

CALIFORNIA COASTAL COMMISSION

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W13c

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5- 17-0068

Applicant: South La Senda Trust # 109 & Skizzim.com, Inc.

Agents: Morris Skenderian & Assoc., AIA Architects

Location: 109 South La Senda Drive, Laguna Beach (Three Arch Bay), Orange County (APN: 056-193-31)

Project Description: Remodel and addition to a 1,995 sq. ft. one-story single-family residence with a basement and a detached 436 sq. ft. garage on an ocean-fronting bluff top lot, resulting in a two-level, 2,381 sq. ft. single family residence. The proposed project includes an 18 sq. ft. main-level addition, 443 sq. ft. basement-level addition, conversion of 15 sq. ft. of existing living space into garage space, and drought-tolerant, non-invasive landscaping.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

South La Senda Trust # 109 & Skizzim.com, Inc. request a permit to remodel and construct an addition to an existing single-family residence on an ocean fronting bluff top in Three Arch Bay, an area of deferred certification in the City of Laguna Beach. Three Arch Bay is a private community with shared ownership of amenities including public access easements over the portions of the beach between the subject property and the mean high tide line of the Pacific Ocean. There is no landside public access through the Three Arch Bay community, which is between Pacific Coast Highway (the first public road) and the coast, but the public may access the beach by sea or by walking laterally along the coast. The subject parcel is bordered by residential development to the north, west and east, and the beach and ocean to the south.

Although the Local Coastal Program for Laguna Beach has been certified by the Commission,

certification of the Three Arch Bay area was deferred by the Commission due to uncertainty of how to certify land use policies consistent with Chapter 3 of the Coastal Act and implementing ordinances consistent with the land use plan for this specific area, given the access-restrictive nature of the community. The proposed project is located within this area of deferred certification, and is located within 50 ft. of a coastal bluff; therefore, the project requires a coastal development permit from the Coastal Commission.

The existing two-level residence was constructed in 1949, prior to passage and implementation of the Coastal Act. The residence has a Commission-approved shotcrete/tieback wall system (approved by CDP 5-99-432) covering approximately 288 sq. ft. of bluff face. The shotcrete/tieback wall was approved in 2000 to stabilize the easternmost portion of the natural bluff face beneath the existing residence. That project addressed spalling of a jointed section of San Onofre Breccia (breaking of rock), which was exacerbated by erosion caused by groundwater seepage and a storm drain outlet that previously discharged at the bluff top. The storm drain outlet has since been modified to discharge at the base of the bluff, and a drainage device has been installed under the existing residence to conduct groundwater to the beach via non-erosive drain lines (via CDP 5-99-432).

The proposed project is a remodel with landward additions to a pre-coastal 21.2-ft. high, 1,995 sq. ft. single-family residence with a basement level. The proposed project includes an approximately 443 sq. ft. basement level addition, an 18 sq. ft. addition to the main level, and the conversion of 15 sq. ft. of existing living space into garage space. The proposed remodel also includes renovations to the interior and exterior of the residence.

The structure has an existing habitable basement level which will be enlarged by 443 sq. ft. The addition to the basement level will be on the landward side of the residence, within the footprint of the existing house, and will not result in an increase in height of the existing residence. The height of the garage, however, will be increased by one foot at the garage door header. The remodel will increase the overall square footage of the residence from 1,995 to 2,381 sq. ft. New landscaping and irrigation improvements are proposed as part of the proposed project. Approximately 100 cu. yds. of grading is proposed for the enlargement of the basement.

The project would include demolition of 17% of the existing roof and floors combined and approximately 45.6% of the existing exterior walls. The applicant proposes to retain and use the existing foundation and add new foundational elements; existing footings will be underpinned by 1.5-ft. deep concrete pads. No new foundation elements will be constructed further seaward than the existing foundation system.

The minimum bluff edge setback for new development in Laguna Beach (and many other jurisdictions) is 25 ft., but since the subject property is within an area of deferred certification, the LCP policy that requires the minimal setback is not a binding standard of review. The plans indicate the existing home currently has a 6-ft. setback from the bluff edge. The report submitted by the applicant identified the bluff edge adjacent to the edge of the existing cantilevered deck on the seaward side of the residence. However, the Commission's former staff Geologist, Dr. Mark Johnsson, identified the bluff edge to be further landward, which establishes that approximately one-half of the existing living space of the residence is located on the bluff face. Existing

development that predates the Coastal Act and is located seaward of the bluff edge or within the setbacks typically used in Three Arch Bay is considered by the Commission to be legally non-conforming. However, a new house, or a ‘major remodel’¹, would have to conform to the current building standards, including the minimal setback from the bluff edge. In this case, the proposed project is not a major remodel because the proposed demolition is less than 50% and the project will not increase the square footage of the existing building or structure by 50% or more. Also, no change in the existing structure’s bluff edge setback is proposed.

