review guidelines shall minimize the scale and bulk of new construction and/or renovation and require development to be compatible with the surrounding residences.*

*Policy 2.2: Encourage the preservation of historically significant residential structures and protect the character-defining components of Laguna Beach's traditional neighborhoods.*

*Policy 2.7: Evaluate the impact of proposed development on hillsides and along ridgelines and require building design, location, and arrangement to avoid continuous and intrusive impacts on hillside view areas and skyline profiles.*

*Policy 2.8: Require building design and siting to be compatible and integrated with natural topographic features, minimize significant alteration of natural topography and/or other significant onsite resources, and protect public views as specified in the Design Guidelines and the Landscape and Scenic Highways Resource Document.*

*Policy 2.9: Require the use of appropriate landscaping, special architectural treatments, and/or siting considerations to protect public views for projects visible from major highways and arterial streets.*

*Policy 2.10 Maximize the preservation of coastal and canyon views (consistent with the principle of view equity) from existing properties and minimize blockage of existing public and private views. Best efforts should be made to site new development in locations that minimize adverse impacts on views from public locations (e.g. roads, bluff top trails, visitor-serving facilities, etc.).*

***Goal 3: Preserve, enhance, and respect the unique, small-scale village character and individual identity of Laguna Beach's commercial areas.***

*Policy 3.10: Require building design and siting to be compatible and integrated with natural topographic features, minimize significant alteration of natural topography or other significant on-site resources, and protect public views as specified in Design Guidelines and Landscape and Scenic Highways Resource Document by maintaining the low-profile character of structures. Require use of appropriate landscaping, special architectural treatments, and siting considerations for projects visible from major highways and arterial streets. Best efforts should be made to site new development in locations that minimize adverse impacts on views from public locations (e.g. roads, bluff-top trails, visitor-serving facilities, etc.).*

***Goal 5: Promote compatibility among land uses in the community.***

*Policy 5.1: Establish standards and review procedures to ensure that infill development and/or redevelopment is neighborhood compatible.*

*Policy 5.2: Ensure that all new development, including subdivisions and the creation of new building sites and remodels that involve building additions, is adequately evaluated to ascertain potential negative impacts on natural resources and adjacent development, emphasizing impact avoidance over impact mitigation. Required mitigation should be located on-site rather than off-site. Any off-site mitigation should be located within the City's boundaries and in close proximity to the project.*



***Goal 6: Provide a diversity of land uses that enhance the community.***

*Policy 6.6: Preserve and promote an increase in the stock of residential rental units in the City.*

*Policy 6.14: Encourage art-related uses and art in public places in appropriate zones.*

***Goal 7: Protect, preserve, and enhance the community's natural resources.***

*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.*

*Policy 7.4: Ensure that development, including subdivisions, new building sites and remodels with building additions, is evaluated to ascertain potential negative impacts on natural resources. Proposed development shall emphasize impacts avoidance over impact mitigation. Any mitigation required due to an unavoidable negative impact should be located on-site where feasible. Any off-site mitigation should be located within the City's boundaries close to the project, where feasible.*

*Policy 7.7: Protect marine resources by implementing methods to minimize runoff from building sites and streets to the City's storm drain system (e.g., on-site water retention).*

*Policy 7.10: Require new construction and grading to be located in close proximity to preexisting development to minimize environmental impacts and growth-inducing potential.*

***Goal 10: Ensure that proposals for new development, subdivisions, and major remodels are sufficiently evaluated to protect public health and safety and natural resources.***

*Policy 10.1: Require that all subdivisions, including parcel maps, are compatible with neighborhood character including building pad elevations, visual and physical relationships to natural topography, open space, view corridors and surrounding residences, and neighborhood access.*

*Policy 10.2: Design and site new development to protect natural and environmentally sensitive resources such as areas of unique scenic quality, public views, and visual compatibility with surrounding uses and to minimize landform alterations.*

*Policy 10.3: Ensure that all new development, including subdivisions, the creation of new building sites and remodels that involve building additions, is evaluated to ascertain potential negative impacts on natural resources, ESHA and existing adjacent development. Proposed development shall emphasize ESHA impact avoidance over impact mitigation. Any mitigation required due to an unavoidable negative impact should be located on-site rather than off-site, where feasible. Any off-site mitigation should be located within the City's boundaries and in close proximity to the project.*

*Policy 10.7: Protect marine resources by implementing methods to minimize runoff from building sites and streets to the City's storm drain system (e.g., on-site water retention.)*

**Laguna Canyon Annexation Area Specific Plan Policies:**

***Section III, Topic 1: Rural Atmosphere***

***Goals: A. Preserve and enhance the rural character of the Laguna Canyon Properties area.***

*Policy 1: Ensure that proposed land uses in the Laguna Canyon Annexation area have a rural character.*

*Policy 3: Require the preservation of ridgelines and encourage the preservation of undeveloped hillside slopes and existing open space.*

*Policy 4: Require that new development along Laguna Canyon Road provide landscaping to improve the scenic quality of the Canyon. The planting of native oaks and sycamores, and eucalyptus and shrubs should be encouraged to screen new development from Laguna Canyon Road.*

*Policy 8: Encourage owners of existing and proposed building sites which support mature trees and other vegetation to properly care for and preserve such habitats.*

*Policy 10: Require that any development be of small-scale in order to maintain the rural character of the Canyon.*

***Section III, Topic 3: Light Industrial Uses***

***Goal: Maintain a land use pattern which responds to the historical development pattern of residential and industrial uses.***

*Policy 1: Ensure that industrial development in Laguna Canyon is compatible with surrounding residential uses.*

*Policy 2: Require new light industrial uses to provide landscaping to improve the scenic quality of the Canyon. Encourage planting of native vegetation to screen these uses from Laguna Canyon Road and to provide a buffer for adjacent residential, agricultural, recreational and open space areas.*

***Section III, Topic 4: Biology and Habitat***

***Goal: Preserve and enhance significant biological resources and wildlife habitats.***

**C. Factors to be Considered in Substantial Issue Analysis**

Section 30625(b)(1) of the Coastal Act states that the Commission shall hear an appeal of a local government action carried out pursuant to Section 30600(b) unless it finds that no substantial issue exists as to conformity with the certified LCP and, if applicable, the access policies of Chapter 3 of the Coastal Act. The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission’s regulations simply indicates that the Commission will hear an appeal unless it “finds that the appeal raises no significant question.” In previous decisions on appeals, the Commission has been guided by the following five factors:

1. The degree of factual and legal support for the local government’s decision that the development is consistent or inconsistent with the relevant provisions of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;

3. The significance of 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.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government’s coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

## **D. Substantial Issue Analysis**

As stated in Section IV of this report, the local coastal development permit may be appealed to the Commission on the grounds that the proposed development does not conform to the standards set forth in the certified Local Coastal Program (LCP) or the public access policies of the Coastal Act. Pursuant to Section 30625 of the Coastal Act, the Commission must assess whether the appeal raises a substantial issue as to the project’s consistency with the certified LCP or, if applicable, the access policies of the Coastal Act.

According to the City of Laguna Beach, the proposed development complies with all development standards, including height, front yard setback, side yard setback, rear yard setback, parking, minimum unit size, work/live space ratio, loading space, and minor retail function. The only exception granted by the City was a fifty-percent reduction in planning and building fees as an incentive for the project to provide eight low-income artist units (11/10/2010).

The appellants, however, disagree with the City’s findings. The substantial issue analysis for the appellants’ contentions are provided below.

1. The City of Laguna Beach incorrectly identified the development setback.

A segment of Laguna Canyon Creek runs along the eastern portion of the project site. This creek has been designated as a “Blue-line” stream on the USGS 7.5 Minute Quadrangle Series Map. The LCP requires that development be set back from streams, with the width of the setback varying depending on the circumstances. Policies 9-C(a) and 9-C(b) in the City’s LCP address the applicable setbacks for development from streams:

Policy 9-C(a) of the Open Space/Conservation Element states:

*Streams on the Major Watershed and Drainage Courses Map which are also “Blue-line” streams identified on the USGS 7.5 Minute Quadrangle Series, shall be identified and mapped on the Coastal Environmentally Sensitive Areas Map of the Land Use Plan. For these streams, a minimum setback of 25 feet from the top of the stream banks shall be required in all new developments. A greater setback may be necessary in order to protect all riparian habitat based on a site-specific assessment. No disturbance of major vegetation, or development, shall be allowed within the setback area. This provision shall not apply to channelized sections of streams without significant habitat value. Where development is proposed on an existing subdivided lot which is otherwise developable consistent with all City ordinances*

*and other policies of this Plan except that application of this setback would result in no available building site on the lot, the setback may be reduced provided it is maintained at a width sufficient to protect all existing riparian habitat on the site and provided all other feasible alternative measures, such as modifications to the size, siting and design of any proposed structures, have been exhausted.*

Policy 9-C(b) of the Open Space/Conservation Element states:

*Require a setback of a minimum of 25 feet measured from the centerflow line of all natural drainage courses other than streams referenced in 9-C(a) above. Such setback shall be increased upon the recommendation of the City engineer and environmental planner through the environmental review process. However, a variance may be given in special circumstances where it can be proven that design of a proposed structure on an affected lot will preserve, enhance or restore the significance of the natural watercourse. At no time shall grubbing of vegetation, elimination of trees, or disturbance of habitat be allowed within the setback area before or after construction.*

In this case, pursuant to Policy 9-C(a), the City of Laguna Beach determined, in part, that due to the existence of channelized portions of Laguna Canyon Creek in the area of the project site, the required setback for this project is 25 feet from the centerline of the creek. Based on the language of the LCP, there are multiple elements contained in each of the policies which must be analyzed, all of which raise questions that, pursuant to the five factor test, necessitate a finding of Substantial Issue.

The first factor used to establish a finding of substantial issue is the **degree of factual and legal support for the local government's decision** that the development is consistent or inconsistent with the relevant provisions of the City's LCP. Pursuant to Policy 9-C(a) of the City's Open Space/Conservation Element, all parties agree that the stream in question – Laguna Canyon Creek – is a "Blue-line" stream. The City failed to clearly address, however, whether Laguna Canyon Creek is also located on the Major Watershed and Drainage Courses (MWDC) Map in the Open Space/Conservation Element. The City's staff reports regarding Conditional Use Permit 13-047, Planning Commission Design Review 13-1375, and Coastal Development Permit 13-1376, as well as the appeal of those decisions, refer to Laguna Canyon Creek as a "significant watercourse," but don't state whether "significant watercourse" means that Laguna Canyon Creek is, in fact, located on the MWDC Map. While Laguna Canyon is identified as a major watershed on the MWDC map, Laguna Canyon Creek is not clearly identified as a "significant watercourse" on the MWDC map even though it is one of the most significant waterways in the City as evidenced by its name, Blue-line designation, and repeated catastrophic flooding.

Such a finding that Laguna Canyon Creek is on the MWDC map is critical, for in order for Policy 9-C(a) to apply, the plain language of that policy requires that Laguna Canyon Creek be both a "Blue-line" stream and designated on the MWDC map. Accordingly, should Laguna Canyon Creek not be identified on the MWDC Map, the required setback of 25 feet from the top of the stream bank would seemingly not apply.

Policy 9-C(a) also states that the provision shall not apply to channelized sections of streams without significant habitat value. As stated, in order for this portion of Policy 9-C(a) to apply, two elements

must be satisfied. First, a determination must be made that a section of a stream is “channelized.” If the section is “channelized,” then a determination must be made that those “channelized” sections of the stream have no significant habitat value. Notably, if a “channelized” section of a stream does, in fact, contain significant habitat value, then this provision does not apply and the setback should be 25 feet from the top of the stream bank.

Here, the City’s LCP does not clearly define what constitutes a channelized stream, but in the City’s September 25, 2013 staff report regarding Conditional Use Permit 13-1047, Coastal Development Permit 13-1376 and Planning Commission Design review 13-1375, the City states that “a mapped significant watercourse/Blue-line stream, which has been partially channelized” exists along the easterly boundary of the site. The City did not elaborate on the significance of this finding, although the City did state in the Initial Environmental Study/Checklist (pg. 64 of staff report dated 9/25/13) that while Laguna Canyon Creek is a “Blue-line stream,” the required setback of 25 feet from the top of the stream bank does not apply “because the section of the stream that traverses the subject property was incrementally and informally lined with rip-rap and masonry blocks for erosion control, prior to annexation of the property to the City.” Furthermore, the City’s staff report on the Appeal of the project dated April 1, 2014 states: “[a]ccording to Policy 9C(a) of the Open Space/Conservation Element, channelized sections of streams are not subject to the setback requirement of 25 feet from the top of the stream bank; therefore, the required watercourse setback is 25 feet from the centerflow line. The City’s response to the appellants’ arguments regarding the setback indicates that a stream which is incrementally and informally lined with rip-rap and masonry blocks for erosion control is sufficient for the City to determine that the stream is channelized. Still, the basis for the City’s decision remains unclear, as little evidence is provided to support the City’s finding. In addition, site visits by Commission staff have confirmed that significant lengths of the stream banks on the project site are comprised entirely of soil and riparian vegetation, thus the stream is only partially channelized.

The value of the habitat, including the importance of Laguna Canyon Creek to the region and watershed is notably absent from the City’s support of its decision to approve the project. Commission staff ecologist Dr. Jonna Engel’s memorandum regarding this project provides the following description of Laguna Canyon Creek and its relationship to the surrounding environment, which elaborates on the functionality and importance of the Creek:

*Laguna Creek is within the Laguna Canyon Watershed. Laguna Canyon cuts through the San Joaquin Hills, runs northeast to southwest, and is drained on the east side by tributaries of San Diego Creek and on the west side by Laguna Canyon Creek. It is deeper and more rugged on the southwestern end near Laguna Beach. A majority of the canyon is located within the Laguna Coast Wilderness; small portions are part of Aliso and Wood Canyons Regional Park and the cities of Irvine, Laguna Beach, Laguna Woods and Aliso Viejo. Laguna Canyon Creek begins as an ephemeral creek draining a mountainside west of the valley floor down into the canyon. It is briefly culverted alongside Laguna Canyon Road within a small developed area but most of the upper course flows in a natural channel...*

*Laguna Canyon Creek is one of two principle creeks in the Laguna Canyon watershed. The Laguna Canyon watershed is within the Laguna Coast Wilderness, which consists of 7,000 acres of pristine coastal canyon country. The Laguna Coast Wilderness is connected to the City of Irvine’s open space area, and the two*

*combined comprise over 20,000 acres of native unfragmented habitat. In addition to being a major watershed creek, Laguna Canyon Creek is an important wildlife corridor that links the upper canyon and hills to the lower canyon and terrestrial/marine interface. Many species of birds, mammals, reptiles and amphibians travel along creek and stream corridors to forage, migrate, disperse, and locate mates. The riparian habitat alongside creeks and streams is a critical component of wildlife corridors.*

*Laguna Canyon Creek is a Blue-line stream in a nearly pristine coastal watershed within a larger area consisting of over 20,000 square feet of open space. Although the stretch of creek adjacent to the proposed project site is channelized and the associated native riparian habitat is interrupted by patches of ornamental plants, it continues to support important processes and functions. Streams and creeks are a rare and threatened habitat throughout California and are easily disturbed and degraded by human activities and development.*

The biological consultants for the proposed project, Glenn Lukos Associates (GLA), also found that the proposed project site supports habitat alongside Laguna Canyon Creek that consists of native riparian habitat and ornamental vegetation; although GLA did ultimately reach a different conclusion than Dr. Engel about the value and significance of the habitat (see discussion under Issue 3 below). The riparian habitat includes the following native species: arroyo willow, *Salix lasiolepis*; mugwort, *Artemisia californica*; California blackberry, *Rubus irsinus*; willow herb, *Epilobium ciliatum*; cattails, *Typha domingensis*; and heliotrope, *Heliotropium curassavicum*. GLA states that “[d]uring the site assessment avian species were observed utilizing the tree canopy and understory vegetation for foraging.” They also found mosquitofish and crawfish in the creek.

Therefore, because Laguna Canyon Creek is only partially channelized and contains significant habitat value, a substantial issue exists regarding the degree of factual and legal support for the local government’s decision regarding the appropriate setback.

The second factor is the **extent and scope of the development** as approved or denied by the local government. Here, the proposed development approved by the local government is a thirty-unit artists’ work/live project next to a Blue-line stream. The City-approved development encroaches within fifteen feet of the edge of the streambed because a ten-foot balcony encroachment was authorized within the 25-foot setback, which is measured from the center of the stream, not the edge of the waterway. Although, the City’s approval did not include any alteration of the streambed, the approval of structures within fifteen feet of sensitive habitat is a substantial issue raised by the appeal. As previously expressed in this section, the extent and scope of the development could be inconsistent with the City’s LCP provisions concerning the appropriate setback from Laguna Canyon Creek, thereby adversely impacting the habitat value of the stream. Therefore, the extent and scope of the development raises a significant issue as to conformity with the City’s LCP provisions regarding setbacks from creeks and streams.

The third factor is the **significance of the coastal resources affected** by the decision. As expressed in Dr. Engel’s memorandum, as well as the LCP, the resources of the Blue-line stream are significant. Policy 4-A of the Open Space/Conservation Element states: *Protect fresh water lakes, streams, waterways and riparian habitats, and preserve the borders and banks of lakes and streams in their*

*natural state*. Therefore, declining to accept this appeal could result in adverse impacts to sensitive and significant habitat, which is a significant coastal resource.

The fourth factor is the **precedential value of the local government's decision** for future interpretations of its LCP. The City's response to a similar argument advanced during the appeal of the City's Planning Commission approval of the proposed development states that approval of this project is not precedent-setting, because

*[e]ach project proposed in Laguna Beach is evaluated individually on its own merits based on the use, location, size, design and potential impacts on the neighborhood and environment, for compliance with the City's General Plan and Municipal Code, applicable Specific Plans, and CEQA.*

However, the City's decision concerning the setback on the finding that the Creek is channelized and devoid of significant habitat value, could allow for future development along Laguna Canyon Creek (and other waterways) to utilize the minimal 25-foot setback (with additional encroachments that further minimize the setback) from the centerline of the Creek when a wider setback may be required to adequately protect the habitat value of the stream, whether the segment of the stream is channelized or not. In addition, the City's decision could further degrade the habitat along the Creek, and make future restoration and enhancement activities more difficult to achieve. Therefore, there is a high risk that the local government's decision regarding the appropriate setback will create an adverse precedent for future actions along Laguna Canyon Creek and other streams.

The fifth factor is **whether the appeal raises local issues, or those of regional or statewide significance**. Proper siting of development along Laguna Canyon Creek is a local issue, however, as stated by Dr. Engel, "[s]treams and creeks are a rare and threatened habitat throughout California . . ." Prevention and/or minimization of adverse impacts to rare or threatened habitat is an important issue not only to the City, but throughout the State. The size of setbacks from this stream and other waterways can directly affect the quality of water that discharges into the ocean, and ocean water quality is an issue of statewide concern. Accordingly, the appeal of the City's approval does raise issues of local, regional, and statewide significance.

In conclusion, questions remain as to the factual and legal support for the local government's decision to approve a coastal development permit for the proposed development. Taking into account the extent and scope of the development, the significance of the coastal resources affected by the decision, the potential for setting an adverse precedent regarding stream setbacks, and the fact that rare and threatened habitat is a statewide issue, the Commission finds that a substantial issue exists in regards to the interpretation the LCP policies that require development to be set back from streams and sensitive habitat areas.

2. The proposed project encroaches into the 25-foot setback requirement in the LCP.

Policy 9-D Open Space/Conservation Element states: "*Permit extensions of decks and other portions of a structure within the required setback for significant natural drainage areas only if: (a) There are no supports to the ground within the setback areas; and (b) The extensions do not encroach closer than fifteen feet from the centerline of flow.*"

Appellants contend that the proposed project encroaches into the 25-foot setback requirement in the LCP. In fact, the City approval does allow a ten-foot encroachment into the 25-foot setback. Policy 9-D states that part of the project may be cantilevered into a setback under certain circumstances, but this results in a very minimal setback: the balconies of the approved structures encroach within fifteen feet of the stream. Therefore, the City-approved structure is actually situated within fifteen feet of the stream, not set back a full 25 feet. As discussed in the preceding section, a substantial issue exists because the setback 25 feet from the stream's centerline of flow has potentially been incorrectly determined. As the proper setback from Laguna Canyon Creek must be determined *ne novo*, a substantial issue exists with regards to the extent of development that is allowed to extend into the setback, if any.

Appellants also contend that the City's determination of the location of the centerline of flow is inconsistent with the land survey that had been completed during the prior owners attempt to develop the property, and no new surveys have apparently been completed during the course of this project approval. The appellants contend that the architect's depiction of the location of the watercourse and the 25-foot setback line from the centerline of flow of the watercourse on the project plans is inaccurate, since the architect has depicted the stream as being symmetrical and equidistant on both sides and the creek is neither symmetrical nor equidistant on both sides. Therefore any extensions into the stream setback, even if allowed by the LCP, have been measured incorrectly.

The appellants measurements indicate that the cantilevered sections are only setback eleven feet from the centerline of flow of the creek, which would be less than ten feet from the stream's edge. The potential for such a minimal setback from a Blue-line stream is a substantial issue. Accordingly, in order to determine whether a substantial issue exists regarding this contention, the analysis largely depends on whether the proper setback has been applied, and from where the setback is measured from. The issue over whether the proper setback has been applied is addressed in Section 1 of this report, where a finding that a substantial issue exists is recommended. Therefore, the Commission's *de novo* review of the project is necessary to ensure that the sensitive habitat in the stream bed is adequately protected as required by the certified LCP.

In conclusion, questions remain as to the factual and legal support for the local government's decision to approve a coastal development permit for the proposed development with a minimal setback from the stream. Taking into account the extent and scope of the development, the significance of the coastal resources affected by the decision, the potential for setting an adverse precedent regarding stream setbacks, and the fact that rare and threatened habitat is a statewide issue, the Commission finds that a substantial issue exists as to the City's finding that the proposed development complies with its LCP.

### 3. The proposed project adversely impacts Environmentally Sensitive Habitat Areas.

The appellants assert that the proposed project adversely impacts Environmentally Sensitive Habitat Areas (ESHA), because the site is surrounded by the Laguna Canyon Wilderness Park, Coastal Sage Scrub, and Southern Maritime Chaparral. Moreover, the appellants assert that wildlife in the canyon is known to utilize the creek.

Policy 8-I of the Open Space/Conservation Element states:



*Environmentally Sensitive Areas (ESA's) as defined in section 30107.5 of the California Coastal Act shall be identified and mapped on a Coastal ESA map. The following areas shall be designated as Environmentally Sensitive Areas: Those areas shown on the Biological Resource Values Map in the Open Space/Conservation Element as "Very High" habitat value, and streams on the Major Watersheds and Drainage Courses Map which are also streams as identified on the USGS 7.5 Minute Quadrangle Series and any other areas which contain environmentally sensitive habitat resources as identified through an on-site biological assessment process, including areas of "High" and "Moderate" habitat value on the Biological Resources Values Map and areas which meet the definition of ESA's in Section 30107.5 of the Coastal Act, including streams, riparian habitats, and areas of open coastal waters, including tidepools, areas of special biological significance, habitats of rare or endangered species, near-shore reefs and rocky intertidal areas and kelp beds.*

Policy 8-J of the Open Space/Conservation Element states, in part: *Detailed biological assessments shall be required for all new development proposals located within areas designated as Environmentally Sensitive Areas on the Coastal ESA Map. To protect these resources, the following shall be required:*

- 1. No new development proposals shall be located in areas designated as "Environmentally Sensitive Areas" on the Coastal ESA Map except for uses dependent upon such resources.*
- 2. When new development proposals are situated in areas adjacent to areas designated as "Environmentally Sensitive Areas" on the Coastal ESA Map and where these are confirmed by subsequent on-site assessment, require that development be designed and sited to prevent impacts which would significantly degrade such areas.*

Policy 8-A of the Open Space/Conservation Element states: *Preserve the canyon wilderness throughout the city for its multiple benefits to the community, protecting critical areas adjacent to canyon wilderness, particularly stream beds whose loss would destroy valuable resources.*

Policy 8-C of the Open Space/Conservation Element states: *Identify and maintain wildlife habitat areas in their natural state as necessary for the preservation of species.*

Furthermore, the Open Space/Conservation Element contains many policies that encourage and promote the protection, preservation, and restoration of water bodies and habitat such as the Creek at issue in this appeal. For example, the following policies are representative of the emphasis placed on the value of such habitat:

Policy 4-A of the Open Space/Conservation Element states: *Protect fresh water lakes, streams, waterways and riparian habitats, and preserve the borders and banks of lakes and streams in their natural state.*

Policy 4-I of the Open Space/Conservation Element states: *Promote the protection and restoration of offshore, coastal, lake, stream or wetland waters and habitats and preserve them to the maximum extent practicable in their natural state. Oppose activities that may degrade the quality of offshore,*

*coastal, lake, stream or wetland waters and habitat and promote the rehabilitation of impaired waters and habitat.*

Policy 9-A of the Open Space/Conservation Element states: *Promote the preservation and restoration of Laguna’s natural drainage channels, freshwater streams, lakes and marshes to protect wildlife habitat and to maintain watershed, groundwater and scenic open space.*

Policy 9-F of the Open Space/Conservation Element states: *Where possible, require restoration of deteriorated significant natural drainage courses that have been disturbed by development, but which retain potential for natural function.*

Policy 9-K Open Space/Conservation Element states: *Promote preservation and enhancement of the natural drainage of Laguna Beach.*

In this case, as previously expressed, Commission staff biologist Dr. Jonna Engel states, in part, that:

*Laguna Canyon Creek is one of two principle creeks in the Laguna Canyon watershed which itself is within the Laguna Coast Wilderness. The Laguna Coast Wilderness consists of 7,000 acres of pristine coastal canyon country, and is connected to the City of Irvine open space, which combined comprise over 20,000 acres of native unfragmented habitat. In addition to being a major watershed creek, Laguna Canyon Creek is an important wildlife corridor that links the upper canyon and hills to the lower canyon and terrestrial/marine interface. Many species of birds, mammals, reptiles and amphibians travel along creek and stream corridors to forage, migrate, disperse, and locate mates. The riparian habitat alongside creeks and streams is a critical component of wildlife corridors.*

*Laguna Canyon Creek is a “Blue-line” stream in a nearly pristine coastal watershed within a larger area consisting of over 20,000 square feet of open space. Although the stretch of creek adjacent to the proposed project site could be construed as partially channelized, and the associated native riparian habitat is interrupted by patches of ornamental plants, it continues to support important processes and functions. Again, streams and creeks are a rare and threatened habitat throughout California and are easily disturbed and degraded by human activities and development.*

The biological consultant for the project, Glenn Lukos Associates (GLA), in their Biological/Regulatory Assessment dated August 12, 2013, found that the proposed project site supports habitat alongside Laguna Canyon Creek that consists of native riparian habitat and ornamental vegetation. The riparian habitat includes the following native species: arroyo willow, *Salix lasiolepis*; mugwort, *Artemisia californica*; California blackberry, *Rubus irsinus*; willow herb, *Epilobium ciliatum*; cattails, *Typha domingensis*; and heliotrope, *Heliotropium curassavicum*. GLA states that “During the site assessment avian species were observed utilizing the tree canopy and understory vegetation for foraging.” The consultant also found mosquitofish and crawfish in the creek.

Yet, GLA concludes in their report that the proposed project is not expected to result in significant impacts to biological resources, “due to a lack of suitable habitat and the planned avoidance of

resources associated with Corps and CDFW jurisdiction.” Further, the report concludes that “[t]he riparian habitat observed on site is very closely associated with the creek yet exhibits characteristics of heavy disturbance due to surrounding urban and suburban influences; therefore the habitat value of this disturbed area is low.” And although the project may cause indirect affects to biological resources associated with Laguna Canyon Creek, those “affects would not be considered significant due to the highly disturbed condition of the creek upstream, downstream and adjacent to the Property.” Thus, based on GLA’s findings, the City determined that no significant habitat exists to warrant additional protection or a larger setback.

The apparent dispute amongst the biological experts concerning the significance of the habitat in this area and, therefore, compliance with the City’s many LCP policies that encourage and/or require protecting, preserving, restoring, enhancing, and maintaining such habitat, raises a substantial issue as is more thoroughly articulated by the five factor test below.

The first factor is the degree of factual and legal support for the local government’s decision that the development is consistent or inconsistent with the relevant provisions of the City’s LCP. As indicated above, the City’s approval of this project was supported by evidence from the City’s biological consultant that the proposed development would not result in significant impacts to biological resources, in part, because the area is already disturbed and the habitat value is low. The Commission’s biologist disagrees with many of the conclusions made by the consulting biologist, for creeks and streams such as Laguna Canyon Creek are rare and threatened throughout California and Laguna Canyon Creek – although disturbed – is an important wildlife corridor. Considering that the City’s LCP contains a number of policies which seek to protect, preserve, restore, maintain, and enhance wildlife area, drainage channels, creeks, and streams, any development in this area, including the proposed development at issue here, could potentially adversely affect sensitive habitat. Therefore, the factual and legal support for the local government’s decision is in dispute.

The second factor is the extent and scope of the development as approved or denied by the local government. Here, the proposed development approved by the local government includes parts that extend within fifteen feet of the stream’s edge. Due to its location next to a “Blue-line” stream, and the minimal setback provided, the extent and scope of the development may adversely impact sensitive habitat. As expressed in Dr. Engel’s memorandum, as well as the LCP, the resources of the Blue-line stream are significant and are designated for protection. Therefore, declining to accept this appeal could result in adverse impacts to sensitive and significant habitat, which is a significant coastal resource. Establishment of the correct setback, as required by the LCP, is of significant precedential value for future decisions along Laguna Canyon Creek and other California waterways with significant habitat value.

In conclusion, since the proposed project abuts a Blue-line stream with native riparian habitat, which has both been identified as environmentally sensitive habitat resource through an on-site biological assessment (and meets the definition of ESA in Section 30107.5 of the Coastal Act), the proposed project is inconsistent with above-referenced policies in the City’s LCP. In addition, should the proposed development remain in the proposed location, efforts to protect, preserve, and ultimately restore Laguna Canyon Creek as called for in the LCP could be severely constrained. Therefore, a substantial issue exists with regards to the City’s approval of the project.

4. The proposed project adversely impacts visual resources.

The appellants contend that due to size, mass, scale, and siting of infrastructure, the proposed project adversely impacts visual resources by degrading the visual character of the existing setting. Laguna Canyon Road – a candidate Scenic Highway – abuts the westerly property line. Specifically, the appellants contend that the proposed project will block public views of the canyon.

Policy 7-A of the Open Space/Conservation Element states: *Preserve to the maximum extent feasible the quality of public views from the hillsides and along the city's shoreline.*

Policy 7-C Open Space/Conservation Element states: *Inventory and map positive and negative visual resources from Coast Highway and Laguna Canyon Road for use in reviewing development projects which might impact the viewshed of these designated scenic highways, pending funding availability.*

Land Use Element Policy 2.10 states: *Maximize the preservation of coastal and canyon views (consistent with the principle of view equity) from existing properties and minimize blockage of existing public and private views. Best efforts should be made to site new development in locations that minimize adverse impacts on views from public locations (e.g. roads, bluff top trails, visitor-serving facilities, etc.)*

Here, the proposed project is located in the M-1B Light Industrial Zone of Laguna Canyon. The M1-B height limit allows development in the floodplain to be up to 36-feet high, and applies to lot areas of a minimum of 20,000 square feet. The proposed two-story structures are setback more than 25 feet from the highway, and are elevated above the 100-year floodplain elevation. The proposed project complies with the applicable height limit, and is designed with multiple pitched roofs meant to emulate the hillside skyline. In addition, the proposed project will be partially screened by the addition of California Sycamores and Weeping Willows along the Laguna Canyon Road side of the property. Such measures to reduce the project's visual impacts are acknowledged, but a finding of substantial issue depends on the following five factor test:

The first factor is the **degree of factual and legal support for the local government's decision** that the development is consistent or inconsistent with the relevant provisions of the City's LCP. As indicated above, the City's conclusion was supported by substantial evidence, including the proposed development's compliance with the applicable height limit. Notably, however, the visual resource policies are broadly written and allow a fair amount of interpretation as to how they apply to a particular project. Thus, a project, such as the one at issue here, could be found to be in compliance with the requisite development standards and still impact public views.

The proposed project underwent a design review, which was approved by both the Planning Commission and City Council (Design Review No. 13-1375). Project design, visual impact and neighborhood compatibility have been thoroughly reviewed by the local government, and its approval of the project is supported by substantial evidence. The City notes that the project is broken into two structures and has a varied roofline. Story poles were erected to help visualize the location and size of the proposed structures. Photographs of the story poles and artistic renderings of the proposed structures are part of the City's record. These photographs and the renderings indicate that the proposed development, with its limited height and setback from the highway, will not obstruct significant views of the surrounding foothills and peaks of the mountains. No shoreline views are

currently available from this section of the canyon, which is three miles inland of the sea. In fact, the existing trees in the area exceed the height of the story poles in the photographs. Therefore, the City record, including photographs and renderings, provides sufficient factual and legal support for the local government's decision in regards to impacts of the project on public views.

The second factor is the **extent and scope of the development** as approved or denied by the local government. Here, the proposed development approved by the local government is a 36-foot high structure along a 300-foot long section of Laguna Canyon Road. The development complies with the height limit set forth in the certified LCP, and significant public views are not affected.

The third factor is the **significance of the coastal resources affected** by the decision. As expressed by the above-referenced visual resource policies in the City's LCP, visual resources are significant resources that require preservation. However, as stated above, the proposed project will not adversely affect any significant public views.

The fourth factor is the **precedential value of the local government's decision** for future interpretations of its LCP. The proposed development complies with the applicable height limit in this area, however, the possibility exists that the cumulative effect similar-sized buildings may incrementally degrade visual resources in this area. It is noted however, that the proposed structures in this case have just two stories (with parking below). The proposed two-story structures reach 36 feet in height because they are required to be elevated above the 100-year floodplain. In that regard, the project may set a precedent for the design of new development in the canyon that minimizes the risk of flood hazards.

The fifth factor is **whether the appeal raises local issues, or those of regional or statewide significance**. Laguna Canyon Road is one of the major roadways into and out of Laguna Beach, and the road provides public views of the surrounding canyon hillsides to residents and non-residents alike. As adverse impacts to visual resources generally raise issues of regional or statewide significance, such a finding is further bolstered by the road's location and its functional importance to the region.

In conclusion, although the City's certified LCP contains broad language pertaining to the preservation of public views, the size, mass, and scale of the proposed development complies with the applicable development standards, and the project as approved by the City will not adversely affect significant public views of the shoreline or hillsides. Therefore, a substantial issue does not exist in regards to public views.

5. The proposed project adversely impacts community character.

The Appellants contend that the proposed project fails to preserve the rural character of Laguna Canyon. The subject site is surrounded by a mix of uses including residential, commercial and light industrial. The light industrial/commercial uses are located to the north and south, and commercial and residential uses are located to the east. An animal hospital abuts the northerly property line, Laguna Koi Ponds abuts the southerly property line, residential (Sun Valley neighborhood) and the Dog Ranch/Dog Daycare kennels abut the easterly property line, and Laguna Canyon Road – a candidate Scenic Highway – abuts the westerly property line.

Laguna Beach Land Use Element Goal 2 states: Preserve, enhance and respect the unique character and identity of Laguna’s residential neighborhoods.

Policy 2.1 states: *Maintain the diversity and uniqueness of individual neighborhoods. Development standards and design review guidelines shall minimize the scale and bulk of new construction and/or renovation and require development to be compatible with the surrounding residences.*

Policy 2.2 states: *Encourage the preservation of historically significant residential structures and protect the character-defining components of Laguna Beach’s traditional neighborhoods.*

Policy 2.7 states: *Evaluate the impact of proposed development on hillsides and along ridgelines and require building design, location, and arrangement to avoid continuous and intrusive impacts on hillside view areas and skyline profiles.*

Policy 2.8 states: *Require building design and siting to be compatible and integrated with natural topographic features, minimize significant alteration of natural topography and/or other significant onsite resources, and protect public views as specified in the Design Guidelines and the Landscape and Scenic Highways Resource Document.*

Section III, Topic 1: Rural Atmosphere of the Laguna Canyon Annexation Area Specific Plan states:

*Goals: A. Preserve and enhance the rural character of the Laguna Canyon Properties area.*

Policy 1: *Ensure that proposed land uses in the Laguna Canyon Annexation area have a rural character.*

Policy 3: *Require preservation of ridgelines and encourage the preservation of undeveloped hillside slopes and existing open space.*

Policy 10: *Require that any development be of small-scale in order to maintain the rural character of the Canyon.*

The above-referenced policies in the City’s LCP reflect a strong interest by the City of retaining the unique character of its communities, and a focus on ensuring that a proposed development is compatible with the established community character in this area. These policies complement other policies in the LCP, such as those concerning adverse impacts to visual resources, but more specifically highlight the importance placed on ensuring that future development does not degrade the character of existing neighborhoods.

The character of any particular coastal community can be difficult to define, unless, as is the case here, a city has a certified LCP. Issues concerning community character can be local, regional, and statewide in nature, as coastal communities with an identifiable character are in many ways unique, which make them attractive to residents and visitors. The five factor test on this contention suggests that the appeal on the issue of community character does not raise a substantial issue.

The first factor is the **degree of factual and legal support for the local government’s decision** that the development is consistent or inconsistent with the relevant provisions of the City’s certified LCP.

The proposed project underwent a design review, which was approved by both the Planning Commission and City Council (Design Review No. 13-1375). Project design, visual impact and neighborhood compatibility have been thoroughly reviewed by the local government. First, the project site has a Light Industrial zoning designation (M-1B), which is not inconsistent with rural character. “Rural” is not defined in the City’s zoning code, but the dictionary definition includes words such as “rustic” and “country”; not urban or city.

In fact, the design of the proposed project is more rural in character than urban in that it provides large setbacks and open spaces between neighboring properties. These setback areas will be landscaped with large trees and native vegetation (not paved over for parking). The proposed project is comprised of two two-story structures on a large site (approximately 36,750 square feet). And while the City’s Planning Commission admitted that the proposed project is not considered to be small in scale, not all rural buildings are small (e.g., barns). The project does comply with all of the applicable development standards in regards to height and scale. In addition, to look more rustic, the proposed project makes use of weathered wood siding, and uses rustic colors of taupe and wood tones on the exterior of the building, and also makes use of a raked-finish exterior stucco. The proposed use itself (artist’s residences) reflects the historic character of Laguna Beach as an artist colony. Therefore, the City record provides sufficient factual and legal support for the local government’s decision in regards to impacts of the project on public views.

The second factor is the **extent and scope of the development** as approved or denied by the local government. The development approved by the local government is a thirty- unit, 36-foot high artists’ work/live project. Eight of the units are reserved for low-income artists. The City determined that the proposed project is compatible with the M-1B Zone based on the surrounding neighborhood comprised of commercial and residential uses and the discussions within the LCAASP regarding artists living and working in Laguna Canyon. According to the City, artists’ studios have always been a permitted use in the M-1B Zone and artists’ work/live use has always been a conditionally permitted use in the M-1A Zone. The City found that the proposed development complies with all of the applicable development standards in the M-1B Light Industrial Zone.

The third factor is the **significance of the coastal resources affected** by the decision. The City’s LCP includes policies aiming to maintain the diversity and uniqueness of the City’s neighborhoods, which is one of the reasons residents and visitors are attracted to the City. As such, community character is a significant coastal resource affected by the City’s decision.

The fourth factor is the **precedential value of the local government’s decision** for future interpretations of its LCP. The proposed development complies with the applicable height limit; however, the possibility exists that the cumulative effect similar-sized buildings may incrementally alter the character of the neighborhood. It must be noted, however, the existing character of Laguna Canyon is far from pastoral, at least along the highway. The highway is a very busy road used by daily commuters traveling between homes and workplaces in inland valleys and coastal towns. The heavily-travelled highway is lined with numerous art studios, light industrial uses, and other commercial enterprises. Most of the existing development is single-story. Although the proposed project is not considered to be small in scale, it is just two stories (with parking below). The proposed two-story structures reach 36 feet in height because they are required to be elevated above the 100-year floodplain. In that regard, the project may set a precedent for the design of new development in the canyon that minimizes the risk of flood hazards. The proposed project may also

set an example for housing artists within the City limits; in a time when escalating housing prices have caused many artists to move away. Therefore, the local government's decision has precedential value.

The fifth factor is **whether the appeal raises local issues, or those of regional or statewide significance**. And issues concerning community character can be local, regional, and statewide in nature. In this case, however, the community character question for this section of Laguna Canyon is a primarily local issue. The proposed project will have no effect on the character of downtown Laguna Beach, which attracts so many visitors. Nor will the proposed project, being limited to two stories, have any significant adverse effect on the parks and open space in the area. In conclusion, the appeal on the issue of community character does not raise a substantial issue.

6. The proposed project would set an unwanted and destructive precedent.

As stated previously in this report, a substantial issue exists in regards to the City's decision that the Creek is channelized and devoid of significant habitat value, and whether the City permit imposes the correct setback. The City's decision could further degrade the habitat along the Creek, and make future restoration and enhancement activities more difficult to achieve. Therefore, the precedential value of the local government's decision regarding the habitat value and the appropriate setback is high. Therefore, the general proposition advanced by the appellants that the proposed project would set an unwanted and destructive precedent has been addressed in the prior sections of this report, with a finding of substantial issue recommended.

7. The proposed project violates the California Environmental Quality Act (CEQA)

Here, the appellants allege that the proposed project fails to comply with CEQA. The appellants contend that the proposed project violates CEQA, because the City of Laguna Beach, as the lead agency, failed to take into account the cumulative impacts of this proposed project in this location. As previously stated, the grounds for appeal of an approval, by a certified local government, of a local CDP authorizing development in the appealable area are stated in Section 30603(b)(1), which states:

*(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 [the Coastal Act].*

The grounds for appeal of an approval by a local government of a local CDP are limited to allegations that the development does not conform to the standards in the local government's certified LCP or the public access policies set forth in the Coastal Act. Compliance with CEQA is a separate process from that of obtaining a coastal development permit. The lead agency's decision regarding compliance with CEQA is not appealable to the Commission. Therefore, a finding of substantial issue cannot be made regarding the City's CEQA determination.

8. The proposed project fails to comply with multiple elements of the City of Laguna Beach General Plan and Laguna Canyon Annexation Area Specific Plan

The appellants' allegation here refers generally to the proposed projects noncompliance with multiple elements of the City of Laguna Beach General Plan, and the Laguna Canyon Annexation Area Specific Plan. The City of Laguna Beach General Plan contains provisions and policies that are not



part of the City's certified LCP, therefore this substantial issue report will not address those allegations. For those provisions and policies that have been incorporated into the City's LCP, the preceding sections have already addressed the Appellants' contentions of noncompliance.

9. The proposed project does not satisfy the Water Quality Management Plan under the lead agency's National Pollutant Discharge Elimination System (NPDES); the proposed project has site drainage deficiencies; and the proposed project does not protect receiving waters.

The appellant (Butow) contends that the offered Best Management Practices (BMPs) are inadequate and insufficient. The appellant also contends that the project fails to preserve or maintain historical surface and sub-surface groundwater flows, does not comply with limitations on impervious surfaces, maximizing soil compaction, or biofiltration capacity metrics; and has site drainage deficiencies. Further, appellant contends that the proposed project does not incorporate feasible mitigation measures to reduce/attenuate water volume, flow rates, and pollutant loading into Laguna Canyon Creek, which is impaired by sediment toxicity and bacterial exceedences as determined by the State. In addition, appellant contends that the project has no pump or other emergency devices to lower or divert water to the MS4 system flood ingress water levels in the sub-surface parking lot. Finally, the appellant contends that the proposed area drains, and subterranean parking lot utilize a single eight-inch diameter pipe, which is insufficient to divert and/or control runoff. The appellant contends that no on-site advanced pre-treatment systems are incorporated into the project, and no diversion to the City's wastewater system is proposed.

Policy 9-I of the Open Space/Conservation Element states: *Require new development projects to control the increase in volume, velocity and sediment load of runoff from the greatest development areas at or near the source of increase to the greatest extent feasible.*

Policy 9-J of the Open Space/Conservation Element states: *Require new developments to maintain runoff characteristics as near as possible to natural discharge characteristics by maintaining the natural conditions of the watershed.*

Policy 9-K of the Open Space/Conservation Element states: *Promote preservation and enhancement of the natural drainage of Laguna Beach*

Policy 9-Q of the Open Space/Conservation Element states: *Oppose new development within the City's surrounding areas that would result in significant adverse impacts to the City's hydrology.*

Policy 10A of the Open Space/Conservation Element states: *Require that plan review procedures recognize and avoid geologically unstable areas, flood-prone lands, and slopes subject to erosion and slippage.*

Policy 10F Open Space/Conservation Element states: *To minimize risk to life and structures, new development located in established floodprone lands shall incorporate all appropriate measures pursuant to the City's "Flood Damage Prevention and Prohibition Ordinance."*

Based on the following five factor test, no substantial issue exists with regards to the project's compliance with the hydrology and water quality policies in the City's LCP.

The first factor is the **degree of factual and legal support for the local government's decision** that the development is consistent or inconsistent with the relevant provisions of the City's certified LCP. As indicated in the City's staff reports, a Water Quality Management Plan (WQMP) dated 5/10/2013) has been prepared for the project and peer-reviewed for accuracy by the City's consultant. The WQMP reduces potential water quality impacts to less than significant. A hydrology study has also been prepared and peer-reviewed by the City's consultant. According to the City's findings, the project has been designed to be elevated above the floodplain, which complies with the City's Municipal Code and FEMA, and a "no-rise" certificate has been issued by the project hydrologist, stating that the new buildings will not obstruct natural flow conveyance and do not increase the flood potential. The project hydrologist also concluded, in part, that "[t]he live/work studio development does not increase the downstream erosion potential from the existing conditions . . ." The City found that the proposed project complies with Chapter 25.38 of the City of Laguna Beach municipal code relating to Flood Hazards and Flood Damage Protection. Accordingly, substantial evidence exists to support the local government's decision.

In response to the contention that the proposed project contains drainage deficiencies, the project's consultant states that the project area tributary to the eight-inch diameter line is 0.65 acres. The eight-inch diameter line has the hydraulic capacity to carry a 100-year storm event from the project tributary area, and it is not designed or intended to carry runoff due to flooding from the creek.

The second factor is the **extent and scope of the development** as approved or denied by the local government. Here, the proposed development approved by the local government is a thirty-unit artists' work/live project with two-floors of live-work area elevated above the 100-year floodplain. The proposed project does not fill, alter, divert or concentrate the existing waterway. The City-approved development incorporates a drainage plan (WQMP) and includes specific measures to protect receiving waters from the impacts of the development. The approved WQMP includes the installation of a "bio-retention" area which is an approved LID/BMP in accordance with the South Orange County Hydrology Model Guidance Document that is designed to mimic the natural environment and provide source control and storage for runoff. In addition, the bioretention area promotes infiltration of low flows, which addresses pollutants from the site, addresses hydromodification concerns on the Creek, and is designed to meet requirements set forth in the South Orange County Hydrology Model Guidance Document.

The third factor is the **significance of the coastal resources affected** by the decision. The City's LCP includes policies to mitigate runoff, erosion, and adverse impacts to the City's hydrology. Water quality and hazard abatement are significant coastal resources that are potentially affected by this decision.

The fourth factor is the **precedential value of the local government's decision** for future interpretations of its LCP. The proposed development complies with the applicable development standards in this area; however, the possibility remains for such a development to degrade further degrade water quality and compound potentially hazardous flooding in this area. Therefore, the local government's decision has precedential value.

The fifth factor is **whether the appeal raises local issues, or those of regional or statewide significance**. Water quality and hazard abatement are local issues, however, given that Laguna Canyon Creek is a "Blue-line" stream – which are rare and threatened in California, and the fact that

Laguna Canyon Road is a vital transportation corridor, any adverse impacts raise issues of regional and statewide significance. In conclusion, the proposed development raises no substantial issue with respect to compliance with the water quality and hazard policies in the City's LCP.