The proposed additions are within 25 ft. of the edge of the coastal bluff, as defined under section 13577(h) of the Commission’s regulations, and the Laguna Beach certified Land Use Plan (while acknowledging that the LCP is not the standard of review), but behind a stringline with other approved development on South La Senda Drive. The applicants’ geotechnical investigation determined that the additions can be safely supported by the proposed slab-on-grade foundation. In addition, the proposed additions will be landward of the 1.5 Factor of Safety as determined by the applicants’ geotechnical consultant. The applicants’ wave run-up and bluff/shoreline erosion analysis indicates that the proposed remodeled residence and addition will not be impacted by coastal hazards and will not require a shoreline protective device over the next 75 to 100 years.

Because the project is a remodel and addition, mostly within the footprint of an existing residence, and no development is proposed to extend seaward of the existing structure, Commission staff is recommending approval based on conformance with Chapter 3 policies of the Coastal Act and consistency with other Commission-approved projects in the area.

Staff recommends **approval** with conditions which require the applicants to: submit revised plans which correctly identify the bluff edge and ensure that no new development or improvements of principal structures or accessory structures shall be constructed further seaward than the existing home’s current seaward line of development; conform to landscape and erosion control requirements and geotechnical recommendations; implement construction best management practices; confirm that the extent of demolition is consistent with the approved demolition plans; agree that no bluff or shoreline protective device(s) that would substantially alter natural landforms along bluffs and cliffs shall ever be constructed to protect the proposed development; assume the risks of the development, waive any claim of damage or liability against the Commission, and indemnify the Commission against future claims; declare that any future improvements to the structure authorized by this permit shall require a permit amendment or a new permit; and record a deed restriction against the property incorporating the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property.

The motion and resolution to carry out the staff recommendation are on **page five**.

¹ “Major remodel” is not defined in the Coastal Act. Although not the standard of review, the certified Laguna Beach Land Use Plan defines a ‘major remodel’ as follows: Alteration of or an addition to an existing building or structure that increases the square footage of the existing building or structure by 50% or more; or demolition, removal, replacement and/or reconstruction of 50% or more of the existing structure; greater specificity shall be provided in the Laguna Beach Municipal Code.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

- Exhibit 1 – Project Location
- Exhibit 2 – Project Plans and Elevations
- Exhibit 3 – CCC-1 (Bluff Edge and Stringline)
- Exhibit 4 – CCC Memo: Bluff Edge
- Exhibit 5 – CDP 5-99-432 Site Plan

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 5-17-0068 pursuant to the staff recommendation.*

Staff recommends a **YES** vote. Passage of this motion will result in 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 5-17-0068 for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. 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 would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit amendment 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 permittees 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 of 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 permittees to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Submittal of Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for review and approval of the Executive Director two (2) sets of final architectural plans, foundation plans, grading plans, and drainage and erosion control plans that substantially conform with the plans submitted to the Commission on January 23, 2017 and July 26, 2017 prepared by Morris Skendarian & Associates, AIA, but shall be revised to include the following:
 - A. All final plans shall depict the existing bluff edge line (“CCC Top of Bluff”) as depicted by the applicant on Plan Page CCC-1, represented in **Exhibit 3** of the staff report dated July 28, 2017, and shall depict a 25-foot bluff edge setback from that CCC Bluff Edge.
 - B. No new development or improvements of principal structures shall be constructed further seaward than the existing home’s current seaward line of development, which is at a point 79 feet seaward from the inland side of the property line, as measured from the centerpoint of the property line that borders the South La Senda Drive right-of-way, and no new development or improvements of accessory structures shall be further seaward than the existing deck as reflected on the plans, which is at the point of 89 feet seaward from the inland side of the property line, centerpoint of the property line that borders the South La Senda Drive right-of- way.

The applicants 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 to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. **Conformance with Geotechnical Recommendations.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for the Executive Director’s review and approval, along with two (2) sets of final plans, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans to be submitted pursuant to **Special Condition 1**, including foundation and grading/drainage plans and certified that each of those final plans are consistent with all the recommendations contained in the Preliminary Geotechnical Investigation dated August 21, 2015 and Supplemental Investigation of Bluff Slope Stability dated February 3, 2017, prepared by Geofirm.

The applicants 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-approved amendment to

this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. **No Future Bluff or Shoreline Protective Devices that would Substantially Alter Natural Landforms along Bluffs and Cliffs.**

- A. By acceptance of this Permit, the applicants agree, on behalf of themselves and all successors and assigns, that no expansion of existing bluff protective devices or new bluff or shoreline protective device(s) that would substantially alter natural landforms along bluffs and cliffs shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-17-0068 including, but not limited to, the proposed development as it relates to the residence, foundations, decks, balconies and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, erosion, sea level rise or other natural coastal hazards in the future. By acceptance of this Permit, the applicants/landowners hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that would substantially alter natural landforms along bluffs and cliffs that may exist under Public Resources Code Section 30235.