10. The proposed project violates the Scenic Highway protection policies.

Policy 3.10 of the Laguna Beach Land Use Element states: *Require building design and siting to be compatible and integrated with natural topographic features, minimize significant alteration of natural topography or other significant on-site resources, and protect public views as specified in Design Guidelines and Landscape and Scenic Highways Resource Document by maintaining the low-profile character of structures. Require use of appropriate landscaping, special architectural treatments, and siting considerations for projects visible from major highways and arterial streets. Best efforts should be made to site new development in locations that minimize adverse impacts on views from public locations (e.g. roads, bluff-top trails, visitor-serving facilities, etc.)*

Per the City's Mitigated Negative Declaration, Laguna Canyon Road (State Route 133) is considered a candidate Scenic Highway. However, the City's Scenic Highways Element is not incorporated into the City's certified LCP. Thus, this substantial issue report will not discuss the appellants' contention that this project violates the Scenic Highway protection policies. Nonetheless, issues concerning potential adverse impacts to public views, visual resources, and community character, which would otherwise be relevant to an analysis of adverse impacts to a Scenic Highway have been addressed in Sections 4 and 5 of this substantial issue report.

11. The proposed project does not conform with the General Plan Land Use Implementation Programs regarding Sustainability and Conservation Element policies.

The appellant contends that the proposed project makes no attempt to achieve LEED silver building standards, fails to reduce energy demands, and recycle and conserve water, and does not incorporate a green roof design. Sustainability and conservation of resources are encouraged by the Commission, but not specifically required by the certified LCP. Applicants can apply for a reduction in permit fees if they choose to pursue LEED certification, but developments are not required by the LCP to achieve an LEED certification. Reduction in energy demands, recycling and conserving water, and a green roof design are laudable goals and encouraged; however, applicants are not required by the LCP to incorporate those specific components into their project design. The proposed project does include rooftop solar panels, native landscaping (to conserve water), BMPs to improve water quality in the Laguna Canyon Creek, and live/work units that will reduce vehicle-miles (energy demand and pollution). This contention does not raise any substantial issue in regards to the proposed project's consistency with the City's LCP.

12. The proposed project requires further evaluation of traffic impacts.

The appellants contend that the proposed project requires a more thorough analysis regarding potential traffic impacts. Such an analysis was conducted and peer-reviewed. Accordingly, recommended mitigation measures have been incorporated into the project. In response to similar contentions made during the appeal to the City Council, a technical response was submitted by RK Engineering Group, Inc. on January 24, 2014, which confirms that the traffic impacts study for the project was prepared in compliance City and State (Caltrans) requirements. According to RK Engineering's response, and as confirmed by the City's action, the report was reviewed by City staff

and peer-reviewed by a third party traffic engineer (RBF Consulting). The traffic impact study indicates that the project would not result in a significant impact to the existing circulation network, assuming the recommendations listed in the report are followed. RK Engineering indicates that all of the project recommendations have been included in the development plan and are listed in the Conditions of Approval. Notably, in response to concerns over cumulative traffic impacts, RK Engineering indicates that all active or pending future development projects were considered within the study area, and concludes that the project will have a less than significant impact within the study area under future conditions. Therefore, no substantial issue exists with respect to potential traffic impacts.

13. The proposed project does not conform to the Conditional Use Permit policies under the Laguna Canyon Annexation Area Specific Plan.

Appellant Clean Water Now (Butow) contends that the proposed project does not conform to the Conditional Use Permit policies under the Laguna Canyon Annexation Area Specific Plan. The Appellant's contention, however, is general and fails to elaborate on the basis for this contention. The City's approval of a local coastal development permit is the subject of this Coastal Commission appeal. The City's action on the Conditional Use Permit is not appealable to the Commission. If the Commission finds that the appeals raise a substantial issue, the "de novo" phase of the hearing will follow, during which the Commission will review the proposed development for consistency with the certified City of Laguna Beach LCP.

## VI. MOTION AND RESOLUTION - DE NOVO PERMIT

### Motion:

*I move that the Commission approve Coastal Development Permit Application No. A-5-LGB-14-0019 subject to the conditions set forth in the staff recommendation.*

Staff recommends a **YES** vote. Passage of this motion will result in conditional approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### Resolution:

*The Commission hereby approves Coastal Development Permit Application No. A-5-LGB-14-0019 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the Certified Local Coastal Plan. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that will substantially lessen any significant adverse impacts of the development on the environment.*

## VII. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

## VIII. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Setback from Laguna Canyon Creek.** The Laguna Canyon Creek Setback is an area at least 25 feet wide (along the western bank of the Creek) that shall be provided and maintained between all portions of the structures (including balconies, decks, patios, and eaves) and the centerflow line of Laguna Canyon Creek. The setback area shall be maintained as a permeable area landscaped with plants native to Laguna Canyon and appropriate to the site's hydrology and historical ecology, and consistent with the Habitat Restoration Plan described in Special Condition Three below.
2. **Submittal of Revised Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director two sets of final architectural plans, grading plans, drainage and run-off control plans, and landscaping plans that substantially conform with the City-approved project plans. The revised plans shall reflect the deletion of the cantilevered decks on the rear of the approved structures in order to provide a minimum 25-foot setback between the structures and the centerflow line of Laguna Canyon Creek. In addition, the applicant shall submit evidence in the form of written documentation from a licensed surveyor or qualified professional with experience in surveying and measuring setbacks, which verifies that the revised plans accurately depict the location of the approved structures in relation to the required minimum 25-foot setback from the centerflow line of Laguna Canyon Creek.

The permittee shall undertake development in accordance with the final plans approved by the Executive Director. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. **Habitat Restoration Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director, a revised Habitat Restoration Plan for the "restoration area" on the rear of the project site, as generally shown on **Exhibit #2 of the staff report dated December 19, 2014**. The restoration area includes the banks and streambed of Laguna Canyon Creek located on the subject property and the 25-foot wide Laguna Canyon Creek Setback area described in Special Condition One. The revised Habitat Restoration Plan shall be prepared by a qualified Resource Specialist in consultation with the California Department of Fish and Wildlife, and shall be in substantial conformance with the applicant's proposed plan entitled, Habitat Restoration Plan for Longi Work/Live Property, Laguna Beach, California, prepared by Glenn Lukos Associates, Revised October 8, 2014. The revised Habitat Restoration Plan shall describe in detail the activities the permittee will undertake to restore and enhance the degraded riparian habitat adjacent to the approved development, and shall include the following provisions:
  - a. **Landscape Plan.** A site plan (with topography) shall show the location, size and species of the non-native plants to be removed, and the location, size and species of the native plants to be protected in place and added to the restoration area. All plants in the restoration area shall be native to Laguna Canyon and appropriate to the site's hydrology and historical ecology (except for the large existing walnut tree that is permitted to

- remain on the west bank of the creek). New vegetation planted on the site shall consist of native riparian trees such as arroyo willow and blue elderberry with the understory consisting of creeping ryegrass, California wild rose, California blackberry, coast goldenbush, bush sunflower, California sagebrush, coyote brush, and mugwort. The plan shall identify the seed sources and plant communities of the plants planned to be employed. If a temporary irrigation system is necessary, it shall be indicated on the plan.
- b. **Non-Native Plant Removal and Erosion Control.** Prior to the removal of non-native vegetation, a qualified Resource Specialist shall survey the project site and identify with flags all areas of existing native vegetation. The permittee shall ensure that the areas of existing native vegetation are protected from disturbance during the implementation of the approved project. Prior to removing the non-native plants and preparation of the soil, the permittee shall employ Best Management Practices (BMPs) to ensure that erosion is minimized and the stream is protected from sedimentation. The storage or stockpiling of soil, silt, and other organic or earthen materials shall not occur where such materials could pass into any waterway.
  - c. **Planting Schedule.** A schedule for the removal of non-native plants and installation of native plants in the restoration area. Implementation of the approved Habitat Restoration Plan shall commence as soon as possible following the issuance of the permit and commencement of construction. Installation of the native plants shall commence at the project site no later than thirty (30) days from the date of the issuance of the certificate of occupancy, or within such additional time as the Executive Director may grant for good cause. The initial planting shall be completed no later than six weeks from the commencement of planting, in compliance with the Habitat Restoration Plan approved by the Executive Director. The permittee shall notify the Executive Director in writing within five days of the date of commencement of the implementation of the approved Habitat Restoration Plan.
  - d. **Monitoring.** For at least five years following the initial planting, the permittee shall actively monitor the restoration area, remove non-native plants, and replant native vegetation that has failed. The permittee shall monitor and inspect the restoration area no less than once each thirty days during the first year that follows the initial planting. Thereafter, the permittee shall monitor the restoration area at least once every ninety days. Each year, for a minimum of five years from the date of commencement, the permittee shall submit, for the review and approval of the Executive Director, an annual monitoring report prepared by a qualified Resource Specialist which certifies that the approved Habitat Restoration Plan is being implemented in conformance with the requirements of this coastal development permit. The annual monitoring report shall include photographic documentation of plant species and plant coverage in the restoration area.
  - e. **Performance Standards.** At the end of five years (following the date of commencement), a minimum of ninety percent (90%) of the restoration area (not including existing cement-lined banks or rocky areas) shall be covered with native plants. No more than five percent (5%) of the restoration area shall be covered with non-native plants at any time. If the annual monitoring report indicates that the restoration area is not in conformance with or has failed to meet these performance standards, the permittee shall submit a revised or supplemental Habitat Restoration Plan for the review and approval of the Executive Director. The revised Habitat Restoration Plan re-vegetation plan must be prepared by a qualified Resource Specialist and shall specify measures to remediate those

portions of the original plan that have failed or are not in conformance with the original approved plan. The permittee shall implement the revised Habitat Restoration Plan approved by the Executive Director and/or seek an amendment to this permit if required by the Executive Director.

- f. No grading or scraping is permitted in the restoration area. No heavy machinery may be used in the restoration area.
- g. The use of rodenticides is prohibited. No dead plants shall be left on site and no persistent chemicals shall be employed.
- h. No bird nests shall be disturbed at any time.
- i. Invasive Plants. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed on the project site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.
- j. Maintenance. Native vegetation shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the Habitat Restoration Plan.

The permittee shall undertake development in accordance with the approved final plan and schedule and other requirements. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

- 4. **Restoration Area Open Space Restriction.** A) No development, as defined in Section 30106 of the Coastal Act, shall occur within the restoration area described in Special Condition Three (the area along the banks and streambed of Laguna Canyon Creek on the rear of the project site, including the Laguna Canyon Creek Setback), except for: 1) the activities described in the Habitat Restoration Plan approved by the Executive Director pursuant to Special Condition Three, 2) limited benches and seating areas, subject to the review and approval of the Executive Director, and 3) a five-foot wide walkway constructed with permeable pavers, located adjacent to the rear of the approved structures on the portion of the Laguna Canyon Creek Setback situated furthest from the creek, subject to the review and approval of the Executive Director. The area subject to the Open Space Restriction shall be depicted in an exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit. Those portions of the above identified lands that are to be used for habitat restoration shall be open to entities designated to undertake the habitat restoration. The land identified in this restriction shall be maintained by the landowner. B) PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, formal legal descriptions and graphic depictions of the portions of the subject property affected by this condition, as generally described above and shown on **Exhibit #2 of the staff report dated December 19, 2014** attached to the findings in support of approval of this permit.
- 5. **Conformance with Geotechnical Recommendations.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director's review and approval, along with a copy of each plan, evidence that an appropriately licensed



professional has reviewed and approved all final design and construction plans including foundation and grading/drainage plans and certified that each of those final plans is consistent with all the recommendations contained in the Updated Geotechnical Report, Proposed Live/Work Artist Complex, 20412 Laguna Canyon Road, Laguna Beach, California by Petra Geotechnical, Inc., dated April 12, 2011; Response to Geotechnical Report Review Checklist, 20412 Laguna Canyon Road, Laguna Beach, California by ViaGeos, dated June 5, 2013; and Comment regarding letter by Clean Water Now, 20412 Laguna Canyon Road, Laguna Beach, California by ViaGeos, dated December 3, 2013.

The applicant shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment unless the Executive Director determines that no amendment is legally required.

6. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from flooding, erosion, slope failure, landslides, and wildfire; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
7. **Liability for Costs and Attorneys Fees.** By acceptance of this permit, the Applicant/Permittee agrees to reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees -- including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay -- that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Applicant/Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.
8. **Future Improvements.** This permit is only for the development described in Coastal Development Permit A-5-LGB-14-0019. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to this development governed by the Coastal Development Permit A-5-LGB-14-0019. Accordingly, any future improvements to the structures authorized by this permit, including but not limited to, repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit A-5-LGB-14-0019 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

**9. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.** The applicant shall comply with the following construction-related requirements:

- a. No demolition or construction materials, debris, equipment or waste shall be placed or stored in any location where it may enter or impact sensitive habitat areas, streams, wetlands, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
- b. The permittee shall employ Best Management Practices (BMPs) to ensure that erosion is minimized and the stream is protected from sedimentation.
- c. Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
- d. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- e. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- f. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- g. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- h. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- i. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- j. The discharge of any hazardous materials into any receiving waters shall be prohibited.
- k. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- l. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity
- m. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

**10. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized

development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

## **IX. FINDINGS AND DECLARATIONS – DE NOVO PERMIT**

Note: The Findings and Declarations in the Substantial Issue section of this staff report are hereby adopted by reference into the Findings and Declarations for the De Novo Permit.

### **A. Project Description and Location**

The project site is comprised of two lots (36,750 square feet) on the east side of Laguna Canyon Road (State Route 133) in the City of Laguna Beach, three miles inland of Main Beach (Exhibits #1&2). Laguna Canyon Creek flows across the rear of the property along its eastern side. The applicant proposes to construct a thirty-unit artists' work/live project with 17,242 square feet of interior work/live area; 11,421 square feet of exterior, communal work area; 513 square foot retail art gallery; and a 47-stall parking garage, including two handicapped spaces. Space for bicycle parking is also provided, as is one 10'x 40' the loading space. Mature trees will be maintained on-site and California Sycamores and Weeping Willows will be added to provide screening for the building.

The proposed project reaches a height of 31 feet high above base flood elevation, or a maximum of 36 feet above grade. The roofs are multiple pitched. The proposed structure contains two separate building elements, which are connected by decks and roof components above a parking garage. The design includes two floors of work/live units arranged around exterior communal work spaces. The parking garage is located under the two floors of live/work space. The work/live units range in size from 485 square feet to one 1,640-square foot unit. The building façade includes a variety of rustic materials and rural cladding.

In order to address some of the concerns raised in the substantial issue report, the applicant has proposed to delete from the plans the cantilevered decks on the rear of the structures (near the creek), provide a 25-foot setback from the center of the creek, and implement a habitat restoration plan on the rear of the property along Laguna Canyon Creek, which was otherwise planned to be left undisturbed.

### **B. Biological Resources**

See Pages 12-18 of this staff report for the relevant policies set forth by the certified City of Laguna Beach LCP.

As identified in the Substantial Issue section of the staff report, the substantial issues raised by the appeal are the proposed project's potential impacts to the riparian habitat that exists in and along Laguna Canyon Creek on the rear of the project site. Laguna Canyon Creek is a "Blue-line" stream,

as designated on the USGS 7.5 Minute Quadrangle Series Map. Laguna Canyon Creek drains the Laguna Canyon Watershed and outlets into the Pacific Ocean three miles south of the project site. The creek is briefly culverted alongside Laguna Canyon Road within a small developed area but most of the upper course flows in a natural channel.

Commission staff ecologist Dr. Jonna Engel's review of the project and surrounding environment concludes that the creek, on the project site, supports riparian habitat and is an Environmentally Sensitive Habitat Area that warrants protection from the impacts of new development (Exhibit #6). Dr. Engel wrote:

*Laguna Creek is within the Laguna Canyon Watershed. Laguna Canyon cuts through the San Joaquin Hills, runs northeast to southwest, and is drained on the east side by tributaries of San Diego Creek and on the west side by Laguna Canyon Creek. It is deeper and more rugged on the southwestern end near Laguna Beach. A majority of the canyon is located within the Laguna Coast Wilderness; small portions are part of Aliso and Wood Canyons Regional Park and the cities of Irvine, Laguna Beach, Laguna Woods and Aliso Viejo. Laguna Canyon Creek begins as an ephemeral creek draining a mountainside west of the valley floor down into the canyon. It is briefly culverted alongside Laguna Canyon Road within a small developed area but most of the upper course flows in a natural channel...*

*Laguna Canyon Creek is one of two principle creeks in the Laguna Canyon watershed. The Laguna Canyon watershed is within the Laguna Coast Wilderness, which consists of 7,000 acres of pristine coastal canyon country. The Laguna Coast Wilderness is connected to the City of Irvine's open space area, and the two combined comprise over 20,000 acres of native unfragmented habitat. In addition to being a major watershed creek, Laguna Canyon Creek is an important wildlife corridor that links the upper canyon and hills to the lower canyon and terrestrial/marine interface. Many species of birds, mammals, reptiles and amphibians travel along creek and stream corridors to forage, migrate, disperse, and locate mates. The riparian habitat alongside creeks and streams is a critical component of wildlife corridors.*

*Laguna Canyon Creek is a blue-line stream in a nearly pristine coastal watershed within a larger area consisting of over 20,000 square feet of open space. Although the stretch of creek adjacent to the proposed project site has been constrained by development and has sections of concrete lined bank, it continues to support native riparian habitat and to provide important processes and functions. Streams and creeks are a rare and threatened habitat throughout California and are easily disturbed and degraded by human activities and development. For the reasons presented here I find that Laguna Canyon Creek and the associated riparian habitat rise to the level of environmentally sensitive habitat (ESHA). I recommend that the creek and riparian habitat be protected by a 25 foot buffer measured from the centerline of the creek, that the buffer area is restored by removing non-native species and planting native riparian species, and that balconies do not encroach into the buffer zone.*

Based on Dr. Engel's expert analysis and recommendation, Commission staff is recommending that the proposed development provide an area at least 25 feet wide (along the western bank of the creek) between all portions of the structures (including balconies, decks, patios, and eaves) and the centerflow line of Laguna Canyon Creek. The applicant has agreed to provide a 25-foot setback as recommended, and is also proposing to restore the Laguna Canyon Creek Setback by removing non-native plants and installing plants native to Laguna Canyon and appropriate to the site's hydrology and historical ecology. Special Condition One describes the required Setback from Laguna Canyon Creek. Special Condition Three requires the applicant to provide a detailed Habitat Restoration Plan with a five-year monitoring program.

The requirement for the 25-foot setback from Laguna Canyon Creek is set forth in the policies of certified LCP:

*9-C (a): Streams on the Major Watershed and Drainage Courses Map which are also "Blue-line" streams identified on the USGS 7.5 Minute Quadrangle Series, shall be identified and mapped on the Coastal Environmentally Sensitive Areas Map of the Land Use Plan. For these streams, a minimum setback of 25 feet from the top of the stream banks shall be required in all new developments. A greater setback may be necessary in order to protect all riparian habitat based on a site-specific assessment. No disturbance of major vegetation, or development, shall be allowed within the setback area. This provision shall not apply to channelized sections of streams without significant habitat value. Where development is proposed on an existing subdivided lot which is otherwise developable consistent with all City ordinances and other policies of this Plan except that application of this setback would result in no available building site on the lot, the setback may be reduced provided it is maintained at a width sufficient to protect all existing riparian habitat on the site and provided all other feasible alternative measures, such as modifications to the size, siting and design of any proposed structures, have been exhausted.*

*9-C(b): Require a setback of a minimum of 25 feet measured from the centerflow line of all natural drainage courses other than streams referenced in 9-C(a) above. Such setback shall be increased upon the recommendation of the City engineer and environmental planner through the environmental review process. However, a variance may be given in special circumstances where it can be proven that design of a proposed structure on an affected lot will preserve, enhance or restore the significance of the natural watercourse. At no time shall grubbing of vegetation, elimination of trees, or disturbance of habitat be allowed within the setback area before or after construction.*

The application of the City's many LCP policies concerning the protection, preservation, and enhancement of the City's biological resources depends on the category of the waterway as outlined in the above policies. The apparent disagreement amongst the experts about the significance of the habitat in the vicinity of the proposed project, and how that potentially affects the proposed project, is more thoroughly clarified below:

1. Determination of the Laguna Canyon Creek Setback

As articulated in Section 1 of the Substantial Issue staff report, the City's application of the setback policies to this project is a substantial issue. Pursuant to Policy 9-C(a) of the City's Open Space/Conservation Element, all parties agree that the stream in question – Laguna Canyon Creek –

is a “Blue-line” stream. The City failed to clearly address, however, whether Laguna Canyon Creek is also located on the Major Watershed and Drainage Courses (MWDC) Map in the Open Space/Conservation Element. The City’s staff reports regarding Conditional Use Permit 13-047, Planning Commission Design Review 13-1375, and Coastal Development Permit 13-1376, as well as the appeal of those decisions, refer to Laguna Canyon Creek as a “significant watercourse,” but don’t clearly state whether “significant watercourse” means that Laguna Canyon Creek is, in fact, located on the MWDC Map. And while Laguna Canyon is identified as a major watershed on the MWDC map, Laguna Canyon Creek is not clearly identified as a “significant watercourse” on that map. Staff is unable to distinguish between the line on the map showing the road as opposed to the same line that may be identifying the creek as a significant watercourse.

A finding that Laguna Canyon Creek is on the MWDC map is critical, for in order for Policy 9-C(a) to apply, the plain language requires that the stream in question be both a “Blue-line” stream and designated on the MWDC map. Accordingly, since Laguna Canyon Creek is not identified on the MWDC Map, the required setback of 25 feet from the top of the stream bank would not apply.

Should the Commission find that the Major Watershed and Drainage Courses Map should have included Laguna Canyon Creek, then Policy 9-C(a) would apply to this situation. In that case, a minimum setback of 25 feet from the top of the stream banks is to be required for this new development instead of the 25 feet from the centerline of the creek, and a greater setback may be necessary in order to protect all riparian habitat.

In the alternative, should it be determined that it was proper to leave Laguna Canyon Creek off of the Major Watershed and Drainage Courses Map, then Policy 9-C(a) would not apply to this situation. In such a circumstance, assuming 9-C(a) and 9-C(b) were intended to account for all possible creek or stream types within Laguna Beach, Policy 9-C(b) must then apply, because 9-C(b) requires a setback of a minimum of 25 feet measured from the centerflow line of all natural drainage courses other than streams referenced in 9-C(a).

Both policies 9-C(a) and 9-C(b) allow discretion in certain circumstances to increase or decrease the size of the “minimum 25-foot” setback. Notably, Policy 9-C(b) also allows the setback to be increased upon the recommendation of the City engineer and environmental planner through the environmental review process. References to the environmental planner in the LCP is interpreted to allow Coastal Commission staff to assume that role when a matter is on appeal. Accordingly, in this case, Coastal Commission staff would be acting as the designated environmental planner. LCP Policy 9-C(b) also allows reductions in the 25-foot setback (only for waterways that are not designated as significant watercourses) in special circumstances where it can be proven that design of a proposed structure on an affected lot will preserve, enhance or restore the significance of the natural watercourse.

In determining that the setback be measured from the centerflow line, the City found that Laguna Canyon Creek is channelized in this location and does not contain significant habitat value. A minimal setback of fifteen feet was required by the City: 25 feet minus the City’s allowance for ten-foot encroachments into the setback.

The Commission finds, however, that the creek does contain significant riparian habitat value and it is not fully channelized. A 25-foot setback is required, but pursuant to Policy 9-C(b) the setback is

measured from the centerflow line rather than the top of bank in this case (until the Major Watershed and Drainage Courses Map is amended to clearly identify Laguna Canyon Creek as a significant watercourse). The full 25-foot buffer must be provided to adequately protect the creek from the impacts of development (e.g., light, noise, runoff, etc.). The City's allowance for ten-foot encroachments into the setback contradicts the intent of the setback to provide a protective buffer between the riparian habitat and the development. The applicant has agreed to revise the project to provide a 25-foot setback from the centerflow line.

Despite numerous amendments and updates over the years, many portions of the Laguna Beach LCP are outdated. Thus, when confronted with policies within an older LCP that pose an apparent conflict with current conditions, or which otherwise lead to a questionable application of the LCP to a particular project, the Commission has taken into consideration new science or changing environmental conditions to aid the decision-making process. Given the creek's value to the surrounding environment, and the rare and threatened nature of Blue-line streams in the coastal zone, the Commission finds that the provision of the 25-foot setback, along with the applicant's proposal to restore riparian habitat, meets the intent of the certified LCP to enhance and protect the sensitive habitat of Laguna Canyon Creek.

## 2. Environmentally Sensitive Areas

Policies contained in the Open Space/Conservation Element, Land Use Element, and the LCAASP including, but not limited to the following: 9-A, 9-F; 5.2, 7.3, 7.4, 10.2, and 10.3; and Topic 4, require and/or suggest the preservation and restoration of habitat and coastal resources be included in proposed development.

Open Space/Conservation Element Policy 8-I states: *Environmentally Sensitive Areas (ESA's) as defined in section 30107.5 of the California Coastal Act shall be identified and mapped on a Coastal ESA map. The following areas shall be designated as Environmentally Sensitive Areas: Those areas shown on the Biological Resource Values Map in the Open Space/Conservation Element as "Very High" habitat value, and streams on the Major Watersheds and Drainage Courses Map which are also streams as identified on the USGS 7.5 Minute Quadrangle Series and any other areas which contain environmentally sensitive habitat resources as identified through an on-site biological assessment process, including areas of "High" and "Moderate" habitat value on the Biological Resources Values Map and areas which meet the definition of ESA's in Section 30107.5 of the Coastal Act, including streams, riparian habitats, and areas of open coastal waters, including tidepools, areas of special biological significance, habitats of rare or endangered species, near-shore reefs and rocky intertidal areas and kelp beds.*

Open Space/Conservation Element Policy 8-I states, in part: *Detailed biological assessments shall be required for all new development proposals located within areas designated as Environmentally Sensitive Areas on the Coastal ESA Map. To protect these resources, the following shall be required:*

1. *No new development proposals shall be located in areas designated as "Environmentally Sensitive Areas" on the Coastal ESA Map except for uses dependent upon such resources.*

2. *When new development proposals are situated in areas adjacent to areas designated as “Environmentally Sensitive Areas” on the Coastal ESA Map and where these are confirmed by subsequent on-site assessment, require that development be designed and sited to prevent impacts which would significantly degrade such areas.*

Pursuant to Policy 8-I, proposed development located within areas designated as ESA’s warrant special protection under the City’s LCP. The previous section of this staff report includes a summary of the biological assessments provided by the project’s consultant and Commission staff’s ecologist Dr. Jonna Engel. Based on those biological assessments, it has been established that Laguna Canyon Creek is identified as a “Blue-line” stream and contains riparian habitat. Pursuant to the definition of ESA in Policy 8-I, it can be established that ESA exists adjacent to the proposed development. As such, the proposed development is required to be designed and sited to prevent impacts which would significantly degrade such areas.

To avoid the potential adverse impacts to ESA, the applicant has proposed to provide a 25-foot setback, along with a five-year Habitat Restoration Plan for the area along the creek in the rear of the development abutting the Creek, as well as removal of the cantilevered decks that would have encroached into the 25-foot setback area [Habitat Restoration Plan, Longi Work/Live Property, City of Laguna Beach, Orange County, California, prepared by Glenn Lukos Associates of Lake Forest, California dated October 8, 2014]. The Habitat Restoration Plan is designed to limit the potential for adverse impacts to ESA through 1) removal of existing invasive non-native species; 2) installation of riparian and transitional riparian plant species appropriate to Laguna Canyon, and 3) control of non-native species within the restoration area through a five-year maintenance program. These proposed actions should be sufficient to avoid the potential impacts to the riparian habitat, and improve this portion of the Creek as required by Policy 8-I.

Specifically, the proposed Habitat Restoration Plan will attempt to restore the onsite areas of Laguna Canyon Creek, in the following ways:

1. Removal of invasive species including Mexican fan palm (*Washingtonia robusta*), Spanish sunflower (*Pulicaria paludosa*), English ivy (*Hedera helix*), Bermuda grass (*Cynodon dactylon*), rabbitsfoot grass (*Polypogon monspeliensis*), bristly ox-tongue (*Helminthotheca echioides*), and poison hemlock (*Conium maculatum*), as well as other non-native annual and perennial species including ornamental yucca (*Yucca* sp.), ripgut brome (*Bromus diandrus*), cheeseweed (*Sonchus arvensis*), clover (*Medicago* sp.), and other non-native species from the length of Laguna Canyon Creek onsite (0.02 acre) and the western bank (0.09 acre); and
2. Planting native riparian canopy and understory species including arroyo willow (*Salix lasiolepis*), blue elderberry (*Sambucus nigra* ssp. *caerulea*), creeping ryegrass (*Elymus triticoides*), California wild rose (*Rosa californica*), California black berry (*Rubus ursinus*), coyote brush (*Baccharis pilularis*), coast goldenbush (*Isocoma menziesii*), and bush sunflower (*Encelia californica*) on the western bank (0.09 acre).

The applicant’s consultant (GLA) expects implementation of the Habitat Restoration Plan to be successful, in part, because the target invasive species have been successfully eradicated in similar areas using the proposed methods, and because the plant palette to be utilized incorporates riparian species that naturally occur in Laguna Canyon Creek. In addition, the applicant has committed to



commence the Habitat Restoration Plan in the fall after completion of the proposed development, which is not only outside of the nesting bird season (September 1 through February 14), but should present more favorable conditions and weather for plant establishment.

The proposed Habitat Restoration Plan has been reviewed and preliminarily approved by Commission staff. Final approval of all aspects of the Habitat Restoration Plan must still be made, therefore, **Special Condition 3** requires the applicant to submit a revised Habitat Restoration Plan for review and approval by the Executive Director, prior to issuance of the coastal development permit. **Special Condition 3** memorializes the applicant's proposal, but also requires a revision of the plan in order to add specific details in regards to timing, landscape plan details, and the provision of annual monitoring reports. With the Habitat Restoration Plan incorporated into the proposed project, the Commission finds that the proposed development complies with the habitat protection, preservation, and restoration policies in the City's LCP.

**Special Condition 4** requires the restoration area and setback area to be protected as Open Space. The condition states that: A) no new development shall occur within the restoration area described in Special Condition Three (the area along the banks and streambed of Laguna Canyon Creek on the rear of the project site, including the Laguna Canyon Creek Setback), except for: 1) the activities described in the Habitat Restoration Plan approved by the Executive Director pursuant to Special Condition Three, 2) limited benches and seating areas, and 3) a five-foot wide walkway constructed with permeable pavers next to the rear of the approved structures (on the portion of the Laguna Canyon Creek Setback situated furthest from the creek). Therefore, as conditioned to restore and protect the creek and setback area from future development, the proposed project conforms to the ESA policies in the City's LCP.

## C. Visual Resources

Policy 7-A of the Open Space/Conservation Element states: *Preserve to the maximum extent feasible the quality of public views from the hillsides and along the city's shoreline.*

Policy 7-C Open Space/Conservation Element states: *Inventory and map positive and negative visual resources from Coast Highway and Laguna Canyon Road for use in reviewing development projects which might impact the viewshed of these designated scenic highways, pending funding availability.*

Land Use Element Policy 2.10 states: *Maximize the preservation of coastal and canyon views (consistent with the principle of view equity) from existing properties and minimize blockage of existing public and private views. Best efforts should be made to site new development in locations that minimize adverse impacts on views from public locations (e.g. roads, bluff top trails, visitor-serving facilities, etc.)*

The proposed project is located in the M-1B Light Industrial Zone of Laguna Canyon, and adjacent to Laguna Canyon Road (State Route 133), which is a heavily utilized transportation corridor into and out of Laguna Beach. The M1-B height limit allows development in the floodplain to be up to 36-feet high, which the proposed project complies with. The proposed two-story structures are setback more than 25 feet from the highway, and are elevated above the 100-year floodplain elevation. In addition, the project is designed with multiple pitched roofs meant to emulate the hillside skyline (Exhibit #4). Further, the proposed project will be partially screened due to the addition of California

Sycamores and Weeping Willows along the Laguna Canyon Road side of the property. Such measures to reduce the project's visual impacts are acknowledged.

As stated in the Substantial Issue section pertaining to visual resources, the City's LCP visual resource policies are broadly written and allow a fair amount of interpretation as to how they apply to a particular project. Thus, a project, such as the one at issue here, could be found to be in compliance with the requisite development standards and still impact public views.

The proposed project underwent a design review, which was approved by both the Planning Commission and City Council (Design Review No. 13-1375). Project design, visual impact and neighborhood compatibility have been thoroughly reviewed by the local government, and its approval of the project is supported by substantial evidence (See the Substantial Issue section of this staff report). No shoreline views are currently available from this section of the canyon, which is three miles inland of the sea.

In conclusion, although the City's certified LCP contains broad language pertaining to the preservation of public views, the size, mass, and scale of the proposed development complies with the applicable development standards, and the project as approved by the City will not adversely affect significant public views of the shoreline or hillsides.

#### **D. Community Character**

See Page 30 of this staff report for the relevant policies set forth by the certified City of Laguna Beach LCP.

The appellants generally contend that the proposed project fails to preserve the rural character of Laguna Canyon. The subject site is surrounded by a mix of uses including residential, commercial and light industrial. The City determined that the proposed project use is compatible with the Light Industrial (M-1B) Zone based on the surrounding neighborhood comprised of commercial and residential uses and the discussions within the LCAASP regarding artists living and working in Laguna Canyon.

The design of the proposed project is more rural in character than urban in that it provides large setbacks and open spaces between neighboring properties. These setback areas will be landscaped with large trees and native vegetation (not paved over for parking). The proposed project is comprised of two two-story structures on a large site (approximately 36,750 square feet). The project complies with all of the applicable development standards in regards to height and scale. In addition, to look more rustic, the proposed project makes use of weathered wood siding, and uses rustic colors of taupe and wood tones on the exterior of the building, and also makes use of a raked-finish exterior stucco. The proposed use itself (artist's residences) reflects the historic character of Laguna Beach as an artist colony.

The mix of uses in the vicinity of the proposed project and the rural elements that have been incorporated into the project design suggest that the proposed development conforms to the rural character policies of the Laguna Beach Land Use Element and Laguna Canyon Annexation Area Specific Plan of the certified LCP.

In this case, the local decision on the coastal development permit was appealable due to its location near a Blue-line stream (three miles inland) and its potential impact to sensitive riparian habitat, not because the project site is part of a unique visitor destination on the shoreline (like downtown Laguna Beach). Therefore, the Commission is hesitant to intervene in this particular situation where the conformance with community character is an issue. The decision regarding community character in this case has been thoroughly reviewed by the local government and its citizens who have more insight and experience regarding the uniqueness of their community. As the local government has deemed the project to be in conformance with the LCP policies concerning the character of the community, and no obvious issues have been presented to suggest that the City's decisions was arbitrary or capricious, the Commission also finds that the proposed development conforms to the community character policies in the LCP.

## **E. Water Quality**

Policy 9-I of the Open Space/Conservation Element states: *Require new development projects to control the increase in volume, velocity and sediment load of runoff from the greatest development areas at or near the source of increase to the greatest extent feasible.*

Policy 9-J of the Open Space/Conservation Element states: *Require new developments to maintain runoff characteristics as near as possible to natural discharge characteristics by maintaining the natural conditions of the watershed.*

Policy 9-K of the Open Space/Conservation Element states: *Promote preservation and enhancement of the natural drainage of Laguna Beach*

Policy 9-Q of the Open Space/Conservation Element states: *Oppose new development within the City's surrounding areas that would result in significant adverse impacts to the City's hydrology.*

Policy 10A of the Open Space/Conservation Element states: *Require that plan review procedures recognize and avoid geologically unstable areas, flood-prone lands, and slopes subject to erosion and slippage.*

Policy 10F Open Space/Conservation Element states: *To minimize risk to life and structures, new development located in established floodprone lands shall incorporate all appropriate measures pursuant to the City's "Flood Damage Prevention and Prohibition Ordinance."*

The appellant (Butow) contends that the offered Best Management Practices (BMPs) are inadequate and insufficient, as well as all the flood management, water quality and drainage mitigations imposed on the proposed project (e.g., sub-surface groundwater flows, impervious surfaces, soil compaction, biofiltration, flow rates, and pollutant loading into Laguna Canyon Creek).

As indicated in the City's staff reports, a Water Quality Management Plan (WQMP) has been prepared for the project and peer-reviewed for accuracy by the City's consultant. The Addendum to the WQMP acknowledges that the proposed development incorporates several bioretention areas, which are designed to reduce the runoff volume discharged from the site. The bioretention areas have an average depth of twelve inches across 1,885 square feet. The Unit Hydrograph results in the WQMP Addendum show that the ten-year, 24-hour volume difference between the existing condition

(4,525 cu. ft.) and the developed condition (6,037 cu. ft.) is 1,512 cubic feet which is less than the proposed storage volume of 1,885 square feet. Accordingly, the bioretention areas are sufficiently sized to address the hydromodification storage requirements. Therefore, the WQMP should reduce potential water quality impacts to less than significant.

A hydrology study has also been prepared and peer-reviewed by the City's consultant. According to the City, the project has been designed to be elevated above the floodplain, which complies with the City's Municipal Code and FEMA, and a "no-rise" certificate has been issued by the project hydrologist. The project hydrologist also concluded, in part, that "[t]he live/work studio development does not increase the downstream erosion potential from the existing conditions . . ."

Based on the water quality and flood analyses done by the consultants and City, the appellant's contentions have been adequately addressed. To further ensure that water quality is not impaired, **Special Condition 9** imposes additional construction and post-construction BMPs that the appellee/applicant is required to observe. Therefore, as conditioned, the Commission finds that the proposed development is consistent with the City's LCP policies concerning water quality and hazards.

## **F. Hazards**

Policy 9-I of the Open Space/Conservation Element states: *Require new development projects to control the increase in volume, velocity and sediment load of runoff from the greatest development areas at or near the source of increase to the greatest extent feasible.*

Policy 9-J of the Open Space/Conservation Element states: *Require new developments to maintain runoff characteristics as near as possible to natural discharge characteristics by maintaining the natural conditions of the watershed.*

Policy 9-K of the Open Space/Conservation Element states: *Promote preservation and enhancement of the natural drainage of Laguna Beach*

Policy 9-Q of the Open Space/Conservation Element states: *Oppose new development within the City's surrounding areas that would result in significant adverse impacts to the City's hydrology.*

Policy 10-A of the Open Space/Conservation Element states: *Require that plan review procedures recognize and avoid geologically unstable areas, flood-prone lands, and slopes subject to erosion and slippage.*

Policy 10-F of the Open Space/Conservation Element states: *To minimize risk to life and structures, new development located in established floodprone lands shall incorporate all appropriate measures pursuant to the City's "Flood Damage Prevention and Prohibition Ordinance."*

An updated Geotechnical Report has been prepared for the proposed project by Petra Geotechnical, Inc., as well as a response to Geotechnical Report Review Checklist prepared by ViaGeos. The updated Geotechnical Report concludes that from a soils engineering and engineering geologic standpoint, the property is considered suitable for the proposed grading and construction provided that the conclusions and recommendations are incorporated into the design criteria and project

specifications. The updated Geotechnical Report also states that the proposed grading and construction are not expected to affect the stability of adjoining properties.

Furthermore, the Response to Geotechnical Report Review Checklist prepared by ViaGeos reviewed the referenced report by Petra Geotechnical, Inc. and accepts the findings of the site investigation, analysis and conclusions of that report. ViaGeos's response provides additional recommendations which supersede those in prior reports by Petra Geotechnical, Inc. Moreover, in response to contentions that the project will increase erosion, ViaGeos prepared a comment letter which states that, as discussed in their report, the stream channel slope is potentially unstable and prone to erosion during flooding events, which presents a potential hazard to the structure. ViaGeos's report recommends, however, that the potential for erosion to impact the structure can be limited by cement treating proposed engineered fill beneath and laterally outside the building footprint areas. Additional recommendations include, but are not limited to, blending cement into the compacted fill place in preparation of the building pad. Finally, ViaGeos's report emphasizes that no retaining wall has been proposed as mitigation for potential erosion of the channel bank. **Special Condition 5** requires the applicant to demonstrate that the final foundation and grading/drainage plans for the proposed project are consistent with the recommendations contained in the Updated Geotechnical Reports.

A Hydrology Report has also been prepared for the proposed project. The project is in compliance with the City's Floodplain Management Ordinance (25.38) and the National Flood Insurance Program (NFIP), 44 CFR Part 65, as administered the by the Federal Emergency Management Agency (FEMA), and confirmed by the City's approval on 7/10/2013. In addition, according to consultants for the project, downstream erosion potential will not increase due to implementation of the project. In fact, the consultant states that erosion and channel instability that occurs in Laguna Canyon Creek is the result of the gradual urbanization of the entire upstream watershed, which includes portions of the Cities of Laguna Beach, Laguna Hills, Laguna Woods, Irvine, and Aliso Viejo.

Based on the findings and recommendations provided in the Geotechnical reports and related responses to comments, the Commission finds that the proposed development is consistent with the City's LCP policies regarding hazards. However, no development in the floodplain can be guaranteed to be safe from hazard. All development located in the floodplain has the potential for damage caused by flooding, erosion, slope failure, landslides, and wildfire. The Commission routinely imposes conditions for assumption of risk in areas at high risk from hazards. **Special Condition 6** ensures that the applicant understands and assumes the potential hazards associated with the development.

## **G. Local Coastal Program**

The City of Laguna Beach LCP was certified by the Coastal Commission on January 13, 1993. The City's LCP is comprised of a variety of planning documents including the Land Use Element, Conservation/Open Space Element, and Laguna Canyon Annexation Specific Plan. The Implementation Plan (IP) portion is Title 25, the City's Zoning Code.

The City amended the Artists' Work/Live Ordinance (Ordinance No. 1567) in 2012 to facilitate the development of artists' work/live units that will be affordable and provide an incentive for artists to live and work in Laguna Beach. The amended ordinance added the M-1B Light Industrial Zone to the zones in which live/work units are allowed. The proposed artists' work/live project is the first

application under the adopted provisions. The amended ordinance was incorporated into the certified LCP by Amendment No. 1-12, which the Commission certified on March 12, 2014 (subsequent to its action to approve with suggested modifications on November 15, 2013). As discussed in this staff report, the proposed project, as conditioned, conforms to the provisions of the City of Laguna Beach Certified LCP.

## **H. California Environmental Quality Act (CEQA)**

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect which the activity may have on the environment.

The City of Laguna Beach is the lead agency for the purposes of CEQA review. On April 1, 2014, the City certified the Mitigated Negative Declaration for the proposed project (Mitigated Negative Declaration/Mitigation Monitoring Program for 20412-20432 Laguna Canyon Road, adopted 4/1/2014). Furthermore, the proposed project has been conditioned in order to be found consistent with the certified LCP. Mitigation measures, in the form of special conditions, require the applicant to: 1) provide an adequate buffer between the Blue-line stream and the proposed structures, 2) revise the project plans, 3) implement a Habitat Restoration Plan for the area along the Blue-line stream, 4) protect the restored area along the stream as open space, 5) conform to the geotechnical recommendations, 6) assume the risks of the development, and 7) implement best management practices to minimize adverse impacts to water quality during construction and operation of the development.

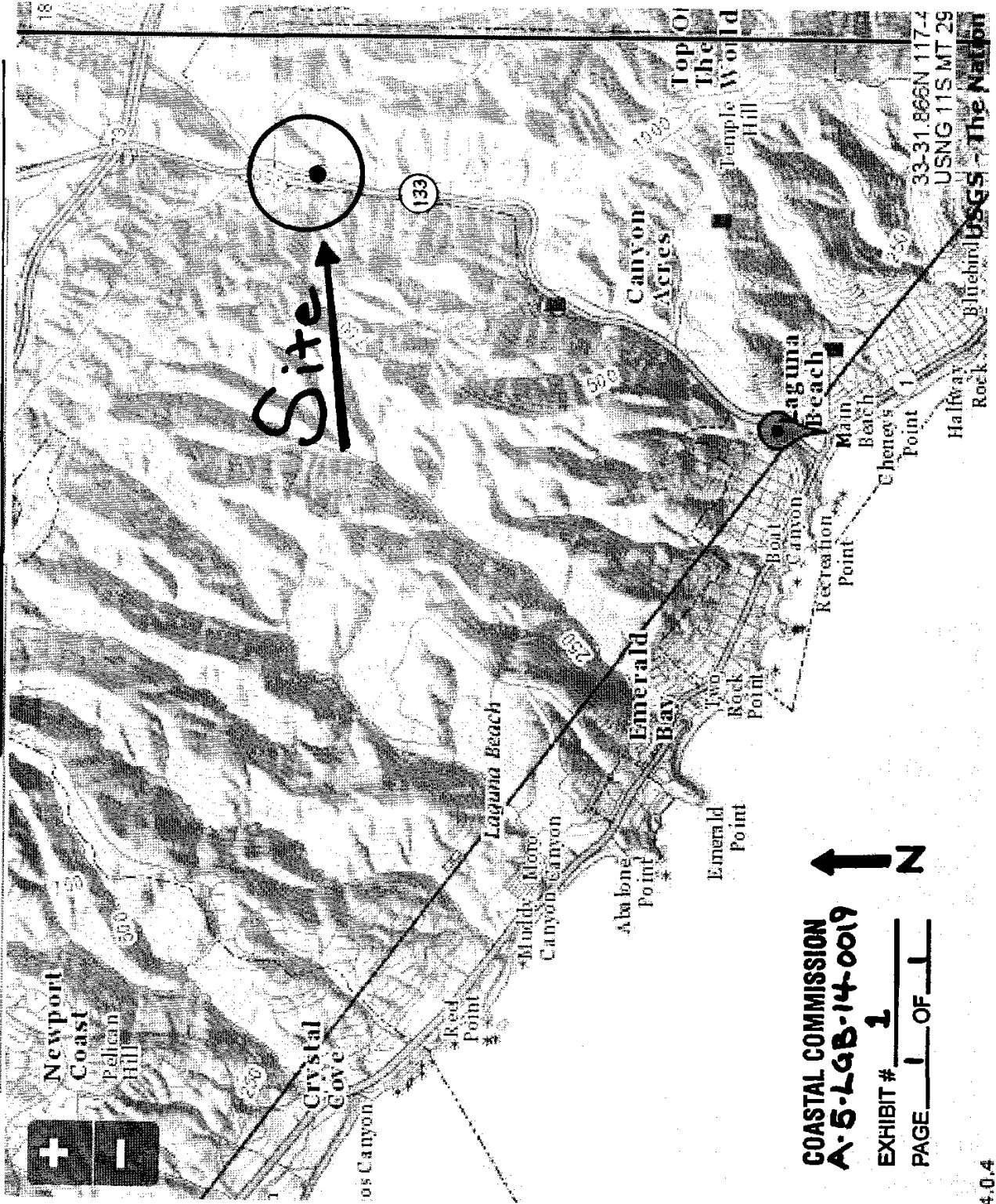
As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and complies with the applicable requirements of the Coastal Act to conform to CEQA.

## APPENDIX

1. City of Laguna Beach certified Local Coastal Program (LCP)
2. City File Record for Local Coastal Development Permit No. 13-1376
3. Mitigated Negative Declaration/Mitigation Monitoring Program for 20412-20432 Laguna Canyon Road, adopted 4/1/2014.
4. WQMP Addendum for: Longi Live Work Create Art Studios, 20412 & 20432 Laguna Canyon Road, Laguna Beach, CA, dated December 20, 2013 prepared by Toal Engineering, Inc of San Clemente, CA
5. Updated Geotechnical Report, Proposed Live/Work Artist Complex, 20412 Laguna Canyon Road, Laguna Beach, California by Petra Geotechnical, Inc., dated April 12, 2011
6. Response to Geotechnical Report Review Checklist, 20412 Laguna Canyon Road, Laguna Beach, California by ViaGeos, dated June 5, 2013
7. Comment regarding letter by Clean Water Now, 20412 Laguna Canyon Road, Laguna Beach, California by ViaGeos, dated December 3, 2013
8. Habitat Restoration Plan, Longi Work/Live Property, City of Laguna Beach, Orange County, California, prepared by Glenn Lukos Associates of Lake Forest, California dated October 8, 2014.
9. Memorandum, Dr. Jonna Engel regarding Appeal No. A-5-LGB-14-0019, 12/18/2014
10. Letter from John Erskine of Nossaman LLP re: Appeal No. 1-5-LGB-14-0019 re Coastal Development Permit 13-1376 (20412 and 20432 Laguna Canyon Road, Laguna Beach, California) Longi Artists Work/Live Project Approved by City of Laguna Beach Council on April 1, 2014, dated September 18, 2014.