- B. By acceptance of this Permit, the applicants/landowners further agree, on behalf of themselves and all successors and assigns, that the landowner(s) shall remove the development authorized by this Permit, including the proposed development as it relates to the residence, foundations, patios, decks, balconies and any other future improvements if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above if no future Coastal Development Permit is issued to construct protection for the development authorized by this Permit. In the event that portions of the development fall to the beach before they are removed, the landowner(s) shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

- C. By acceptance of this Permit, the applicants/landowners further agrees, on behalf of itself and all successors and assigns, that periodic bluff edge monitoring reports will be submitted as continued condition compliance. The submission of a bluff edge monitoring report to the Executive Director of the Coastal Commission, sent directly to the Coastal Commission's South Coast District office shall be submitted at least once every 10 years (or at earlier intervals if geologic conditions degrade such that geologic review is warranted) and shall include:
 - 1) A geotechnical investigation shall be prepared by a licensed engineer and geologist, with expertise in coastal processes and hazards) retained by the applicants, that addresses whether any portions of the residence or accessory structures are threatened by waves, erosion, storm conditions, bluff retreat, landslides, erosion, sea level rise or other coastal hazards.

- 2) The report shall document any changes in the condition of the bluff, including erosion since the date of permit issuance, and shall document the location of the bluff edge in relation to the primary residence.
- 3) The report shall identify all those immediate or potential future measures that could stabilize the principal residence without the use of bluff or shoreline protective device(s) that substantially alter the natural landform along bluffs and cliffs including but not limited to removal or relocation of portions of the residence.
- 4) If the geotechnical report concludes that the residence or any portion of the residence is unsafe for occupancy, the permittee shall, within 90 days of submitting the report, apply for a coastal development permit amendment to remedy the hazard through: measures that could stabilize the principal residence without the use of bluff or shoreline protective device(s) that substantially alter the natural landform along bluffs and cliffs or measures which include removal of the threatened portion of the structure.

4. Landscaping – Drought Tolerant, Non-Invasive Plants.

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, in a form and content acceptable to the Executive Director, two (2) full size sets of final landscaping plans, which shall include and be consistent with the following:
 - i. Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the 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. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>).
 - ii. Use of reclaimed water for irrigation is encouraged. If using potable water for irrigation, only drip or microspray irrigation systems may be used. Other water conservation measures shall be considered, such as weather based irrigation controllers.
- B. The permittees shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan 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 in writing that no amendment is legally required.

5. Drainage and Run-off Control Plan.

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, in a form and content acceptable to the Executive Director, two (2) sets of a final drainage plan prepared by an appropriately licensed professional that has been reviewed and approved by the City of Laguna Beach. The plan shall incorporate the following criteria:

- 1) Runoff from all roofs, patios, driveways and other impervious surfaces and slopes on the site shall be directed to dry wells, trench drains or vegetated/landscaped areas to the maximum extent practicable within the constraints of City requirements and geotechnical recommendations;
- 2) Where City code prohibits on-site infiltration, runoff shall be collected and discharged via pipe or other non-erosive conveyance to the frontage street to the maximum extent practicable. Runoff from impervious surfaces that cannot feasibly be directed to the street shall be discharged via pipe or other non-erosive conveyance to a designated outlet point to avoid ponding or erosion either on- or off- site;
- 3) Runoff shall not be allowed to pond adjacent to the structure or sheet flow directly over the coastal bluff to the beach below; and
- 4) The functionality of the approved drainage and runoff control plan shall be maintained throughout the life of the development.

B. The permittees shall undertake development in accordance with the approved plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit 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 applicants acknowledges and agrees (i) that the site may be subject to hazards from bluff and slope instability, sea level rise, erosion, landslides and wave uprush or other tidal induced erosion; (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. **Future Improvements.** This permit is only for the development specifically described in Coastal Development Permit 5-17-0068. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to this development governed by Coastal Development Permit 5-17-0068. Accordingly, any future improvements to the development 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 a Commission-approved amendment to Permit 5-17-0068 or shall require an additional coastal development permit from the Commission.