Laguna Beach, CA

20412 & 20432 Laguna Canyon Road, Laguna Beach, Orange County



COASTAL COMMISSION  
A-5-LGB-14-0019

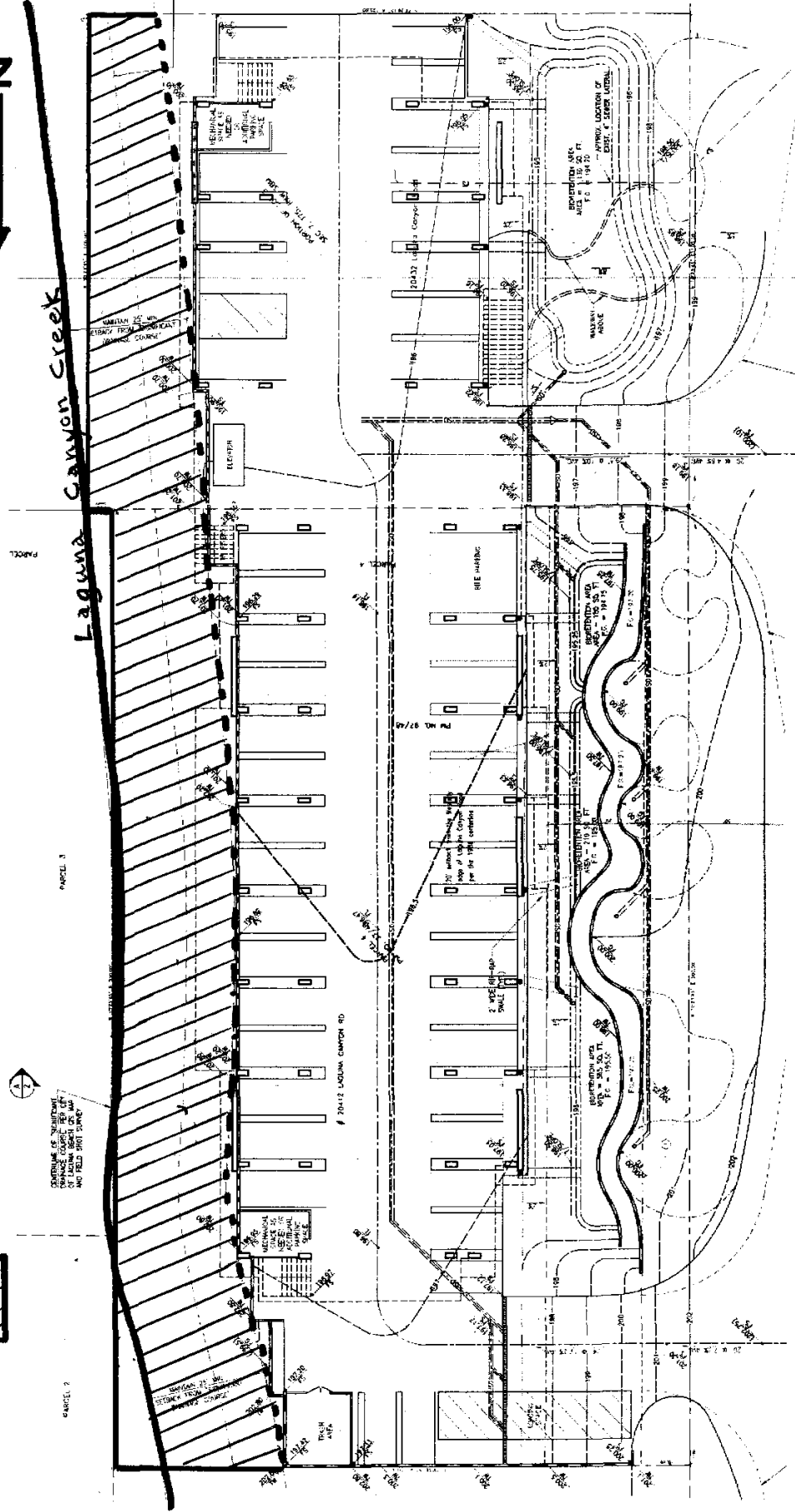
EXHIBIT # 1

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: 25-foot setback/Restoration Area



# Site Plan

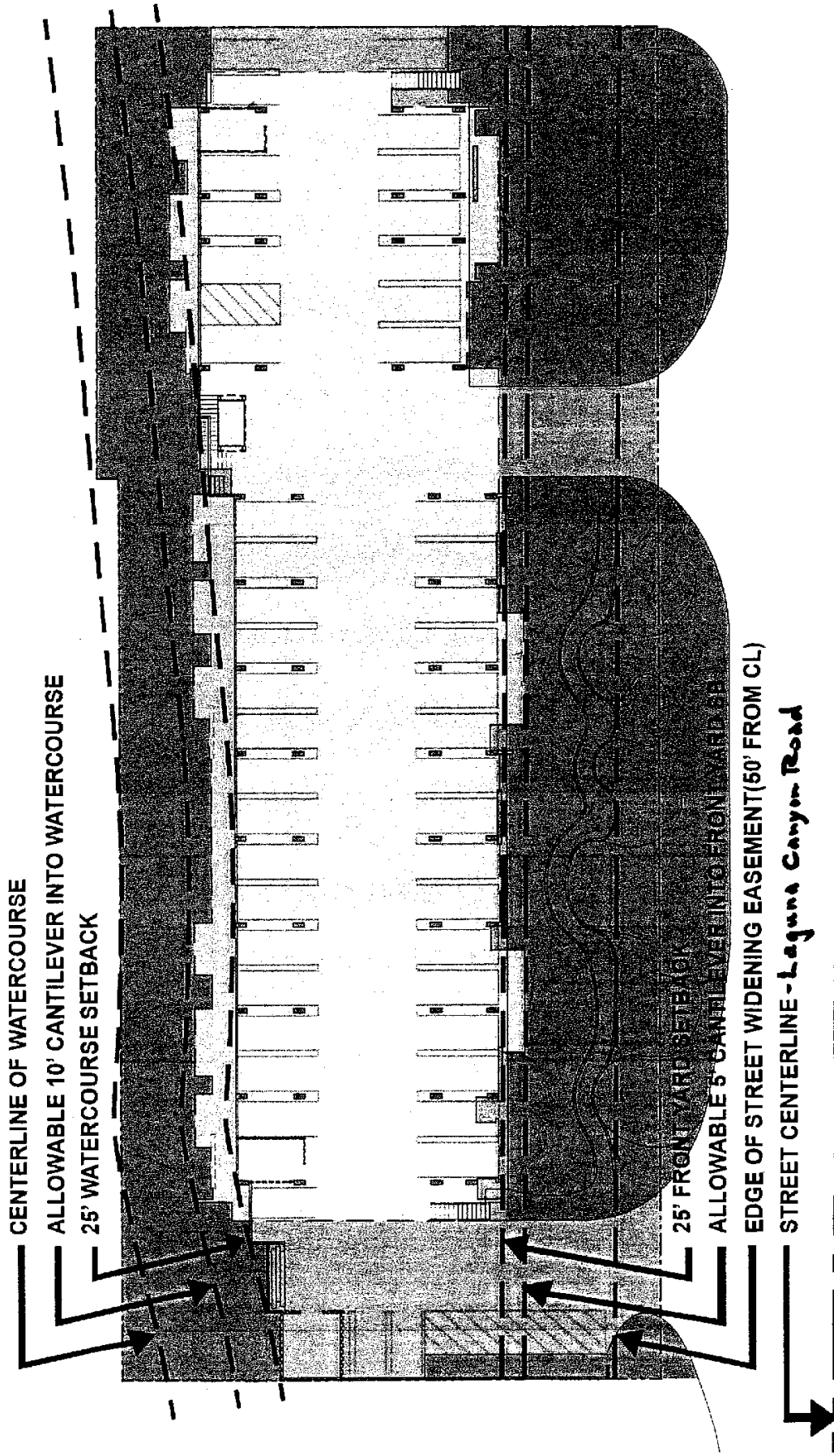
COASTAL COMMISSION

A-5-LGB-14-0019

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← Laguna Canyon Road →

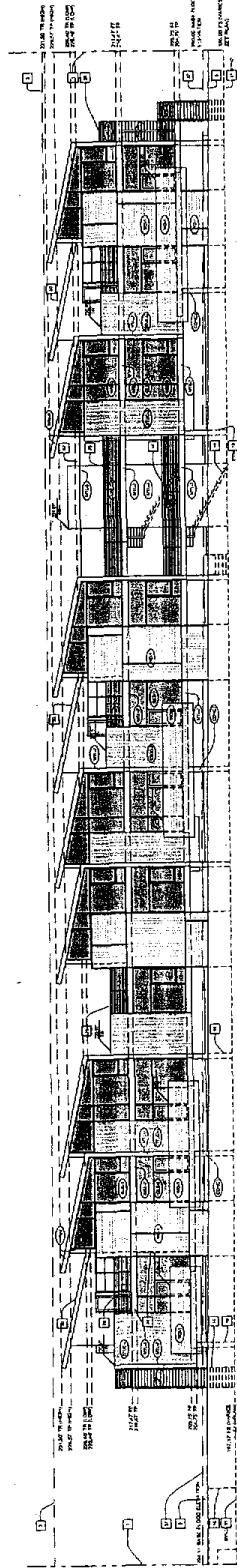


LANDSCAPE

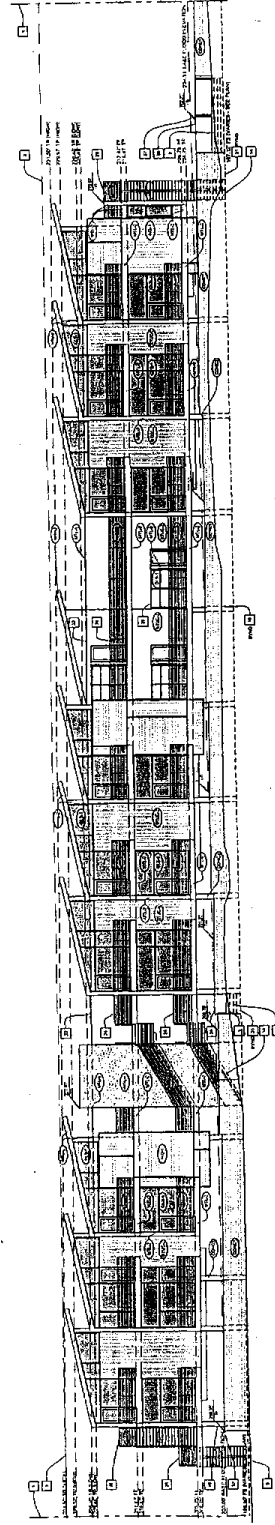
HARDSCAPE

EXTENT OF BUILDING ABOVE

# Site Plan - City Approval



WEST ELEVATION (FRONT)  
*Laguna Canyon*  
*Road*

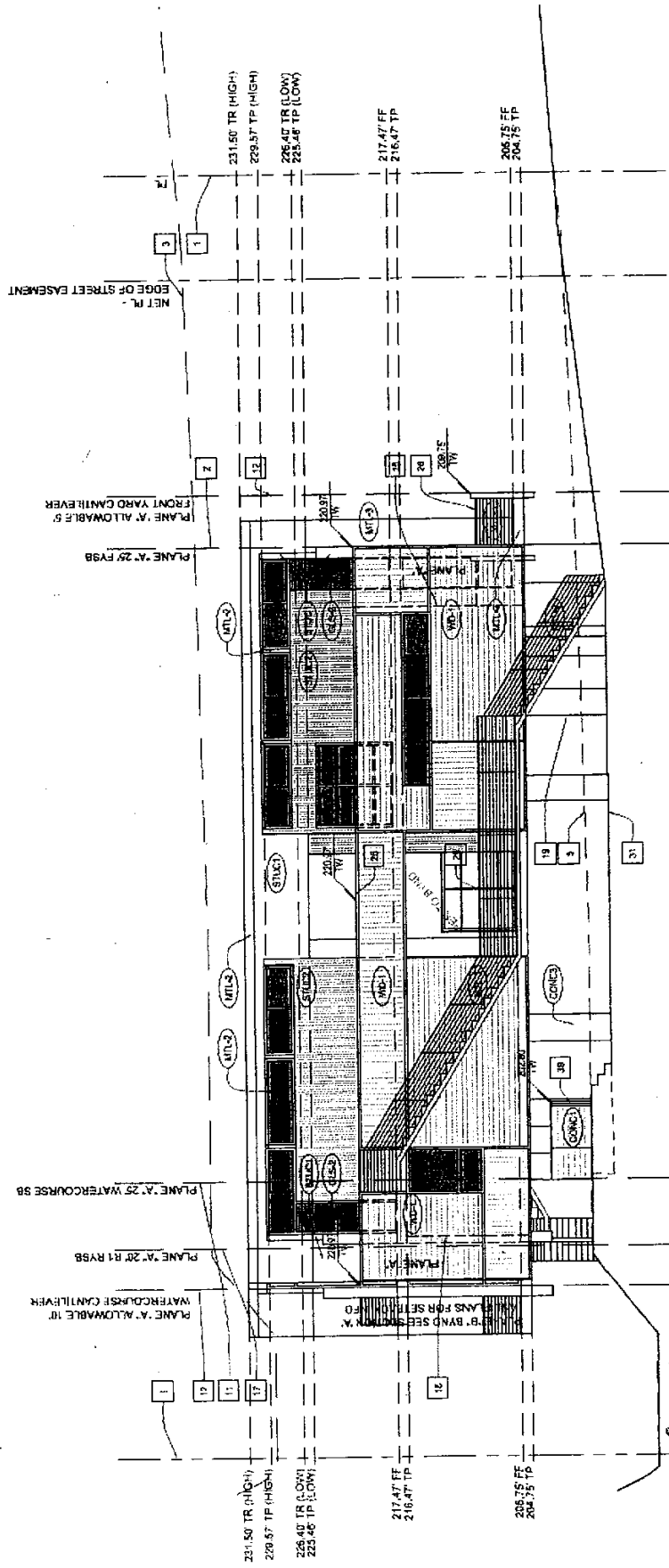


EAST ELEVATION (REAR)

COASTAL COMMISSION  
 A.S. LAB. 14-0019

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# NORTH ELEVATION

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
89 SOUTH CALIFORNIA ST., SUITE 200  
VENTURA, CA 93001  
(805) 585-1800

**MEMORANDUM**

**FROM:** Jonna D. Engel, Ph.D.  
Ecologist

**TO:** Charles Posner  
South Coast Planning Supervisor

**SUBJECT:** Laguna Beach Proposed Artists' Studio Project - Appeal A-5-LGB-14-0019

**DATE:** December 18, 2014

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**Documents Reviewed:**

Glenn Lukos Associates. August 12, 2013. Results of Biological/Regulatory Assessment Conducted for the 0.84-Acre Proposed Art Studios Project Located at 20412 and 20432 Laguna Canyon Road in Laguna Beach, Orange County, California. Prepared for Carolyn Martin, Principal Planner, City of Laguna Beach

---

I have been asked to evaluate the status of the natural resources at 20412 & 20432 Laguna Canyon Road in the City of Laguna Beach; the site of the proposed Laguna Canyon Art Studios project. I have reviewed aerial photographs and the Glenn Lukos Associates (GLA) biological/regulatory assessment report for the project dated August 12, 2013. In addition I visited the site on June 19, 2014. The subject site is immediately adjacent to Laguna Canyon Creek, a blue-line stream depicted on the Laguna Beach U.S. Geological Survey (USGS) topographic map that is unimpeded for most of the watershed. It has been artificially confined along a stretch of developed area adjacent to Laguna Canyon Road. In this area much of the creek banks are composed of concrete or rip rap that pre-dates the coastal act. The creek bank adjacent to 20412 and 20432 includes dirt banks interspersed with stretches of concrete lined banks.

Laguna Creek is within the Laguna Canyon Watershed. Laguna Canyon cuts through the San Joaquin Hills, runs northeast to southwest, and is drained on the east side by tributaries of San Diego Creek and on the west side by Laguna Canyon Creek. It is deeper and more rugged on the southwestern end near Laguna Beach. A majority of the canyon is located within the Laguna Coast Wilderness; small portions are part of Aliso and Wood Canyons Regional Park and the cities of Irvine, Laguna Beach, Laguna Woods and Aliso Viejo. Laguna Canyon Creek begins as an ephemeral creek draining a mountainside west of the valley floor down into the canyon. It is briefly culverted

EXHIBIT # 6  
PAGE 1 OF 2

alongside Laguna Canyon Road within a small developed area but most of the upper course flows in a natural channel.

Glenn Lukos Associates (GLA) found that the proposed project site supports both native riparian habitat and ornamental vegetation alongside Laguna Canyon Creek. The riparian habitat includes the following native species: arroyo willow, *Salix lasiolepis*; mugwort, *Artemisia californica*; California blackberry, *Rubus irsinus*; willow herb, *Epilobium ciliatum*; cattails, *Typha domingensis*; and heliotrope, *Heliotropium curassavicum*. GLA states that "During the site assessment avian species were observed utilizing the tree canopy and understory vegetation for foraging." They also found mosquitofish and crawfish in the creek. During our site visit we heard pacific tree frogs, *Pseudacris regilla*, while walking in the creek bed.

Laguna Canyon Creek is one of two principle creeks in the Laguna Canyon watershed which itself is within the Laguna Coast Wilderness which consists of 7,000 acres of pristine coastal canyon country. The Laguna Coast Wilderness is in turn connected to the City of Irvine open space and the two combined comprise over 20,000 acres of native unfragmented habitat. In addition to being a major watershed creek, Laguna Canyon Creek is an important wildlife corridor that links the upper canyon and hills to the lower canyon and terrestrial/marine interface. Many species of birds, mammals, reptiles and amphibians travel along creek and stream corridors to forage, migrate, disperse, and locate mates. The riparian habitat alongside creeks and streams is a critical component of wildlife corridors.

Laguna Canyon Creek is a blue-line stream in a nearly pristine coastal watershed within a larger area consisting of over 20,000 square feet of open space. Although the stretch of creek adjacent to the proposed project site has been constrained by development and has sections of concrete lined bank, it continues to support native riparian habitat and to provide important processes and functions. Streams and creeks are a rare and threatened habitat throughout California and are easily disturbed and degraded by human activities and development. For the reasons presented here I find that Laguna Canyon Creek and the associated riparian habitat rise to the level of environmentally sensitive habitat (ESHA). I recommend that the creek and riparian habitat be protected by a 25 foot buffer measured from the centerline of the creek, that the buffer area is restored by removing non-native species and planting native riparian species, and that balconies do not encroach into the buffer zone.

**COASTAL COMMISSION**

EXHIBIT # 6  
PAGE 2 OF 2

## CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE  
200 OCEANGATE, 10<sup>TH</sup> FLOOR  
LONG BEACH, CA 90802-4416  
VOICE (562) 590-5071 FAX (562) 591-5084

APR 16 2014

CALIFORNIA  
COASTAL COMMISSION

## APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Devora Hertz

Mailing Address: 31901 9<sup>th</sup> Avenue

City: Laguna Beach

Zip Code: 92651

Phone: 949 395-6945

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Laguna Beach

2. Brief description of development being appealed:

30 Unit Apartment complex called the "Artist live/work" project.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

20412 and 20432 Laguna Canyon Road, Laguna Beach CA 92651

4. Description of decision being appealed (check one.):

☒ Approval; no special conditions☐ Approval with special conditions:☐ Denial

**Note:** For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

## TO BE COMPLETED BY COMMISSION:

APPEAL NO:

A-5-LGB-14-0019

DATE FILED:

4/21/14

DISTRICT:

South Coast / Long Beach

COASTAL COMMISSION

EXHIBIT #

7

PAGE

1

OF

9

Devora Hertz  
31901 9<sup>th</sup> Avenue  
Laguna Beach, CA 92651  
(949) 395-6945

**RECEIVED**  
South Coast Region  
APR 16 2014  
CALIFORNIA  
COASTAL COMMISSION

Karl Schwing, Supervisor Regulation and Planning  
California Coastal Commission  
South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302

April 1, 14

Re: CDP: 13-1376  
Artist Live Work Project  
Planning Commission Approval and CUP 13-1047  
Design Review 13-1375  
Parcels 629-051-23, 629-051-02  
Address: 20412 and 20432 Laguna Canyon Road  
Mitigated Negative Declaration

Karl,

I am writing on the heels of the Laguna Beach City Council approval of an appeal for CDP 13-1376, for the above listed project. This was the final appeal that exhausts all the hearings/appeals for the project the local level.

Originally, a prior property owner had proposed a project for a 10,000 sq ft animal hospital at this same site. It was a project that maintained the appropriate setback of 25 feet from the watercourse. However, the owners abandoned the project after meeting continual

EXHIBIT # 7  
PAGE 2 OF 9



difficulties from the city regarding the project and its approval. Difficulties, which the current project owner has not had to encounter. The City told the prior owner that he would need to do an EIR. Due to this, the owner eventually sold the property to the neighbor, who has now received the approval for an approximately 37,000 sq ft project on this site.

Initially when this project was proposed it consisted of 8 units. There was no opposition from the community, as the project impacts were not insurmountable. However, somewhere in the twilight this project grew to be a 30-unit apartment complex. Due to the now glaring impacts, related to the projects proximity to the mapped blue line stream, traffic, water quality, nonconformity to the Laguna Canyon Specific Plan, view issues, surrounding ESHA and others, a full EIR was requested. This request was ignored and a flawed Mitigated Negative Declaration (MND) was filed with the California State Clearinghouse. (SCH 2013081067)

### Blue Line Stream

The project involves the shoring up of a natural (currently unchannelized) portion of Laguna Creek, a mapped blue line stream that is part of the Local Coastal Program. There has been channelization of the creek on other portions of the creek, but **not** at the location of this project.

As you can see in the picture below, the story polls for the project are literally **in** Laguna Canyon Creek (Creek). The City states that this story pole depicts a cantilevered portion of the structure that overhangs the creek. However, the City did not story pole for the structured area. This leaves no other recourse than to use this as a guideline and subtract the distance of the cantilever from the story pole. Either

way, the structure is *within the 25-foot setback of the bluff of the watercourse.*

Policy 9C of the Open Space Conservation Element of the General Plan specifically state the setback requirement for this structure.

**"9C a) Streams on the Major Watershed and Drainage courses Map and the South Laguna and Laguna Canyon Biological Values Maps which are also "blue-line" streams identified on the USGS 7.5 Minute Quadrangle Series, shall be identified and mapped on the Coastal Environmentally Sensitive Areas Map of the Land Use Plan. For these streams, a minimum setback of 25 feet from the top of the stream banks shall be required in all new developments. "**

14 CCR 13577 indicates that the setback should be measured from the bluff (acclivity), not the centerline. This is reinforced by the City's flood zone manual, which indicates that a "minimum" setback of 25 feet is required.

However, the City insists on using the "Centerline" for the setback measurement for this project. This places the project unnecessarily close to a valuable asset to this community (the watercourse) and does not honor the guidelines established in our Open Space Conservation Element.

In addition, on the project plans the architect has so neatly drawn the stream as being completely symmetrical and equidistant on both sides in the project plans. This is just an inaccurate depiction of the stream width and flow course and bluff location relative to the project. As we all know, nature doesn't know about property lines and where it's supposed to go straight or turn relative to the convenience of

development.

The picture below shows the story pole in the creek. The yellow tape is where the City (City of Laguna Beach) had decided the "centerline" of the creek is located.



If you look at the land survey that is being used for the project that the prior owner had completed, you will notice that there is a flow area that extends from the creek at this juncture onto the property, passing what would normally be cast as the bluffs edge. This is important because this property has acted as a thoroughfare for floodwaters related to several alluvial fans, which drain from surrounding canyon hillsides.

We went out and measured the distance from the yellow tape placed by the City. It appears they placed the tape at the location where they

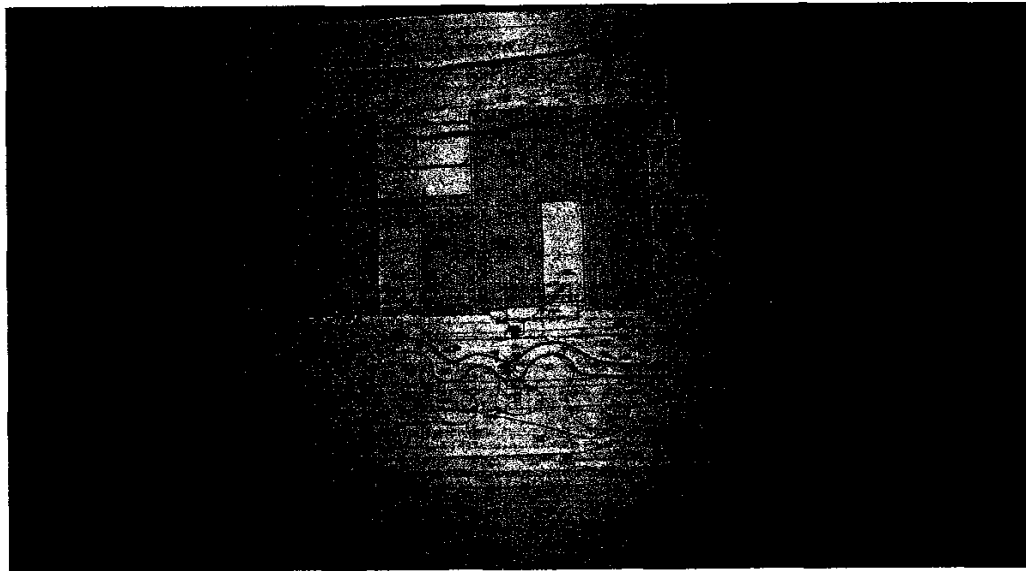
actually visualized water. This is not where the mapped centerline of the creek is located on the survey maps. The picture below shows 11 feet from the city placed tape using a 15-foot measuring tape.



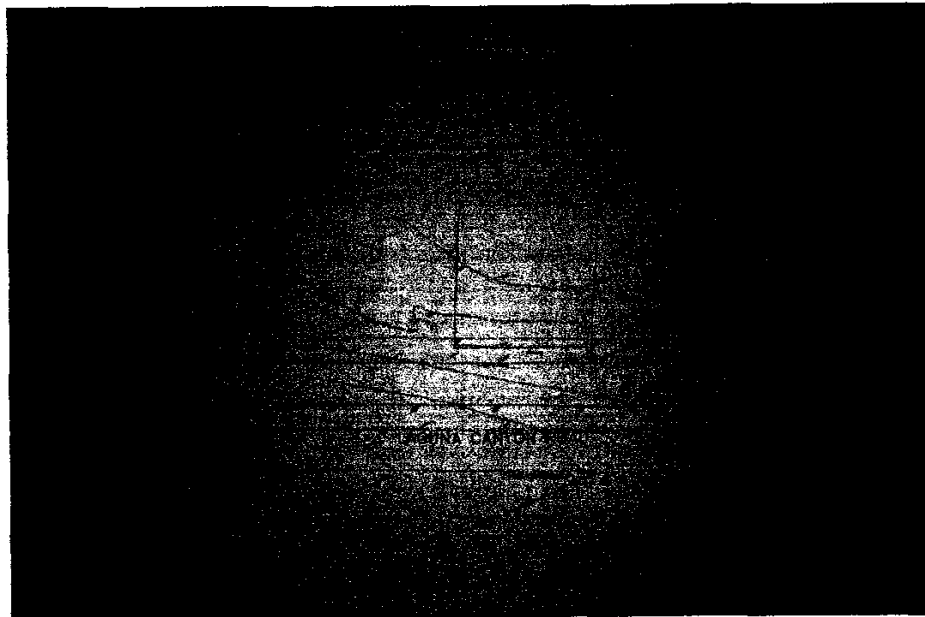
Please look at the project plans included below. The pink lines represent the architect's depiction of the location of the watercourse and the 25-foot setback line from the "centerline" of the watercourse.

**COASTAL COMMISSION**

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I think we can all agree that a good portion of this project is located in the required setback.



**COASTAL COMMISSION**

In addition, a stricture at this juncture will just serve to exacerbate any

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flooding that is inevitably going to occur at this site. This is truly an issue that will threaten the lives and livelihoods of residents and animals that reside in the surrounding area. Not to mention, water quality, wild life usage, ESHA degradation and other issues.

The intrinsic value of the watercourse itself is of value. However, this particular site is surrounded by ESHA (The Laguna Canyon Wilderness Park) and wildlife that are known to utilize this creek for survival and as a resource.

This project meets the appealability requirement with its proximity to the watercourse as stated in the Coastal Commission regulations.

*“§ 13577. Criteria for Permit and Appeal Jurisdiction Boundary Determinations.*

*For purposes of Public Resources Code Sections 30519, 30600.5, 30601, 30603, and all other applicable provisions of the Coastal Act of 1976, the precise boundaries of the jurisdictional areas described therein shall be determined using the following criteria:*

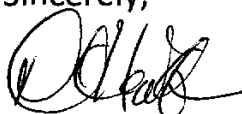
*(a) Streams. Measure 100 feet landward from the top of the bank of any stream mapped by USGS on the 7.5 minute quadrangle series, or identified in a local coastal program. **The bank of a stream shall be defined as the watershed and relatively permanent elevation or acclivity at the outer line of the stream channel which separates the bed from the adjacent upland, whether valley or hill, and serves to confine the water within the bed and to preserve the course of the stream.** In areas where a stream has no discernable bank, the boundary shall be measured from the line closest to the stream where riparian vegetation is permanently established. For purposes of this section, channelized streams not having significant habitat value should not be considered. “*

This letter is just a preliminary preview of **one** of the nonconforming issues relating to this project.

I personally, would like to see this project pulled back and out of the watercourse and required to comply with the 25-foot setback. I request that you deny the Coastal Development Permit 13-1376 for the project and request the developer come back to the Commission with a smaller project that does not encroach into the creek.

We would really like your (Commission Staff) support with this appeal. I appreciate the time and attention you, and the Commission give to these matters. If you have any questions, don't hesitate to contact me at 949 395-6945.

Sincerely,



Devora Hertz

**COASTAL COMMISSION**

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PAGE 9 OF 9

CALIFORNIA COASTAL COMMISSION

APR 18 2014

SOUTH COAST DISTRICT OFFICE

200 OCEANGATE, 10<sup>TH</sup> FLOOR

LONG BEACH, CA 90802-4416

VOICE (562) 590-5071 FAX (562) 591-5084

CALIFORNIA  
COASTAL COMMISSION**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT****Please Review Attached Appeal Information Sheet Prior To Completing This Form.****SECTION I. Appellant(s)**

Name: Jackie Gallagher and Audrey Prosser

Mailing Address: 2845 Zell Dr.

City: Laguna Beach

Zip Code: 92651

Phone: 949-415-0157

**SECTION II. Decision Being Appealed**

1. Name of local/port government:

City of Laguna Beach

2. Brief description of development being appealed:

Action by the City of Laguna Beach on April 1, 2014, approving a proposal to combine two lots (20412 and 20432 Laguna Canyon Road) and construct and operate a 30-unit artist' work/live development in Laguna Canyon, including a retail function within a 513 square-foot gallery which will be operated by appointment only.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

20412 and 20432 Laguna Canyon Road, Laguna Beach, CA 92651 in Laguna Canyon

4. Description of decision being appealed (check one.):

- ☒ Approval; no special conditions  
☐ Approval with special conditions:  
☐ Denial

**Note:** For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

**TO BE COMPLETED BY COMMISSION:**

APPEAL NO:

A-5-LGB-14-0019

DATE FILED:

4/18/14

DISTRICT:

South Coast / Long Bch

COASTAL COMMISSION

EXHIBIT # 8  
PAGE 1 OF 10



## APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

### **SECTION IV. Reasons Supporting This Appeal**

#### **PLEASE NOTE:**

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, *there must be sufficient* discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

This appeal stems from an April 1, 2014 action by the City of Laguna Beach approving a proposal to combine two lots through a lot line adjustment (20412 and 20432 Laguna Canyon Road) and construct and operate a 30-unit artist' work/live development in Laguna Canyon, including a retail function within a 513 square-foot gallery which will be operated by appointment only. This timely appeal is brought pursuant to Public Resources Code §30603(a)(1) and is located within less than 25 feet of a stream. The standard of review for this appeal as set forth in provisions of the Coastal Act, City of Laguna Beach certified Local Coastal Program "LCP" (certified January 13, 1993). Please note that the City's website and access to their certified LCP has been sporadically offline and unavailable to the public since late 2013. Preparation of an appeal to the California Coastal Commission becomes more than challenging when the public is unable to access the information needed for an appeal that is based on the City's LCP (including General Plan and Specific Plan for this area).

The project under appeal violates several provisions of the certified LCP including: 1) development within 25 feet of a mapped blue line stream; 2) failure to protect critical habitat and wildlife as well as essential wildlife corridors; 3) non-compliance with multiple elements of the City of Laguna Beach General Plan and Laguna Canyon Annexation Area Specific Plan; 4) Scenic Highway protection policies; 5) height, scale, bulk and blocking of public canyon views; 6) project would set unwanted and destructive precedent.

NOTE: Exhibits to accompany this appeal have been provided to staff on a USB flash drive and delivered to the Long Beach office with a hard copy of this appeal on Friday, April 18, 2014. A listing of these exhibits have also been provided in hard copy form. The Karlin Marsh Laguna Canyon Biological Resources Inventory (May 28, 1993) has been submitted to Long Beach staff as well as Dr. Dixon and Dr. Engel via email on April 14, 2014 as additional reference and back up to the various Element policies.

As an additional submittal, public comments made by Planning Commissioners and City Councilmembers have been included in hard copy form. These comments are submitted to assist staff in understanding how this project was approved at the local level. Review of the various hearings would be helpful, but as that is a time intensive undertaking, we hope that these notes will be of assistance.

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Listed below and labeled as General Plan or Specific Plan Elements are the Goals and Policies that are not being upheld by the City of Laguna Beach in its approval of this project. Again, the USB flash drive that has been provided will substantiate the many issues being brought forward in this appeal.

#### Open Space/Conservation Element

#### Open Space/Conservation Element Policies

4A Protect fresh water lakes, streams, waterways and riparian habitats, and preserve the borders and banks of lakes and streams in their natural state.

7A Preserve to the maximum extent feasible the quality of public views from the hillsides and along the City's shoreline.

7C Inventory and map positive and negative visual resources from Coast Highway and Laguna Canyon Road for use in reviewing development projects which might impact the viewshed of these designated scenic highways, pending funding availability.

7K Preserve as much as possible the natural character of the landscape (including coastal bluff, hillsides and ridgelines) by requiring proposed development plans to preserve and enhance scenic and conservation values to the maximum extent possible, to minimize impacts on soil mantle, vegetation cover, water resources, physiographic features, erosion problems, and require recontouring and replanting where the natural landscape has been disturbed.

#### Topic 8 Vegetation and Wildlife Resources

##### Excerpts:

Very High Value Habitats: These include the habitats of endangered, rare or locally unique native plant species. Also included are areas of southern oak woodland and natural springs and seeps. Among the very high value habitats inventoried are areas of significant rock outcrop exposures, because of assemblages of sensitive plant species that often occupy such settings.

The Laguna Canyon Biological Study completed the inventory process of all open spaces of substantial size within the existing City boundaries (provided to staff on April 14, 2014 via email). The major portion of Laguna Canyon Annexation study area is to be incorporated into the Laguna Coast Wilderness Park and will be preserved as permanent open space. A number of sensitive plant and animal species have been found in this study area; perhaps the most important in terms of extent of cover and/or numbers are many-stemmed and Laguna Beach Dudleya, the orange-throated whiptail and the coastal cactus wren. The inventory also identified Laguna Creek as a habitat resource.

##### Rare and Endangered Species – excerpt

The Dudleya stolonifera occurs in the South Laguna portion of the Aliso Canyon and in Laguna Canyon and has not been sited anywhere else.

**COASTAL COMMISSION**

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Wildlife Habitat The vegetation associations provide excellent wildlife habitat areas: mountain lion and golden eagles have been sited in the past; deer, small birds, small and medium mammals and a limited number of reptiles inhabit the site.

8A Preserve the canyon wilderness throughout the City for its multiple benefits to the community, protecting critical area adjacent to canyon wilderness, particularly stream beds whose loss would destroy valuable resources.

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

8I Environmentally Sensitive Areas (ESAs) as defined in Section 30107.5 of the California Coastal Act shall be identified and mapped on a Coastal ESA Map. The following areas shall be designated as ESAs: those shown on the Biological Resource Values Maps in the Open Space/Conservation Element as "Very High" habitat value, and streams on the Major Watersheds and Drainage Courses Map which are also streams as identified on the USGS 7.5 Minute Quadrangle Series and any other areas which contain environmentally sensitive habitat resources as identified through an on-site biological assessment process, including areas of "High" and "Moderate" habitat value on the Biological Resources Values Maps and areas which meet the definition of ESAs in Section 30107.5 of the Coastal Act, including streams, riparian habitats, and areas of open coastal waters, including tidepools, areas of special biological significance, habitats of rare or endangered species, near-shore reefs and rock intertidal areas and kelp beds.

Topic 9: Watershed and Watercourses

Excerpts:

The construction of impervious surfaces such as streets, driveways and roofs, reduces the area of soils available for absorption of rainfall and consequently increases the concentration of runoff. The demand for urban land has also resulted in the placement of structures in and adjacent to flood-prone areas, thereby exacerbating the potential for flooding and property and environmental damage, as well as repair and maintenance of liabilities. As development in the City has increased, these problems have worsened accordingly.

Issue Identification and Analysis

The City has increased its efforts to protect watershed areas and natural watercourses during the last decade, particularly since the adoption of the first Open Space and Conservation Element to the General Plan. There are several reasons for this interest: disturbance of these lands may create hazards such as flooding and mudslides; destroy important public resources such as water supplies and water quality; or damage valuable habitat lands and ecological systems. Any of these events could threaten the general welfare of a community and result in economic loss. The direct costs of not protecting these areas can be high, affecting both property owners and government interests. These costs may include the reduction of property values, the actual destruction of property or the repair or installation of expensive storm drain systems and related

public facilities.

9A Promote the preservation and restoration of Laguna's natural drainage channels, freshwater streams, lakes and marshes to protect wildlife habitat and to maintain watershed, groundwater and scenic open space.

9B Prohibit filling and substantial alteration of streams and/or diversion or culverting of such streams except as necessary to protect existing structures in the proven interest of public safety, where no other methods for protection of existing structures in the flood plain are feasible and where the primary function is to improve fish and wildlife habitat. This provision does not apply to channelized sections of streams without significant habitat value.

9C Streams on the Major Watershed and Drain Courses Map and the South Laguna and Laguna Canyon Biological Values Maps, as well as the "blue-line" streams identified in the USGS 7.5 Minute Quadrangle Series, shall be identified as a component of the Coastal Environmental Sensitive Areas Map of the Land Use Plan. For these streams, a minimum setback of 25 feet from the top of the stream banks shall be required for all new development. A greater setback may be necessary in order to protect all riparian habitat based on a site-specific assessment. No disturbance of major vegetation, or development, shall be allowed within the setback area. This provision shall not apply to channelized sections of streams without significant habitat value. Where development is proposed on an existing subdivided lot which is otherwise developable consistent with all City ordinances and other policies of this Plan except that application of this setback would result in no available building site on the lot, the setback may be reduced provided it is maintained at a width sufficient to protect all existing riparian habitat on the site and provided all other feasible alternative measures, such as modifications to the size, siting and design of any proposed structures, have been exhausted.

9D Permit extensions of decks and other portions of a structure within the required setback for significant natural drainage areas only if:

- a. There are no supports to the ground within the setback areas; and
- b. The extensions do not encroach closer than 15 feet from the centerline of flow.

9F Where possible, require restoration of deteriorated significant natural drainage courses that have been disturbed by development, but which retain potential for natural function.

9I Require new development projects to control the increase in the volume, velocity and sediment load runoff from the greatest development areas at or near the source of increase to the greatest extent feasible.

9J Require new developments to maintain runoff characteristics as near as possible to natural discharge characteristics by maintaining the natural conditions of the watershed.

9K Promote preservation and enhancement of the natural drainage of Laguna Beach.

9Q Oppose new development within the City's surrounding area that would result in significant adverse impacts to the City's hydrology.

Topic 10: Natural Hazards

Excerpts:

Encroachment on the flood plain, via development, has created obstructions to the natural path of flow.

Note: There is extensive discussion under this topic about how harmful and costly development within an existing flood plain is. Please reference Topic 10 of the Open Space/Conservation Element for a detailed summary of how the City has violated its own policy with this proposed project.

10A Require that plan review procedures recognize and avoid geologically unstable areas, flood-prone lands, and slopes subject to erosion and slippage.

10F To minimize risk to life and structures, new development located in established floodprone lands shall incorporate all appropriate measures pursuant to the City's "Flood Damage Prevention and Prohibition Ordinance."

Section 3.0 General Resource Protection Policies, item 9:

Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

Land Use Element

GOAL 2: Preserve, enhance and respect the unique character and identity of Laguna's residential neighborhoods.

Policy 2.1

Maintain the diversity and uniqueness of individual neighborhoods. Development standards and design review guidelines shall minimize the scale and bulk of new construction and/or renovation and require development to be compatible with the surrounding residences.

Action 2.1.1 Evaluate the adopted building envelope and lot coverage standards and amend as necessary to ensure that the building scale of proposed development is compatible in scale and mass with surrounding residences. Methods to be investigated include, but are not necessarily limited to, a revised building site coverage standard, floor area ratios, volumetrics (cubic feet), plate height limitations (floor-to-ceiling height limits), and maximum residence size.

Policy 2.3

Preserve and enhance the qualities that contribute to the character of the residential community, including quiet neighborhoods, pedestrian use of streets, and appropriate levels of illumination and nighttime activity and seek to mitigate the effects of high-volume thru-traffic.

## Policy 5.2

Ensure that all new development, including subdivisions and the creation of new building sites and remodels that involve building additions, is adequately evaluated to ascertain potential negative impacts on natural resources and adjacent development, emphasizing impact avoidance over impact mitigation. Required mitigation should be located on-site rather than off-site. Any off-site mitigation should be located within the City's boundaries and in close proximity to the project.

## 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.

Action 7.3.3 Design and site new development to avoid hazardous areas and minimize risks to life and property from coastal and other hazards.

Action 7.4.3 Review development to minimize adverse impacts to abutting dedicated open-space areas; taking into consideration both the appropriate habitat buffer zones and the required fuel modification zones.

## Policy 9.12

Continue to consider flood hazards when reviewing projects within the 100-year floodplain.

## Policy 9.13

Continue to require nonstructural methods for flood control, such as preservation of watershed lands and natural drainage channels, rather than structural methods, such as concrete flood channels whenever feasible.

## Policy 10.2

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

Action 10.2.1 Adopt standards that require new development and related improvements to be located on the most suitable areas of the site so as to maximize safety and the preservation of sensitive resources.

Action 10.3.2 Continue to require in-depth analysis of constraint issues for properties,

**COASTAL COMMISSION**

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PAGE 7 OF 10

especially those designated on the City's hazard maps so that the nature of the constraint and the best options for mitigation or avoidance will be considered at all stages of the approval process since these constraints may affect what development is appropriate for the property.

Action 10.7.1 Continue to evaluate and update criteria to minimize nonpermeable hardscape improvements.

#### Policy 10.10

Prohibit lot line adjustments that are inconsistent with the Municipal Code, General Plan, and Subdivision Map Act. Existing building sites which maintain a legal nonconforming lot or lots may adjust the lot lines provided that the adjustment does adversely increase the extent of nonconformities.

#### General Plan/Land Use/Guiding Principles

2) Scenic views of the Pacific coastline, hillsides, and canyons are distinctive elements of this setting and greatly enhance the community's image and sense of place. Ensuring that the City's environmentally sensitive surroundings are maintained as open space is vital to maintaining its character.

7) Planning, access, siting, and design choices should reflect a response to the particular characteristics and challenges associated with the site; examples include constraints related to the presence of significant natural resources and safety hazards as well as those related to the need for infill projects to be compatible in design, scale, and character with the surrounding neighborhood.

Section 5/Existing Land Use-7 The architectural and aesthetic appearance of new development along Laguna Canyon is particularly important, given its proximity to the Central Business District and the entrance to the community.

#### Laguna Canyon Annexation Specific Plan

Section II: Profile of Laguna Canyon Annexation Area/Land Use and Zoning/Distinction of Neighborhoods/Stan Oaks Neighborhood P. 13.

"The Sun Valley Drive Neighborhood is bordered by Laguna Canyon Creek, which provides both food and water for numerous forms of small native wildlife. Laguna Creek is one of the few sources of year-round fresh water. There are numerous crawdads and wild blackberries in the area."

Section III: Issue Statements and Policies/Topic 1 (Rural Atmosphere)/Policies/#3 (page 23)  
"Require the preservation of ridgelines and encourage the preservation of undeveloped hillside slopes and existing open space."

Section III: Issue Statements and Policies/Topic 4 (Biology and Habitat)/Goal (page 25)  
"Preserve and enhance significant biological resources and wildlife habitats."

Section III: Issue Statements and Policies/Topic 7 (External Growth Pressures)/Policies/#2  
(page 27)

"Discourage development within the Laguna Greenbelt segment of the City's total planning area."

Topic 1 Rural Atmosphere: Policies and appropriate implementing actions are necessary to preserve the rural character of Laguna Canyon and to encourage a small, rural scale of development.

Goals

Preserve and enhance the rural character of the Laguna Canyon Properties area.

Maintain a land use pattern which responds to the historical development pattern of residential and industrial uses.

Preserve and enhance significant biological resources and wildlife habitats.

Policies

Ensure that proposed land uses in Laguna Canyon Annexation area have a rural character.

Require that any development be of small-scale in order to maintain the rural character of the Canyon.

Ensure that industrial development in Laguna Canyon is compatible with surrounding residential uses.

Actively and aggressively pursue flood protection for the Laguna Canyon Annexation Area.

Consistency with the California Environmental Quality Act (CEQA)

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

This project is just one of several projects being considered by the City of Laguna Beach at this time without concern for cumulative impacts and piecemealing which is prohibited by CEQA.

Three of the seven projects slated for development include:

- Village Entrance
- Self Storage at Big Bend

**COASTAL COMMISSION**

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PAGE 9 OF 10



- Permanent Supportive Housing Project

Please also note that the original proposed project was for an eight unit artist live work facility. This was not contested by anyone, but the developer decided the revenue model was not adequate from a profit standpoint and decided to increase the entire project, including implementation of a lot line adjustment that will in fact prove detrimental to the resources in this area and only exacerbate the flooding issues. The City of Laguna Beach LCP and the Coastal Act are not in place to accommodate the profitability of a development that will impact natural resources and create potential flood liabilities.

Thank you for your time and consideration of our submittal. Should you require further supporting documentation for any of the issues brought forth in this appeal, please do not hesitate to contact us as we have volumes of written, electronic, video and photographic documentation.

**COASTAL COMMISSION**

EXHIBIT # 8  
PAGE 10 OF 10

**CALIFORNIA COASTAL COMMISSION**

SOUTH COAST DISTRICT OFFICE  
200 OCEANGATE, 10<sup>TH</sup> FLOOR  
LONG BEACH, CA 90802-4416  
VOICE (562) 590-5071 FAX (562) 591-5084

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

**Please Review Attached Appeal Information Sheet Prior To Completing This Form.**

**SECTION I. Appellant(s)**

Name: Clean Water Now

Mailing Address: P.O. Box 4711

City: Laguna Beach

Zip Code: 92652

Phone: 949.715.1912

**SECTION II. Decision Being Appealed**

1. Name of local/port government:

City of Laguna Beach

2. Brief description of development being appealed:

Coastal  
Development  
Permit  
(CDP)  
13-1376

30-unit mixed use (M-1B Light Industrial/Residential) Artist Work/Live Project

3. Development's location (street address, assessor's parcel no., cross street, etc.):

APN(s): 629-051-23 629-051-02 CUP 13-1047 LBPC Design Review 13-1375 Coastal Development

Permit (CDP) 13-1376

Address: 20412 & 20432 Laguna Canyon Road Laguna Beach CA 92651

4. Description of decision being appealed (check one.):

- ☒ Approval; no special conditions  
☐ Approval with special conditions:  
☐ Denial

**Note:** For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

**TO BE COMPLETED BY COMMISSION:**

APPEAL NO:

A-5-LGB-14-0019

DATE FILED:

**RECEIVED**  
South Coast Region

APR 18 2014

CALIFORNIA  
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**COASTAL COMMISSION**

EXHIBIT # 9  
PAGE 1 OF 14

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)**

**SECTION IV. Reasons Supporting This Appeal**

**PLEASE NOTE:**

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

Note: SEE ATTACHMENTS

[A] Litany of non-conforming CCA, LCP & CEQA sections (Hard Copy)

Remaining attachments are provided in CD-ROM format per staff approval (Ms. Meg Vaughn)

[B] JPEGs with explanatory captions of the proposed development site

[C] Laguna Canyon Annexation Area Specific Plan (LCAASP)

[D] Laguna Canyon Property Owners Association Concerns

[E] MND

[F] WQMP

Laguna Beach Planning incorrectly identified development setback on the Cover Page of the MND. The proposed project will NOT maintain a 25-foot setback from the centerline of this designated blue line stream (Laguna Canyon Creek). This misled trustee, resource and regulatory public agencies into believing that their analyses, participation and input was unnecessary

Buried in the project narrative is entitlement 9D (Watersheds & Watercourses), Open Space & Conservation Element, General Plan. This allows a cantilever of 10-feet, hence the net distance is only 15 feet. The project in fact will incur, invade up to the precipice (ledge) of the nearly vertical stream bank that already exhibits degradation (downcutting/disequilibrium) stress and erosion potential not found in adjacent reaches of the stream.