8. **Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.** By acceptance of the permit, the permittees agree to comply with the following construction-related requirements and shall do so in a manner that complies with all relevant local, state and federal laws applicable to each requirement:
- i. No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, rain, or tidal erosion and dispersion;
 - ii. Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
 - iii. Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;
 - iv. Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMP's shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and
 - v. All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

Best Management Practices (BMP's) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the onset of such activity. Selected BMP's shall be maintained in a functional condition throughout the duration of the project. By acceptance of the permit, the permittees agree that the following measures shall be used during construction:

- vi. The permittees shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These 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. It shall be located as far away from the receiving waters and storm drain inlets as possible;
- vii. The permittees shall develop and implement spill prevention and control measures;
- viii. The permittees shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50 feet away from a storm drain, open ditch or surface water; and
- ix. The permittees shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

9. **Confirmation of the Extent of Demolition.** After demolition has been completed, the applicants shall provide the Executive Director, for review and approval, a certified copy of the City of Laguna Beach Building Department job card showing that all demolition has been performed pursuant to the demolition plans approved under this coastal development permit.

If the Building Department job card, accepted by the Executive Director, indicates additional demolition has already occurred or must occur due to the deteriorated state of the walls which were proposed by the applicants to remain, the applicants shall halt construction immediately and submit a complete coastal development permit amendment application or an application for a new coastal development permit. The application shall address the issue of revisions to the project due to the need for additional demolition. Whether an amendment or a new application is required shall be determined by the Executive Director.

No further development may occur until either:

- a) The Executive Director determines, in writing, pursuant to the Building Department job card, that all walls identified as walls to remain are intact and structurally sound; or
- b) The applicants submit a coastal development permit amendment application if so directed by the Executive Director and the coastal development permit amendment is subsequently approved by the Coastal Commission and issued by the Executive Director; or
- c) The applicant submit a new coastal development permit application if so directed by the Executive Director and the coastal development permit is approved by the Coastal Commission and issued by the Executive Director.

10. **Termite Inspection.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for the review and approval of the Executive Director, a termite inspection report, prepared by a licensed professional, indicating the degree, if any, of termite damage that exists within the existing residential structure that is the subject of the permit. The termite inspection report shall also be submitted to the City of Laguna Beach Building Department.

If the termite inspection report indicates that additional demolition will be necessary in order for the structure to meet building and safety standards, the applicants shall submit a complete amendment request application or a complete application for a new coastal development permit. Whether an amendment or permit application is required shall be determined by the Executive Director. The application shall address the issue of revisions to the project due to the need for additional demolition.

Development may not occur until either:

- a) The Executive Director determines, in writing, pursuant to the termite inspection report and the City of Laguna Beach Building Department, no additional demolition will be

necessary and that all walls identified as walls to remain are intact and structurally sound, (and the coastal development permit has been issued); or

- b) The applicants submit a coastal development permit amendment application if so directed by the Executive Director and the coastal development permit amendment is subsequently approved by the Coastal Commission and issued by the Executive Director; or
- c) The applicant submit a new coastal development permit application if so directed by the Executive Director and the coastal development permit is approved by the Coastal Commission and issued by the Executive Director.

11. Non-Conforming Development.

- A. Other than as permitted under the plans approved under **Special Condition 1**, no improvements to the existing non-conforming development seaward of the “CCC Top of Bluff” as depicted in **Exhibit 3** of the staff report dated July 28, 2017, and seaward of the bluff edge setback area measured 25 feet inland of “CCC Top of Bluff”, shall be permitted, except to bring the development into complete conformity with the 25-foot bluff edge setback.
- B. The permittees shall undertake the development in accordance with Subsection A above. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines in writing that no amendment is legally required.

12. Deed Restriction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants 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.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

The subject site is an ocean fronting bluff top lot in Three Arch Bay, an area of deferred certification in the city of Laguna Beach, Orange County (**Exhibit 1**). Three Arch Bay is a private community with shared ownership of amenities including the portion of the beach between the

subject property and the mean high tide line of the Pacific Ocean. The lot slopes gently seaward between the road and the bluff edge, and then slopes more sharply to the sandy beach below (**Exhibit 1**). A one-story single-family residence over a basement level and detached garage occupies the pad portion of the 7,447 sq. ft. parcel. The land use designation for the parcel is Village Low Density and the adjacent parcels are also developed with single-family residences.

There is no public access through the Three Arch Bay gated community between the nearest public road (Pacific Coast Highway) and the coast, but the public may access the tidelands below the mean high tide line by sea and by walking laterally along the coast. The nearest public access point is 1,000 Steps Beach, approximately one mile to the northwest. The public may access the public tidelands and public access easements over the portions of the beach between the subject property and the mean high tide line of the Pacific Ocean by walking laterally along tidelands during low tide. The subject parcel is bordered by residential development to the north, east, and west, as well as the South La Senda Drive right-of-way to the north, and the ocean to the south (**Exhibit 1**).

The proposed development is a remodel with landward additions to a pre-coastal 1,995 sq. ft., 10.8-ft. high (as measured above upper property line), one-story single-family residence above existing subterranean basement level. The applicant proposes a net addition of approximately 461 sq. ft., which includes the construction of a 443 sq. ft. basement-level, an 18 sq. ft. first-floor addition on the landward side of the residence; and the conversion of 15 sq. ft. of existing habitable space into garage space (**Exhibit 2**). All of the additions are within the footprint of the existing structure, with the exception of the 18 sq. ft. portion. The remodel also includes renovations to the interior and exterior of the residence.

The structure has an existing habitable basement level which will be enlarged by 443 sq. ft. The addition to the basement level will be on the landward side of the residence, within the footprint of the existing residence, and will not result in an increase in height of the existing residence (**Exhibit 2**). The height of the garage will be increased by one foot at the garage door header. The upper level addition will occupy currently undeveloped area at the street level. The remodel will increase the overall square footage of the residence from 1,995 sq. ft. to 2,381 sq. ft. The additions will be supported by slab-on-grade foundation. New landscaping and irrigation improvements are also proposed as part of the addition and remodel. Approximately 100 cu. yds. of grading is proposed for the enlargement of the basement.

The proposed work does not involve demolition of more than 50% of the existing structure. The proposal involves less than 50% demolition (approximately 45.6%) of exterior walls, less than a 50% addition, and less than 17% change to the existing roof and floors combined (**Exhibit 2**). The applicant proposes to retain and use the existing foundation and add new foundational elements; existing footings will be underpinned by 1.5-ft. deep concrete pads. No new foundation elements will be constructed further seaward than the existing foundation (**Exhibit 2**). Therefore, pursuant to the definition in the City's LCP, which the Commission has been guided by in previous actions in Three Arch Bay, the proposed project is not a 'major remodel'² or re-development of the site

² The certified Land Use Plan (used as guidance in Three Arch Bay), defines a 'major remodel' as follows: *Alteration of or an addition to an existing building or structure that increases the square footage of the existing building or structure*

because the proposed demolition is less than 50% and the project will not increase the square footage of the existing building or structure by 50% or more.

Permit History

In June 2000, the Commission approved Coastal Development Permit 5-99-432 for the installation of a rock anchor system, shotcrete wall covering 288 sq. ft. of natural bluff face, and a non-erosive groundwater drainage device under the existing residence at the project site to stabilize the easternmost portion of the natural bluff face beneath the residence (**Exhibit 5**). That project was necessary to address spalling of a jointed section of San Onofre Breccia, which had been exacerbated by erosion caused by groundwater seepage and a storm drain outlet that previously discharge at the bluff top. The storm drain outlet has since been modified to discharge at the base of the bluff, and a drainage device has been installed under the existing residence to conduct groundwater to the beach via non-erosive drain lines (via CDP 5-99-432).

The residence includes an existing cantilevered deck over the bluff face extending from the main level of the residence outward to the shotcrete wall. No changes are proposed to this existing accessory structure at this time.

B. STANDARD OF REVIEW

Laguna Beach has a certified Local Coastal Program (LCP), but there are four areas of deferred certification in the City: Irvine Cove, Blue Lagoon, Hobo Canyon, and Three Arch Bay. Certification of the Three Arch Bay area was deferred by the Commission due to uncertainty of how to certify land use policies consistent with Chapter 3 of the Coastal Act and implementing ordinances consistent with the land use plan for this specific area, given the access issues arising from the nature of this private community. The proposed development needs a coastal development permit from the Coastal Commission because it is located in the Three Arch Bay area of deferred certification. Therefore, the standard of review for this project is Chapter 3 of the Coastal Act with the certified Laguna Beach LCP as guidance. (See Pub. Res. Code §§ 30511(c), 30600(a) and (c).)

C. HAZARDS & VISUAL RESOURCES

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to its setting.

Section 30253 of the Coastal Act states, in relevant part:

by 50% or more; or demolition, removal, replacement and/or reconstruction of 50% or more of the existing structure; greater specificity shall be provided in the Laguna Beach Municipal Code.

New development shall do all of the following:

(a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

A preliminary geotechnical Investigation report was prepared for the proposed development by Geofirm dated August 21, 2015. In addition, Geofirm supplemented this report with a slope stability investigation report dated February 3, 2017. The geologic reports present results and recommendations regarding the proposed development at the subject site. Preparation of the reports included research of readily available geotechnical records for the site and environs, identification of the site's subsurface soil and bedrock conditions by observation and exploration, collection of soil and bedrock samples, geotechnical laboratory testing of selected soil and bedrock samples obtained from exploratory work for the project, engineering analyses of the data obtained from the exploration, establishing the location of the bluff edge, slope stability analysis, and an assessment of expected long term bluff retreat.

The applicant has also provided a wave runup and bluff/shoreline erosion analysis prepared by GeoSoils, Inc. dated August 11, 2015.