This overhang or cantilevered entitlement credit extirpates, i.e., completely eliminates the critical riparian and wildlife corridor foraging and migrational buffer zone.

Additionally, there is a planned 3-foot high, 310-foot long (entire length of the project's joined parcels) cinder block retaining wall with an substantial footing that is approximately 20 feet from the centerline flow, bifurcating (disrupting) the wildlife buffer zone.

This project does not comply with, or conform to, innumerable CCA sections, CEQA requirements, the City of Laguna Beach General Plan (LCP), or the applicable LCAASP. It is in disharmony, non-congruent/inconstant with a long list of LIP guidelines and parameters for new or re-development. Due to the wording of the General Plan/LCAASP, there are outstanding, unresolved contradictions that have led to competing, conflicting Goals, Policies and Actions (implementation) regarding land use standards.

The project's siting will negatively impact (without mitigation) the ESA biological resources of the designated blue line stream (Laguna Canyon Creek--LCC) as agreed upon in the LCAASP. due to light, noise and elimination of the appropriate, existing buffer zone.

**COASTAL COMMISSION**

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The development setback is insufficient, construction and post-construction maintenance will have significant intrusions into habitat and streambed in our opinion cannot be avoided. The applicant intends to remove non-native flora, "enhance" the riparian and buffer zones, and should have required a CF&W §1602 SAA, USACE 404 Permit and SDRWQCB 401 Water Quality Certification Permit due to these disturbance programs.

It does not protect or preserve the biological balance, obliterates scenic and visual qualities of the hillsides and highway adjacent to a wilderness park, and adversely affects the known, acknowledged wildlife corridor (riparian and streambed). Though no threatened or endangered species are present, its value was memorialized in the LCAASP as a migrational corridor, plus a source of life-sustaining food and water for native fauna.

It does not conform to the Conditional Use Permit policies under the LCAASP.

It violates many CEQA prescriptions (Included in ATTACHMENT A)

It does not fulfill the prescriptions of the WQMP (Chapter 16) under the lead agency's NPDES because of the proximity to LCC and site development design. The offered BMPs are inadequate, insufficient boilerplate strategies that cannot obviate sediment and contaminant migrational transport to the LCC. The project fails to preserve or maintain historical surface and sub-surface groundwater flows.

It fails to comply with the NPDES requirements (MC Title 16) regarding Priority Development Projects, including the self-imposed limitations of impervious surfaces, maximizing (instead of minimizing) soil compaction, biofiltration capacity metrics, etc. This is primarily due to its infrastructural (development) intrusion and deposition of all roof drainage to the front.

The project, in order to create the subterranean parking lot, will excavate over 50% of the site footprint to a depth of approximately 8 feet, the average depth of the existing groundwater table. It will in fact create a sub-surface dam approximately 280 feet long, an impervious membrane, resulting in a previously non-existent manner. By deflecting groundwater flows and surface flows irreparably the surface spillage will move downgradient, overwhelming (flooding) parcels south of the project.

Peak flows (with attendant pollutants) that formerly transited the property and in many cases were detained and filtrated will be inhibited, re-directed, altering historical, natural topographical drainage.

It fails to protect receiving waters (Pacific Ocean), refuses to include feasible, technologically possible mitigations to reduce/attenuate volume, flow rates and pollutant loading into LCC which is impaired by SEDIMENT TOXICITY and BACTERIAL EXCEEDANCES as determined by Cal/EPA. It has no pump or other emergency devices to lower or divert to the MS4 system flood ingress water levels in the sub-surface parking lot.

Site Drainage deficiencies: It is our understanding that ALL of the area drains, including the 47 vehicle subterranean parking lot for the .83 acres site, join one (1) single 8" pipe that then discharges into LCC. This is massively under-valued (sized), insufficient to divert and/or control runoff. No onsite advanced pre-treatment to reduce and/or remove contaminants generated onsite or immigrated from Laguna Canyon Road. No diversion to City wastewater common system offered.

It fails to conform with the General Plan Land Use Implementation Program regarding "Sustainability/

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Conservation Element" policies: It makes no attempt to achieve LEED silver building standards, including but not limited to ZERO solar infrastructure (to reduce energy demands), ZERO onsite greywater recycling (reduce or pre-treat wastewater generated onsite for reuse as irrigation, thereby reducing water consumption), ZERO catchment systems to reduce/conserv water use subsequent to precipitation events, ZERO green roof design integrated, etc.

Project fails to comply with the General and LCAASP regarding "implementing actions necessary to preserve the rural character of Laguna Canyon and to encourage small, rural development."

Due to size, mass, scale and siting of infrastructure it degrades the visual character, the existing setting.

CEQA: Ignores §15065 "Cumulatively considerable impacts." MND omitted (left out) several environmentally significant factors from the document: (1) Aesthetics, (2) Geology/Soil, (3) Land Use/Planning, and (4) Mandatory Findings of Significance

CCA: Section 30105.5 Cumulatively; cumulative effect

"Cumulatively" or "cumulative effect" means the incremental effects of an individual project shall be reviewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects. Project ignores accumulation of known/knowable cumulative impacts from infill, that is foreseeable future projects in the vicinity.

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**Laguna Beach General Plan  
Land Use Element (Updated: Nov. 27, 2012)**

***"Given the interrelationship between these subjects and the City's General Plan, the Coastal Plan has been physically integrated into this element and the Open Space/Conservation Element. These elements contain policies and development standards related to the Coastal Plan and are intended to implement the provisions of the Coastal Act."***

**General Plan**

**Goals, Policies, Actions and Implementation Program**

**Goal 1:**

**Create a community that is sustainable, resilient, and regenerative.**

**Sites should be planned, buildings designed, and infrastructure developed to reduce the consumption of energy, water, and raw materials, generation of waste, and use of toxic and hazardous substances.**

**Policy 1.1**

**Action 1.1.3** Create a Sustainability/Conservation Element with policies that promote energy and resource efficiency, water efficiency, conservation, recycling, and the protection of ground and surface waters. *(Short-term implementation. 1-3 years.)*

**Policy 1.2** Support design strategies and construction standards that maximize use of alternative energy sources and passive solar architecture in buildings.

**Action 1.2.1** Modify building codes and design guidelines to permit, encourage, and/or require integration of passive solar design, green roofs, active solar, and other renewable energy sources and/or provide incentives for development projects that meet or exceed silver LEED certification or better (or equivalent standards, if developed by the

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(5)

State). (*Short-term implementation*)

**Policy 1.3** Support planning and design solutions that reduce water consumption and implement water conservation practices. (*Short-to-medium-term implementation.*)

**Action 1.3.3** Review existing ordinances to allow/encourage water reuse in public and private construction and remodels. (*Short-to-medium-term implementation. 3-5 years.*)

**GOAL 2:**

**Preserve, enhance and respect the unique character and identity of Laguna's residential neighborhoods.**

**Policy 2.1** Maintain the diversity and uniqueness of individual neighborhoods. Development standards and design review guidelines shall minimize the scale and bulk of new construction and/or renovation and require development to be compatible with the surrounding residences.

**Action 2.1.1** Evaluate the adopted building envelope and lot coverage standards and amend as necessary to ensure that the building scale of proposed development is compatible in scale and mass with surrounding residences. Methods to be investigated include, but are not necessarily limited to, a revised building site coverage standard, floor area ratios, volumetrics (cubic feet), plate height limitations (floor-to-ceiling height limits), and maximum residence size. (*Short to-medium-term implementation.*)

**Action 2.1.2** Implement the long-term "anti-mansionization" policies and standards adopted on September 24, 2002. (*Ongoing implementation -short-to-long-term.*)

**Action 2.1.3** Evaluate and, if necessary, reduce the allowable site coverage on lots over 8,000 square feet to ensure compatibility with existing developed building sites in the neighborhoods. (*Short-to-medium-term implementation.*)

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(6)

**Policy 2.2** Encourage the preservation of historically significant residential structures and protect the character-defining components of Laguna Beach's traditional neighborhoods.

**GOAL 3:**

**Preserve, enhance, and respect the unique, small-scale village character and individual identity of Laguna Beach's commercial areas.**

**Policy 3.4** Ensure that development standards and design review guidelines result in commercial development that is compatible in scale and design with the surrounding and immediate area, including commercial and residential structures and neighborhoods.

**Policy 3.10** Require building design and siting to be compatible and integrated with natural topographic features, minimize significant alteration of natural topography or other significant on-site resources, and protect public views as specified in the Design Guidelines and Landscape and Scenic Highways Resource Document by maintaining the low-profile character of structures.

Require use of appropriate landscaping, special architectural treatments, and siting considerations for projects visible from major highways and arterial streets. Best efforts should be made to site new development in locations that minimize adverse impacts on views from public locations (e.g., roads, bluff-top trails, visitor-serving facilities, etc.).

**Action 3.10.1** Establish criteria for placement of new development on the most suitable area of the lot to maximize the preservation of sensitive resources. (*Short-to-medium-term implementation.*)

**GOAL 5:**

**Promote compatibility among land uses in the community.**

**Policy 5.1** Establish standards and review procedures to ensure that

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infill development and/or redevelopment is neighborhood-compatible.

**Policy 5.2** Ensure that all new development, including subdivisions and the creation of new building sites and remodels that involve building additions, is adequately evaluated to ascertain potential negative impacts on natural resources and adjacent development, emphasizing impact avoidance over impact mitigation.

**GOAL 7:**

**Protect, preserve, and enhance the community's natural resources.**

**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. (*Same as Policy 10.2.*)

**Action 7.3.1** Evaluate and, if necessary, adopt an Open Space/Conservation Element policy to ensure that environmentally sensitive species and/or habitat located within homeowners' associations are protected. (*Medium-term implementation.*)

**Action 7.4.3** Review development to minimize adverse impacts to abutting dedicated open-space areas; taking into consideration both the appropriate habitat buffer zones and the required fuel modification zones. (*Short-term implementation.*)

**Policy 7.7** Protect marine resources by implementing methods to minimize runoff from building sites and streets to the City's storm drain system (e.g., on-site water retention). (*Same as Policy 10. 7.*)

**Goal 10:**

**Ensure that proposals for new development, subdivisions, and**

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**major remodels are sufficiently evaluated to protect public health and safety and natural resources**

**Policy 10.2** Design and site new development to protect natural and environmentally sensitive resources such as areas of unique scenic quality, public views, and visual compatibility with surrounding uses and to minimize landform alterations. *(Same as Policy 7.3)*

**Policy 10.7** Protect marine resources by implementing methods to minimize runoff from building sites and streets to the City's storm drain system (e.g., on-site water retention). *(Same as Policy 7. 7.)*

**Growth Management Element Policies**

**Scenic Highways and Aesthetics**

**11 C** *Preserve the scenic qualities of all highways, including views of both ocean and hillsides.*

**Housing Element Policies**

**1.11** Ensure that new housing will be aesthetically compatible with the surrounding environment and consistent with the size, scale and character of development in the neighborhood in which it is located.

**Open Space and Conservation Element Policies**

**Water Quality and Conservation**

**4A: Development Planning and Design Best Management Practices (BMPs)**

Ensure that development plans and designs incorporate appropriate Site Design, Source Control and Structural Treatment Control Best Management Practices (BMPs), where feasible, to reduce to the maximum extent practicable, pollutants and runoff from the proposed development. Structural Treatment Control BMPs shall be implemented when a combination of Site Design and Source Control BMPs are not sufficient to protect water quality.

**4C Minimize Volume and Velocity of Runoff**

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Ensure that development is designed and managed to minimize the volume and velocity of runoff (including both stormwater and dry weather runoff) to the maximum extent practicable, to avoid excessive erosion and sedimentation.

**4D Minimize Introduction of Pollutants**

Ensure that development and existing land uses and associated operational practices minimize the introduction of pollutants into coastal waters (including the ocean, estuaries, wetlands, rivers and lakes) to the maximum extent practicable

**4E Preserve Functions of Natural Drainage Systems**

Ensure that development is sited and designed to limit disturbances and to preserve the infiltration, purification, retention and conveyance functions of natural drainage systems that exist on the site to the maximum extent practicable

**4G Minimize Construction Impacts**

Ensure that all development minimizes erosion, sedimentation and other pollutants in runoff from construction-related activities to the maximum extent practicable. Ensure that development minimizes land disturbance activities during construction (e.g., clearing, grading and cut-and-fill), especially in erosive areas (including steep slopes, unstable areas and erosive soils), to minimize the impacts on water quality.

**Visual Resources**

**7A** Preserve to the maximum extent feasible the quality of public views from the hillsides and along the City's shoreline.

**7C** Inventory and map positive and negative visual resources from

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(10)

Coast Highway and Laguna Canyon Road for use in reviewing development projects which might impact the viewshed of these designated scenic highways, pending funding availability.

### **Vegetation and Wildlife Resources**

#### **8M**

When new development proposals are situated in areas adjacent to "Environmentally Sensitive Areas" as designated on the Coastal ESA Map and where these are confirmed by subsequent onsite assessment, require that development be designed and sited to prevent impacts which would degrade such areas.

### **Watersheds and Watercourses**

**9A** Promote the preservation and restoration of Laguna's natural drainage channels, freshwater streams, lakes and marshes to protect wildlife habitat and to maintain watershed, groundwater and scenic open space.

**9B** Prohibit filling and substantial alteration of streams and/or diversion or culverting of such streams except as necessary to protect existing structures in the proven interest of public safety, where no other methods for protection of existing structures in the flood plain are feasible or where the primary function is to improve fish and wildlife habitat. This provision does not apply to channelized sections of streams without significant habitat value.

#### **9C**

**a)** Streams on the Major Watershed and Drainage Courses Map and the South Laguna and Laguna Canyon Biological Values Maps which are also "blue-line" streams identified on the USGS 7.5 Minute Quadrangle Series, shall be identified and mapped on the Coastal Environmentally Sensitive Areas Map of the Land Use Plan.

For these streams, a minimum setback of 25 feet from the top

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of the stream banks shall be required in all new developments. A greater setback may be necessary in order to protect all riparian habitat based on a site-specific assessment. No disturbance of major vegetation, or development, shall be allowed within the setback area. This provision shall not apply to channelized sections of streams without significant habitat value. Where development is proposed on an existing subdivided lot which is otherwise developable consistent with all City ordinances and other policies of this Plan except that application of this setback would result in no available building site on the lot, **the setback may be reduced provided it is maintained at a width sufficient to protect all existing riparian habitat on the site and provided all other feasible alternative measures, such as modifications to the size, siting and design of any proposed structures, have been exhausted.**

b) Require a setback of a minimum of 25 feet measured from the centerflow line of all natural drainage courses or streams on the Major Watershed and Drainage Courses Map and the South Laguna and Laguna Canyon Biological Values Maps other than the "blue-line" streams referenced in **9-C (a)** above.

Such setback shall be increased upon the recommendation of the City Engineer and environmental planner through the environmental review process.

However, a variance may be given in special circumstances where it can be proven that design of a proposed structure on an affected lot will preserve, enhance or restore the significance of the natural watercourse. **At no time shall grubbing of vegetation, elimination of trees, or disturbance of habitat be allowed within the setback area before or after construction.**

## (2) CEQA

### **CEQA Non-compliance Check List**

#### **CPRC Division 13. Environmental Quality**

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**CHAPTER 1 POLICY**

**§ 21002. APPROVAL OF PROJECTS; FEASIBLE ALTERNATIVE OR MITIGATION MEASURES** **Comment:** No feasible alternative(s) offered by developer. (See **§21064.5** comments below)

**§ 21002.1. USE OF ENVIRONMENTAL IMPACT REPORTS; POLICY** **Comment:** Project not compliant with (a) and (b) Fails to mitigate and avoid significant impacts.

**§ 21003. PLANNING AND ENVIRONMENTAL REVIEW PROCEDURES; DOCUMENTS; REPORTS; DATA BASE; ADMINISTRATION OF PROCESS** **Comment:** Project not compliant with (b) and (e). *De minimis* MND failed to provide useful database to responsible resource trustee and regulatory oversight agencies notified by the lead agency + OP&R (SCH). Local lead agency failed to follow CEQA Initial Study checklist guidelines.

**§ 21005. INFORMATION DISCLOSURE PROVISIONS; NONCOMPLIANCE; PRESUMPTION; FINDINGS** **Comment:** Determination or decision of local lead agency to draft an MND instead of an EIR was **not** supported by substantial evidence (a) *"prejudicial abuse of discretion within the meaning of Sections 21168 and 21168.5, regardless of whether a different outcome would have resulted."*

**CHAPTER 2 DEFINITIONS**

**§ 21064.5. MITIGATED NEGATIVE DECLARATION** **Comment:** Substantial evidence existed that the project does NOT avoid significant unmitigated effects. De minimis MND was the incorrect choice, should have required an EIR. **Note:** Violates (a), (1) & (2) of **Title 14 Article 1 General §15021. DUTY TO MINIMIZE ENVIRONMENTAL DAMAGE AND BALANCE COMPETING PUBLIC OBJECTIVES** Environmental damage not avoided/minimized, feasible alternatives not provided or considered.

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**CHAPTER 2.6 GENERAL**

**§ 21080.3.** CONSULTATION WITH RESPONSIBLE AGENCIES;  
ASSISTANCE BY OFFICE OF PLANNING AND RESEARCH

**Comment:** Violates (a) CEQA Conditional Use Permit issuance and implementation requirements per Laguna Beach General Plan (Land Use Policies) and Laguna Canyon Annexation Area Specific Plan (LCAASP).

**§ 21083.** OFFICE OF PLANNING AND RESEARCH; PREPARATION AND DEVELOPMENT OF GUIDELINES; CONDITIONS

**Comment:** Lead agency failed to implement guidelines for a project is of state, regional and areawide environmental significance meriting an EIR.

*From the desk of:*

**Roger E. Bütow**  
**Founder & Executive Director**

**Phone:** (949) 715.1912  
**Address:** PO Box 4711 Laguna Beach CA 92652  
**Email:** [roger@clean-water-now.org](mailto:roger@clean-water-now.org)  
**Web:** [www.clean-water-now.org](http://www.clean-water-now.org)

**CLEAN WATER NOW (est. 1998)** is an innovative, science-based organization committed to solution-oriented collaboration as a means of developing safe, sustainable water supplies and preserving healthy ecosystems.

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1 RECORDING REQUESTED BY  
2 CITY OF LAGUNA BEACH  
3 AND WHEN RECORDED MAIL TO:

Recorded in Official Records, Orange County  
Hugh Nguyen, Clerk-Recorder

 72.00

2014000126061 04:30pm 04/03/14

4 CITY CLERK  
5 CITY OF LAGUNA BEACH  
6 505 FOREST AVENUE  
7 LAGUNA BEACH, CA 92651

232 407 R28 F13 22  
0.00 0.00 0.00 0.00 63.00 0.00 0.00 0.00

THIS SPACE RESERVED FOR RECORDING

**RESOLUTION NO. 14.027**

8 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH  
9 UPHOLDING THE PLANNING COMMISSION APPROVAL OF **CONDITIONAL**  
10 **USE PERMIT 13-1047, PLANNING COMMISSION DESIGN REVIEW 13-1375,**  
11 **COASTAL DEVELOPMENT PERMIT 13-1376, AND THE MITIGATED**  
12 **NEGATIVE DECLARATION AND MITIGATION MONITORING PROGRAM FOR**  
13 **20412-20432 LAGUNA CANYON ROAD**

14 WHEREAS, an application has been filed by the property owner of 20412 - 20432  
15 Laguna Canyon Road requesting a Conditional Use Permit, a Coastal Development Permit and  
16 Planning Commission Design Review, in accordance with the provisions of the Municipal Code  
17 for the development and operation of 30 artists' work/live rental units, including the 55 year  
18 reservation of eight (8) artists' work/live rental units for occupancy by low-income artist  
19 households, and a minor retail function within a 513-square-foot gallery; and

20 WHEREAS, the City Council at its meeting of November 10, 2010, authorized a  
21 reduction of one-half of the planning and building fees, during a time of economic challenges,  
22 for the potential approval of an artists' work/live development, which would provide an  
23 affordable working and living option to artists; and

24 WHEREAS, the project includes eight (8) artists' work/live units that will be reserved for  
25 low-income artist households for a minimum of 55 years, in compliance with Housing Element  
26 Policy HE 2.08 which states "Provide incentives (i.e., density bonus, fee reductions/exemptions,  
27 liberalized development standards, fast-tracking, etc.) to developers of projects that include  
28 extremely-low, very-low and low-income housing units."



1  
2 WHEREAS, the proposal is considered a "project" pursuant to the California  
3 Environmental Quality Act; and  
4

5 WHEREAS, an Initial Study and Mitigated Negative Declaration have been prepared  
6 and circulated for public review from August 12, 2013 through September 20, 2013, with the  
7 determination that with the incorporation of mitigation measures this proposal will not have the  
8 potential to cause any significant negative environmental effects, and public notice of such  
9 determination has been provided as required by the State and Local CEQA Guidelines; and  
10

11 WHEREAS, on September 25, 2013, November 13, 2013 and January 8, 2014, the  
12 Planning Commission conducted legally noticed public hearings and, after reviewing all  
13 documents and testimony, voted to approve the proposed project and adopted the Mitigated  
14 Negative Declaration and Mitigation Monitoring Program in accordance with the provisions  
15 of the California Environmental Quality Act; and  
16

17 WHEREAS, the Planning Commission approval was appealed by the project applicant  
18 and opponents of the project; and  
19

20 WHEREAS, on April 1, 2014, the City Council conducted a legally noticed public  
21 hearing and reviewed and considered all evidence and testimony presented by interested and  
22 affected persons.  
23

24 NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH  
25 does RESOLVE and ORDER as follows:  
26

27 SECTION 1: The City Council makes the following findings with regard to  
28 Conditional Use Permit 13-1047 to develop and operate 30 artists' work/live units and a  
minor retail function in a 513 square-foot gallery:

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1. The proposed artists' work units/live development will not cause an adverse affect to the health, safety or welfare of persons residing or working in the surrounding area in that the proposed use is compatible with the surrounding residential, commercial and light industrial uses and the creation of art, including the mitigation measures incorporated herein, and does not have the potential to cause an adverse affect on persons residing or working in the surrounding area.

2. The proposed artists' work/live development will not impair the use and enjoyment of surrounding property in the vicinity of the site in that the types of art created at the project site will comply with Municipal Code Section 25.16 Artists' Work/Live and will not cause on/off-site impacts that would exceed the artists' work/live performance standards of noise, odor, smoke, dust and/or dirt, subject to mitigation measures which have been incorporated into the project conditions and design to reduce any potential impacts to less than significant.

3. The subject site is adequate in size and shape to accommodate the yards, parking, landscaping and other development requirements as required to integrate the use with existing and planned uses in the surrounding area in that the proposed artists' work/live development complies with the development standards of the M-1B Zone, is compatible with surrounding land uses and has been designed to avoid land use conflicts and negative impacts to both the artists' work/live occupants, the occupants of neighboring properties and the environment.

4. The project site is adequately served by highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate in that the subject site maintains frontage on Laguna Canyon Road, and based on the results of the

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Traffic Impact Study prepared for the project and peer-reviewed, the proposal can be implemented without significantly impacting the existing roadway system.

5. The project site is adequately served by other public or private service facilities as are required, in that the artists' work/live units are located within a developed neighborhood, which is adequately served by both public and private service facilities.

6. There are sufficient conditions imposed to ensure that the working and living spaces are not separately sold or rented in that the proposed artists' work/live units have been conditioned to prohibit the separate conveyance or rental of the working and living areas of each unit.