Extent of Demolition

Where existing and/or proposed development is undertaken under the premise of a 'remodel' or 'remodel-addition' it's important to determine the quantity and location where work is occurring on the existing structure. This is needed in order to assess whether the extent of the development actually constitutes a replacement structure that requires the applicant to address all heretofore existing non-conformities with the Coastal Act, such as inadequate or absent bluff edge setback, and to ensure that the entire proposed development complies with all other applicable Chapter 3 policies. To the maximum extent possible it is also important to avoid creating new nonconformities, especially where they may interfere with bringing the structure into conformity in the future. One way the Commission determines whether a 'major remodel' or substantial redevelopment of a site is occurring, thereby constituting a replacement structure, is to look at the extent of demolition occurring to the existing structure and the location within the existing structure where such demolition is taking place. Typically, the Commission has quantified demolition by tabulating the extent of exterior linear walls to be removed compared to the total overall amount of exterior linear walls existing prior to the proposed development. The walls proposed to remain must retain their structural components such as studs and foundation. Cosmetic portions of the wall, such as exterior stucco and interior drywall, may be removed. The applicant has submitted information regarding the extent of demolition proposed. The Commission has typically found that if less than 50% of the existing structure is removed, the project can be reviewed as a remodel rather than as a 'major remodel' or substantial re-development. Furthermore, the term 'major remodel' is defined by the City's certified Land Use Element (used as guidance in this case) as:

Alteration of or an addition to an existing building or structure that increases the square footage of the existing building or structure by 50% or more; or demolition, removal,

replacement and/or reconstruction of 50% or more of the existing structure; greater specificity shall be provided in the Laguna Beach Municipal Code.

The significance of this distinction between a remodel and a major remodel is that existing non-conformities for a remodel, such as existing development within the setback area as is the case here, can be considered for retention as a baseline consideration for purposes of the current development proposal. The 50% demolition threshold provides one consistent and objective method of dealing with existing non-conformities associated with extensive major remodel projects.

The proposed plans indicate that less than 50% of the existing structure will be removed, so the proposed project is not a major remodel (**Exhibit 2**). Also, the square footage of the existing structure will not be increased by 50% or more (**Exhibit 2**). The proposed project involves a total of 17% demolition to the roof and floors, and 45.6% demolition of the existing exterior walls. Moreover, the 461 sq. ft. addition is not more than 50% of the total square footage of the existing residence (1,995 sq. ft.). While the City does not typically factor in changes to the foundation, the Commission has considered the extent of such work. In this case, the existing foundation will be retained. Existing footings, however, will be underpinned by nine 1.5-ft. deep concrete footing pads to balance the loading of the existing foundation supporting the existing residence and the new foundation that would support the lower level addition. Under the proposed lower level addition, slab-on-grade foundation is proposed. All of this proposed work is no further seaward than the existing foundation system. Therefore, as accurately described as a remodel, the existing structure can maintain its existing non-conformities, including the bluff edge setback.

However, contingencies must be set forth to assure that the quantity and location of demolition occurs in the manner proposed. Should quantity or location of demolition actually carried out substantially differ from that which is proposed and identified specifically by the Commission-approved plans, the Commission may establish requirements for the project to be reassessed based on the revised demolition plan. **Special Condition 9** requires that the applicant submit a copy of the City Building Department job card after the proposed demolition is complete and the framing of the walls to remain is exposed, but before any new construction has commenced. The City's card would verify the extent of demolition and the condition of the walls remaining. If the card indicates that more demolition has occurred than was approved or that the walls originally proposed to remain are not structurally sound, the applicants shall be required to immediately halt construction and submit an amendment application or an application for a new coastal development permit, if legally required. Further, **Special Condition 10** requires a termite inspection to ensure that additional demolition of the structure beyond the scope authorized by the permit will not be undertaken due to termite damage. Should extensive termite damage be discovered, the Executive Director shall make a determination in writing whether an amendment or new permit application is appropriate. Once a complete application is received, the project would then be evaluated based on the newly discovered information.

The existing structure and accessory development are considered by the Commission to be existing legally non-conforming. If the site were to be substantially re-developed, the Commission would typically require the entire site, including accessory development, to be made to conform to current setback requirements. In this case, the proposed project is a remodel/addition and does not involve a 'major remodel' or substantial redevelopment of the site. Therefore, the Commission imposes

Special Condition 11, which does not allow improvements to this existing non-conforming development (except as may be specifically authorized by this CDP) and identifies permit requirements if the permittees decide to change the plans with respect to the non-conforming development. **Special Condition 7** notifies the applicants and future property owners that future improvements and repair and maintenance activities require a coastal development permit.