*Conditional Use Permit Findings for Artists' Work/Live Units (Municipal Code Chapter 25.16)*

1. The proposed use at the location requested will not cause an adverse effect to the health, safety or welfare of persons residing or working in the surrounding area or impair the use and enjoyment of surrounding properties in the vicinity of the site in that the proposed project complies with the requirements of the M-1B Light Industrial Zone of the Laguna Canyon Annexation Area Specific Plan, Municipal Code Chapter 25.16 ("Artists' Work/Live") and related sections, including the Coastal Act and the California Environmental Quality Act.

2. The proposed project site is adequate in size and shape to accommodate the yards, open space, walls, fences, parking and loading facilities, landscaping and other development requirements as required to integrate the use with existing and planned uses in the area in that the proposed artists' work/live development complies with the development standards of the M-1B Zone, is compatible with surrounding land uses and has been designed to avoid land use

**COASTAL COMMISSION**

1  
2 conflicts and negative impacts to both the artists' work/live occupants, the occupants of  
3 neighboring properties and the environment.

4  
5 3. The proposed site is adequately served by highways or streets of sufficient width and  
6 improved as necessary to carry the kind and quantity of traffic such use would generate and by  
7 other public or private facilities as are required in that the subject site maintains frontage on  
8 Laguna Canyon Road, and based on the results of the Traffic Impact Study prepared for the  
9 project and peer-reviewed, the proposal can be implemented without significantly impacting  
10 the existing roadway system.

11  
12 4. There are sufficient conditions imposed to ensure that the working space and residential  
13 dwelling area within each artist's working and living unit cannot be separately rented or sold.

14 5. The type of artwork proposed for the artist's working and living unit shall be consistent and  
15 compatible with the zoning district requirements and with the surrounding neighborhood in that  
16 mitigation measures have been incorporated into the project conditions to ensure compliance  
17 with the City's Noise Ordinance and the performance standards of the Artist's Work/Live  
18 Ordinance.

19  
20 6. The architecture, materials and functionality of the development reflect the use proposed to  
21 occupy the unit, which is also integrated and compatible with the surrounding neighborhood in  
22 that the development has been redesigned twice through the Planning Commission review  
23 process to reduce the building mass and scale and to incorporate rustic, natural elements, such as  
24 weathered wood panels, to complement the rural character of the Laguna Canyon Annexation  
25 Area Specific Plan, and the design as a work/live project with exterior communal work space  
26 will enhance the artist experience by creating a synergistic work environment.

27  
28 **COASTAL COMMISSION**

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Conditional Use Permit Findings for Projects located in the Laguna Canyon Annexation  
Area Specific Plan (Municipal Code Chapter 25.16)

1. The proposed use is compatible with the surrounding land uses in that the surrounding uses are light industrial, commercial and residential, and the proposed project provides working and living accommodations for artists, which is an allowed use in the M-1B Light Industrial Zone and encouraged by Laguna Beach, as an art colony.

2. The proposed use is compatible with and does not detract from the rural atmosphere of the Laguna Canyon Annexation Area, in that the project has been redesigned through the public hearing process to reduce massing and to incorporate materials that reflect the rural character of the canyon area. Additionally, the existing mature trees will be maintained on-site, while California Sycamores and Weeping Willows will also be planted to visually screen the building and enhance the natural setting of the neighborhood, in compliance with the intent of the M-1B Light Industrial Zone, which is exclusive to the Laguna Canyon Annexation Area Specific Plan.

3. The proposed use is not in conflict with the designation of Laguna Canyon as a candidate Scenic Highway, as the City's Land Use and Open Space/Conservation Elements of the General Plan do not designate nor map the subject site as a scenic vista, nor do they establish objective criteria by which to evaluate proposed development impacts to public views from Laguna Canyon Road. Therefore, the project will not adversely impact scenic resources.

4. The proposed use does not create a density which would compromise the environmental sensitivity of the area, in that a biologic/regulatory assessment was conducted for the project and recommended mitigation measures have been incorporated into the project and this resolution to

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minimize any potentially significant effects.

5. The proposed use will not result in a substantial increase in traffic generation or adversely impact vehicular circulation patterns in that resident artists will live and work at the site, thereby minimizing peak hour trips, and the site has been designed with two vehicular access driveways, which have been reviewed, peer-reviewed and determined by two separate traffic engineering consultants to provide safe circulation and adequate visibility.

SECTION 2. The City Council has made the following findings with regard to  
**Coastal Development Permit 13-1376:**

1. The project is in conformity with all applicable provisions of the General Plan, including the policies of the Land Use Element and Open Space/Conservation Element of the Certified Local Coastal Program/Land Use Plan, in that the proposed artists' work/live development is compatible with surrounding land uses and is designed and conditioned to avoid significant environmental effects and land use conflicts to both the artists' work/live occupants, the occupants of neighboring properties. In addition, the project complies with the Inclusionary Housing Policy of the General Plan Housing Element in that eight (8) artists' work/live units (#2, 12, 14, 15, 16, 17, 18 and 24) shall be restricted for a period of 55 years to occupancy by low-income artist households, utilizing the State Income Limits for Orange County published annually by the California Department of Housing and Community Development.

2. The project site is not located between the sea and the first public road paralleling the sea; therefore, special view and access considerations are not required.

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3. The proposed project, in conjunction with the mitigation measures outlined in the Mitigated Negative Declaration and this resolution, will not result in significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

SECTION 3. The City Council finds that the Planning Commission did not commit error in exercising its discretion with regard to **Planning Commission Design Review 13-1375** and that the Planning Commission's decision is supported by substantial evidence.

SECTION 4. **Conditional Use Permit 13-1047, Coastal Development Permit 13-1376 and Planning Commission Design Review 13-1375** are hereby granted and the associated **Mitigated Negative Declaration/Mitigation Monitoring Program** is hereby adopted to the following extent:

Approval to develop and operate 30 artists' work/live rental units, including the 55-year reservation of eight (8) artists' work/live rental units for the occupancy of low-income artist households, and a minor retail function within a 513-square-foot gallery.

SECTION 5. The following conditions are set forth to protect the health, safety and welfare of the community and to assure the intent and purpose of the regulations:

1. The Conditional Use Permit shall be subject to review if written complaints are received, and shall be subject to administrative review one (1) year after issuance of the certificate of use to determine if the approved conditions of approval are in compliance. These reviews may result in a formal noticed public hearing before the Planning Commission. After the public hearing on the matter, the Planning Commission may require immediate condition compliance, amend the conditions of approval or proceed with revocation of the Conditional Use Permit as specified in Municipal Code Section 25.05.075.

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2. It is understood that the conditions of approval apply herein to any future owners and/or lessees operating under this Conditional Use Permit. This means in legal terms that the conditions of approval for the Conditional Use Permit shall be and hereby are obligations of and binding upon the applicant and his/her heirs, successors, assigns, agents and representatives. The conditions shall constitute a covenant running with and binding the land in accordance with the provisions of California Civil Code Section 1468. Failure to comply with such conditions, and each of them, and any other related federal, state and local regulations may be grounds for revocation of the Conditional Use Permit, in addition to other remedies that may be available to the City.

3. Applicable Certificate of Use and/or Certificate of Occupancy shall not be issued until City staff has verified compliance with all conditions of approval.

4. A City business license shall be obtained prior to the operation of any business use permitted by this Conditional Use Permit.

5. Prior to occupancy of a work/live unit, each artist shall apply to the City and receive an Artist Occupancy Permit and a Business License in compliance with Municipal Code Chapter 25.16.

6. This Conditional Use Permit shall not become effective until the owner of the subject property has signed an affidavit in the form attached to this Resolution, whereby the property owner acknowledges and consents to the imposition of the conditions set forth in this Resolution, and agrees that such conditions shall constitute restrictions running with the land and shall be binding upon the property owner and their heirs, successors and assigns. If the applicant is different than the owner of the subject property, then this Conditional Use Permit shall also not

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2 become effective until the applicant has signed an affidavit in the form attached to this  
3 Resolution, whereby the applicant acknowledges and consents to the imposition of the conditions  
4 set forth in this Resolution, and agrees that such conditions shall be binding upon the applicant  
5 and their heirs, successors and assigns.  
6

7 7. The Conditional Use Permit shall lapse and automatically become void two years following  
8 the effective date unless: a) the privileges authorized are established; or b) a building permit is  
9 issued and construction is begun and diligently pursued to completion or c) an extension of time  
10 is granted pursuant to Municipal Code Section 25.05.030(I).  
11

12 8. If the use authorized under this Resolution and Conditional Use Permit is abandoned or  
13 terminated for any reason for a period of at least one year, the Conditional Use Permit shall  
14 automatically expire and become void.

15 9. In the absence of specific provisions or conditions herein to the contrary, the application and  
16 all plans or exhibits attached to the application are relied upon, incorporated and made a part of  
17 this resolution. It is required that such plans or exhibits be complied with and implemented in a  
18 consistent manner with the approved use and other conditions of approval. Such plans and  
19 exhibits for which this Conditional Use Permit has been granted shall not be changed or  
20 amended except pursuant to a subsequent Conditional Use Permit as might otherwise be required  
21 or granted pursuant to the terms of Title 25 of the City of Laguna Beach Municipal Code.  
22

23 10. No additions or enlargements of structures or modification of floor areas designated to  
24 working and living spaces upon property for which this Conditional Use Permit has been  
25 granted shall be allowed except pursuant to a subsequent Conditional Use Permit or Variance as  
26 might otherwise be required or granted pursuant to the terms of Title 25 of the City of Laguna  
27

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Beach Municipal Code.

11. No proposed change or modification to the specifically permitted use and development of 30 artists' work/live units and one minor retail function within an on-site retail gallery shall be allowed, except pursuant to a subsequent or amended Conditional Use Permit granted pursuant to the terms of Title 25 of the City of Laguna Beach Municipal Code.

12. The artists' work/live units shall not be used as a Laguna College of Art & Design (LCAD) student housing facility or dormitory (also defined as a building, as at a college, containing a number of private or semiprivate rooms for residents, usually along with common bathroom facilities and recreation areas). This condition shall not preclude occupancy by individual artists, whom are also students, provided that every artist/resident shall apply to the City and receive an Artist Occupancy Permit and a Business License prior to occupancy, in compliance with Municipal Code Chapter 25.16.

13. Prior to submittal of working drawings for structural plan check, the applicant shall apply for and receive approval by the Arts Commission of an Art in Public Place application, which may include rotating art exhibits, in compliance with Municipal Code Chapter 1.09.

14. The applicant shall not allow, act, cause or permit any lessee, agent, employee, exhibitor or concessionaire any "prohibited discharge" (as defined in Municipal Code Section 16.01.020) into the City's storm water drainage system.

15. The applicant/owner shall defend, hold harmless and indemnify, at his/her/its expense, the City, City Council and members thereof, commissions, boards, officials, officers, employees, agents and representatives from any claims and all third party claims, actions or proceedings to the attack, set aside, void or annul and approval of this Conditional Use, which action is

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2 brought within the time period provided for in California Government Code Section  
3 66499.37, as same may be amended. This obligation shall encompass all costs and expenses  
4 incurred by the City in defending against any claim, action or proceeding, as well as costs or  
5 damages the City may be required by a court to pay as a result of such claim, action or  
6 proceeding. The City shall notify the applicant/landowner/subdivider in the defense of any  
7 claim, action or proceeding within a timely manner of receipt the same.  
8

9 16. Prior to issuance of a grading or building permit, the applicant shall submit a  
10 covenant/deed restriction acknowledging the potential soil erosion, liquefaction, settlement,  
11 earthquake, fire and flooding hazards of the site and waiving liability claims against the City,  
12 and such document shall be reviewed and approved by the City Attorney and filed and  
13 recorded with the Orange County Clerk and Recorder.  
14

15 17. The artists' work/live units shall not be rented or sold separately, and internal  
16 connection/access between the living and working areas shall remain consistent with the  
17 approved plans.  
18

19 18. Storage of materials and/or supplies for purposes other than those necessary to create the  
20 allowed artwork shall be prohibited, and outdoor storage shall be prohibited, excepting  
21 artwork which is actively in progress may be stored outdoors temporarily. All use and storage  
22 of hazardous materials shall be subject to the review and approval of the City's building  
23 official and fire chief.  
24

25 19. The installation of signs or construction of structures shall be prohibited unless a sign  
26 permit or building permit have been issued in compliance with the City's Zoning Ordinance.  
27

28 20. The approved minor retail function (on-site gallery) shall be limited to the retail sale of

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artwork created on-site by the resident artists, and shall be open by appointment only.

21. No employees shall be permitted on-site except pursuant to a subsequent or amended Conditional Use Permit granted pursuant to the terms of Title 25 of the City of Laguna Beach Municipal Code, in which the Planning Commission determines that there is adequate on-site parking.

22. Prior to occupancy of each artists' work/live unit the property owners shall notify the prospective artist tenant of the conditions outlined in this conditional use permit resolution, including the following:

a) The approved use at the site is artists' work/live, which is subject to the provisions of Municipal Code Chapter 25.16.

b) Under the City's General Plan and adopted zoning, the area in which the use is located is principally industrial zoned and residential uses are considered ancillary to the light industrial zoning of the area.

c) By selecting this type of residence in an industrial zone, the tenant acknowledges and accepts by signing an appropriate document, in a form satisfactory to the City Attorney and which is recorded, that there are commercial and industrial conditions such as traffic, noise, odors, dust and dirt generally found in the area.

d) The use of the artists' work/live unit may be subject to additional review upon receipt of and verification of written complaints and the use shall terminate immediately upon the expiration, revocation or termination of the conditional use permit. Upon termination of the conditional use permit, the artists' work/live unit may not be used for any purpose unless the structure and use conform in all aspects to the allowable zoning that applies to property in

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1  
2 which the artists' work/live unit is located.

3 e) An owner of the artists' work/live units shall sign an affidavit, punishable under  
4 penalty of perjury, stating that the artists' work/live unit is in compliance with Municipal  
5 Code Chapter 25.16 and that the individual unit is occupied by and in accordance with the  
6 artist occupancy permit. This affidavit shall be submitted annually for as long as the artist  
7 occupancy permit remains in effect. The unauthorized rental of an affordable unit, or the  
8 failure of an occupant to comply with the definition of an "artist," shall be grounds for  
9 revocation of the artist occupancy permit and the commencement of appropriate code  
10 enforcement proceedings against the occupant, the owner, or both.  
11

12 f) Upon reasonable notice, the City shall have the right to perform on-site inspections to  
13 determine compliance with Municipal Code Chapter 25.16 Artists' Work/Live, and the  
14 Conditional Use Permit.  
15

16 23. The proposed use and structure shall be subject to the requirements of Chapter 25.38 of  
17 the Laguna Beach Municipal Code entitled Flood Damage Prevention.  
18

19 24. The proposed development and associated improvements shall not conflict with any  
20 existing public easements. Prior to issuance of a building permit final and certificate of  
21 use/occupancy, the applicant shall submit to the City an irrevocable offer to dedicate a street  
22 and highway easement along the Laguna Canyon Road frontage, as shown on the approved  
23 project plans.  
24

25 25. Prior to issuance of a building permit the applicant shall submit an Affordable Housing  
26 Covenant, for review and approval by the City Attorney, to reserve eight artists' work/live  
27 units (numbers 2, 12, 14, 15 16, 17, 18, and 24) for occupancy by low-income artist  
28

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households for a minimum of 55 years from the date a certificate of use/occupancy is issued for said units. The Affordable Housing Covenant, in a form approved by the City Attorney, shall be recorded by the applicant in the Orange County Recorder's office prior to issuance of a building permit final and certificate of use/occupancy.

26. The owner of the subject property shall annually submit an affidavit to the City Community Development Department certifying that the occupant(s) of Units 2, 12, 14, 15, 16, 17, 18 and 24 are occupied by qualifying low-income households, consistent with the State Income Limits published annually by the California Department of Housing and Community Development (HCD) for Orange County. Such certification shall provide the tenant(s) name(s), proof of annual income, proof of monthly rental rate, and verify that the artists are operating in compliance with the Conditional Use Permit.

27. Prior to issuance of a building or grading permit the applicant shall submit an application and receive approval by the City for a Lot Line Adjustment to combine the two subject lots at 20412 and 20432 Laguna Canyon Road into one parcel.

28. Prior to issuance of a building or grading permit the applicant shall demonstrate that the temporary storage container, approved by Temporary Use Permit 11-07, has been permanently removed from the project site.

29. All equipment at the site shall be stored in individual artists' work/live units; larger equipment shall be stored in Unit 5. Artwork actively in progress may remain within the outdoor common area, temporarily, until completed.

30. The applicant shall apply to Caltrans for an Encroachment Permit for any construction within the State right-of-way (SR 133). The applicant shall submit either a Storm Water

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Pollutions Prevention Plan (SWPPP) or a Water Pollution Control Program (WPCP) pursuant to the Caltrans Storm Water Quality Handbook.

31. Any runoff draining into the Caltrans right-of-way from construction operations or from the resulting project must fully conform to the Caltrans Statewide NPDES Permit (Order No. 99-06-DWQ, NPDES No. CAS000003) and the current discharge requirements of the San Diego Regional Water Quality Control Board to avoid impacting water quality.

32. Prior to issuance of a building permit the applicant shall note the best management practices (BMPs), listed in the project Water Quality Management Plan (WQMP), on the construction plans and demonstrate how the BMPs have been incorporated into the project design and operation. (Mitigation Measure)

33. Prior to issuance of a grading or building permit the applicant shall either 1) agree to conduct grading and construction activities outside the breeding season between February 1 and August 31; or 2) a qualified biologist shall conduct a nesting bird survey prior to removing trees, shrubs, tall herbaceous vegetation and any structures, in order to prevent violations of the Migratory Bird Treaty Act, and provide such survey, including any recommended mitigation to the City. (Mitigation Measure)

34. Prior to issuance of a grading or building permit, the applicant shall note on the plans that each tenant shall receive a copy of the Disaster Preparedness and Emergency Evacuation Plan prepared for the project to reduce potential safety risks during potential floods and fires. (Mitigation Measure)

35. The allowable exterior noise levels from the operation of the artists' live/work use(s) shall comply with the limitations specified in Chapter 7.25 of the Laguna Beach Municipal Code.

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36. Prior to issuance of a grading or building permit the applicant shall note the following noise mitigation measures on the construction plans and incorporate such measures into the project construction, design and operation:

A) Construction Noise Mitigation:

1. Construction shall not occur during the hours of 6:00 p.m. and 7:30 a.m. Monday through Friday. Weekend construction activities may be conducted provided that they do not utilize loud equipment or disturb a person of normal sensitivity, and all construction activity shall comply with Municipal Code Section 7.25.080.

2. Stationary construction noise sources such as generators or pumps should be located at least 100 feet from sensitive land uses, as feasible

3. Construction staging areas shall be located as far from noise sensitive land uses as feasible.

4. During construction, the contractor shall ensure that all equipment is equipped with appropriate noise attenuating devices.

5. Idling equipment shall be turned off when not in use.

6. Equipment shall be maintained so that vehicles and their loads are secured from rattling and banging.

B) Project Operation Noise Mitigation:

1. All windows and sliding glass doors on units facing Laguna Canyon Road shall have an STC rating of 30 or higher. For proper acoustical performance, all exterior windows, doors and sliding glass doors must have a positive seal and leaks/cracks must be kept to a minimum. Minimize cracks or leaks; any partition with a gap or hole will allow noise to flank and

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penetrate the partition.

2. All equipment use shall be limited to the hours of 8:00 a.m. to 6:00 p.m. Monday through Friday and Saturdays from 9:00 a.m. to 5:00 p.m. No noise producing equipment shall be in use on Sundays.

3. No more than two noise producing tools shall be in use at any one time in the same area.

4. The use of any grinders, rotary screw compressors or other similar noise producing equipment shall only be operated behind noise barriers that have a weight of at least 3.5 pounds per square foot of face area without decorative cutouts or line-of-sight openings between the shielded areas and the project site. A noise barrier must present a solid face from top to bottom. Preventable openings or decorative cutouts shall not be made. All gaps (except for weep holes) shall be filled with grout or caulking to avoid flanking. Noise control barriers may be constructed using one, or any combination of the following material: a) masonry block; b) stucco veneer over wood framing (or foam core), or one-inch thick tongue and groove wood of sufficient weight per square foot; c) glass (minimum 1/4 inch thick) or other transparent material with sufficient weight per square foot; or d) earthen berm. (Mitigation Measure)

37. The artists' work/live use shall not be operated in such a manner that emits obnoxious odor or fumes beyond the working area.

38. The artists' work/live units shall not be operated in such a manner that emits smoke, dirt, or dust into the atmosphere.

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39. Prior to the issuance of a grading or building permit the applicant shall provide the City with the final Property Rules and Regulations that specify the noise mitigation related to equipment use and operation outlined in Condition 36, and the applicant shall note on the building plans that each tenant will receive a copy of the Property Rules and Regulations.

(Mitigation Measure)

40. Prior to issuance of a grading or building permit the applicant shall incorporate on-site traffic stop signs, stop bars and stop legends for each project access driveway into the construction plans. (Mitigation Measure)

41. Prior to issuance of a grading or building permit the applicant shall note the following mitigation measure on the building plans and within the Property Rules and Regulations: The project shall maintain a limited use area, to be kept clear of all obstructions over 30 inches high, including vegetation. Existing vegetation in the form of large trees on the south end of the project shall be trimmed to provide sufficient sight distance.

42. Prior to issuance of a grading or building permit the applicant shall submit building plans incorporating the best management practices outlined in the project Water Quality Management Plan (WQMP) dated May 10, 2013, into the project plans, and the site occupants shall, at all times, implement the WQMP best management practices. (Mitigation Measure)

43. On-site events shall only be conducted after City approval of a Temporary Use Permit.

44. The on-site retail gallery shall be operated by appointment, only.

45. The project has been designed to avoid impacts to riparian habitat, which occurs in close proximity to the project impact limits. Should circumstances change and impacts become unavoidable, the applicant shall consult with the California Department of Fish and Wildlife

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(CDFW) prior to causing any such impacts and any potentially significant impacts shall be mitigated to less than significant through coordination with CDFW.

46. Prior to issuance of a building permit final, the applicant shall apply to Caltrans and if approved, install the following signs: 1) One intersection warning sign "Double Side Roads" (W2-8L) 500 feet north of Stans Lane, along the westerly side of SR-133. A supplemental plaque with the word "AHEAD" (W16-9P) should be installed below the vehicular warning sign. 2) One intersection warning sign "Double Side Roads" (W2-8R) 500 feet south of Sun Valley Drive, along the easterly side of SR-133. A supplemental plaque with the word "AHEAD" (W16-9P) should be installed below the vehicular warning sign. **Additionally**, the applicant shall install the following signs, which do not require Caltrans approval: 1) One stop sign (R1-1), stop bar and stop legend for westbound traffic on Stans Lane at SR-133. 2) One stop sign (R1-1), stop bar and stop legend for westbound traffic on Sun Valley Drive at SR-133.

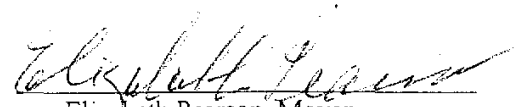
47. All project windows shall be tinted and low emissivity.

48. Any questions of intent or interpretation of any conditions herein shall be determined by the Community Development Director, whose determinations may be subject to appeal pursuant to the provisions of Municipal Code Title 25.

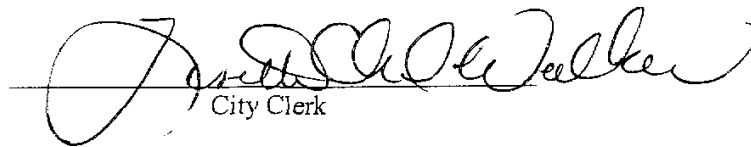
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ADOPTED this 1st day of April, 2014.

  
Elizabeth Pearson, Mayor

ATTEST:

  
City Clerk

I, LISETTE CHEL, City Clerk of the City of Laguna Beach, California, do hereby certify that the foregoing Resolution No. 14.027 was duly adopted at a Regular Meeting of the City Council of said City held on April 1, 2014, by the following vote:

AYES: COUNCILMEMBER(S): Boyd, Dicterow, Pearson

NOES: COUNCILMEMBER(S): Iseman, Whalen

ABSTAIN: COUNCILMEMBER(S): None

ABSENT: COUNCILMEMBER(S): None

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