Setbacks

Section 30253(a) of the Coastal Act requires that new development minimize risks to life and property in areas of high geologic hazard. The Commission has consistently found that development on a bluff site that is adjacent to the sea, like the project site, is inherently subject to hazards from erosional forces imposed against the bluff material from wave energy, wind and rain. Setting development back from the edge of the bluff can substantially decrease risk to life, because the further from the bluff edge development is located, the less likely it is that that development will become jeopardized by erosion, landslides, and similar hazards. Likewise, setbacks decrease the likelihood of destruction of a structure caused by geologic instability. The added weight of development, irrigation, and human activity closer to the bluff edge all increase the rate of erosion and bluff retreat.

In addition, Section 30251 of the Coastal Act requires that scenic and visual qualities of coastal areas be protected. Setting development further back from the edge of the coastal bluff decreases the project's visibility from the beach below, which the public may access below the mean high tide line. For these reasons, the Commission typically imposes a bluff edge setback as a condition of approval for development on bluff sites.

The Commission's regulations, Section 13577(h)(2), provides the definition of "bluff edge":

Bluff line or edge shall be defined as the upper termination of a bluff, cliff, or seacliff. In cases where the top edge of the cliff is rounded away from the face of the cliff as a result of erosional processes related to the presence of the steep cliff face, the bluff line or edge shall be defined as that point nearest the cliff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff. In a case where there is a steplike feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the cliff edge.

Defining the bluff edge can be complicated: by the presence of irregularities in the bluff edge, a rounded bluff edge, a sloping bluff top, or previous grading or development near the bluff edge. In this case, previous grading and development has created a steplike feature at the top of the cliff face. Where there is a steplike feature at the top of the cliff face, the landward edge of the topmost riser should be taken to be the cliff edge consistent with Section 13577(h)(2) of the Commission's Regulations.

The location of the bluff edge identified by the applicants' geotechnical consultant was depicted near the seaward extent of the cantilevered deck, at the approximately 73-ft. elevation contour line on the topographic map (**Exhibit 3**). Based on this bluff edge, the plans state the existing residence has a current 6 to 13 ft. setback from the bluff edge.

However, the Commission's former staff geologist, Dr. Mark Johnsson, reviewed the applicants' geotechnical analysis, bluff edge determination, and proposed architectural and foundation plans and determined that the applicant's bluff edge determination is not consistent with the definition of bluff edge in Section 13577(h)(2) of the Commission's regulations.

Although not the standard of review here, the Land Use Element, a component of the City of Laguna Beach certified LCP, contains the following definition of "Oceanfront Bluff Edge or Coastal Bluff Edge":

The California Coastal Act and Regulations define the oceanfront bluff edge as the upper termination of a bluff, cliff, or seacliff. In cases where the top edge of the bluff is rounded away from the face of the bluff, the bluff edge shall be defined as that point nearest the bluff face beyond which a downward gradient is maintained continuously to the base of the bluff. In a case where there is a step like feature at the top of the bluff, the landward edge of the topmost riser shall be considered the bluff edge. Bluff edges typically retreat over time as a result of erosional processes, landslides, development of gullies, or by grading (cut). In areas where fill has been placed near or over the bluff edge, the original bluff edge, even if buried beneath fill, shall be taken to be the bluff edge.

Contrary to the bluff edge provided by the applicants' consultant, the Commission's former staff Geologist estimated the natural bluff edge to be located at approximately the 81-ft. elevation contour line, which was subsequently depicted as "CCC Top of the Bluff" by the applicant on a cross section and site plan, see **Exhibit 3** (for purposes of the final site plan the applicants have accounted for the Commission's determination of the bluff edge). The 81-ft. elevation contour line places the CCC bluff edge approximately 20-25 ft. landward of the applicants' bluff edge determination. Commission technical staff has confirmed Dr. Johnsson's bluff edge (**Exhibit 4**). Based on the definitions of bluff edge in the Commission's regulations, as well as the Laguna Beach Land Use Element as guidance, Commission staff has identified the bluff edge to be at approximately the 81-ft. elevation contour line, which is closer to the landward topmost riser of a "step-like feature" created by grading and seaward of which a natural downward gradient is maintained continuously to the base of the bluff.

Thus, Commission staff concludes that the ocean fronting bluff edge is at approximately the 81-ft. elevation contour line, where there is continuous downward gradient under the existing home.

Because the bluff edge runs along a contour, the bluff edge setback is further from the street on the east side of the property and nearer to the street on the west side of the property. From the bluff edge at approximately the 81-ft. elevation contour line, a portion of the existing residence encroaches 10 ft. onto the bluff face on the east side and 15 ft. on the west side. The existing seaward deck is cantilevered over the natural bluff face and extends 5-to-13 ft. past the seaward extent of the house, or 15-to-28 ft. beyond CCC's bluff edge; this deck is proposed to remain intact.

Coastal Act Sections 30251 and 30253 require that new development minimize the alteration of natural land forms and not contribute to geologic instability – hence why the Commission typically

requires adequate setbacks from bluff edges for development situated on a bluff site. Although not the standard of review here, the Laguna Beach Land Use Element contains more specific policies.

Policy 7.3 of the Land Use Element states:

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 of the Land Use Element states:

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

Action 7.3.5 of the Land Use Element states:

Prohibit development on oceanfront bluff faces, except public improvements providing public access, protecting coastal resources, or providing for public safety. Permit such improvements only when no feasible alternative exists and when designed and constructed to minimize landform alteration of the oceanfront bluff face, to not contribute to further erosion of the oceanfront bluff face, and to be visually compatible with the surrounding area to the maximum extent feasible.

Action 10.2.7 of the Land Use Element states:

Require all new development located on oceanfront bluffs to be sited in accordance with the stringline but not less than 25 feet from the bluff edge. This requirement shall apply to the principal structure and major accessory structures such as guesthouses and pools that require a structural foundation. The setback shall be increased where necessary to ensure geologic safety and stability of the development.

Action 10.2.8 of the Land Use Element states:

On oceanfront bluffs, require new minor accessory structures such as decks, patios and walkways that do not require structural foundations to be sited in accordance with stringline but not less than 10 feet from the bluff edge. Require accessory structures to be removed or relocated landward when threatened by erosion, geologic instability or other coastal hazards.

In Laguna Beach, the Commission typically requires a minimum bluff edge setback of 25 ft. from the edge of the coastal bluff for primary structures (i.e. the enclosed living area of residential structures) and a 10-ft. setback for accessory structures (e.g. decks and patios) based on Actions 10.2.7 and 10.2.8 of the Land Use Element. In this case, a portion of the existing single-family residence is on the bluff face, encroaching 10 ft. onto the bluff face on the east side and 15 ft. on the west side. However, considering that the existing single-family residence constitutes a legal

nonconforming use that predates the Coastal Act and the Laguna Beach LCP, and that the LCP is not the standard of review, the fact that these existing elements of the single-family home do not meet the LCP's 25-ft. setback standard does not warrant any action by the Commission at this time. The proposed addition would be setback one to four feet from the ocean-fronting bluff edge as determined by Commission staff. The proposed addition does not conform with the minimum setbacks requirements set forth in the certified LCP. However, considering that the LCP's 25-ft. setback standard is not a binding requirement on this site, and recognizing the unique nature of the developed parcel and the proposed development in the setback which will mostly be underground, in an area which has been developed with other residences predating the Coastal Act extending up to and over the bluff edge, the Commission may consider other standards in order to provide a consistent and equitable analysis to ensure that the proposed development meets the requirements of Chapter 3 coastal and geologic hazards policies (e.g., 30251 and 30253).

Stringline Analysis

The existing single-family residence at 109 La Senda Drive encroaches onto the bluff face (10 ft. on the east side and 15 ft. on the west side) but was constructed prior to the Coastal Act and is in line with the pattern of existing development which also predates the Coastal Act. Because the additions are proposed landward (north) of the existing seaward extent of the home, the additions meet the setback from a stringline drawn from the southern wall of the existing structures to the east and the west. Therefore, all of the proposed development will be inland of the existing line of development, and will not impact visual resources. The stringline for primary structures in this instance is between the southeastern wall of the home located at 111 South La Senda Drive and the southwestern wall of the home located at 107 Bay Drive.

Three Arch Bay Zoning Code Section 25.44.050(E)(1) is not the standard of review here, but may be used as guidance, and is more restrictive of bluff top development than the underlying Laguna Beach Zoning Code:

All coastal lots are subject to a stringline setback. The building stringline averages the setback of oceanfront buildings on both adjacent sides of coastal lots and is defined as follows: The stringline setback shall be depicted as a line across a parcel that connects the oceanward ends of the nearest adjacent walls of the main buildings on adjacent lots.

The stringline identified in **Exhibit 3** is consistent with this definition and would support approval of the proposed additions to the existing home behind the line of existing development of primary structures as the project meets this stringline setback. The additions would be in character with the existing line of development of the residence and the surrounding residences. Also, approval of the additions will not set a negative precedent for new bluff development with respect to the fact that new additions do not meet the typically-required minimum setback for bluff top lots in this area because they are additions to an **existing** legal nonconforming single-family home built prior to passage of the Coastal Act – not development of an entirely new single family home. Moreover, 443 sq. ft. of the additions are proposed on the basement level within the footprint of the existing residence and it will not be visible from the public portion of the beach below the site. In short, although the LCP is not the standard of review here, the fact that the proposed development meets the stringline policy of Three Arch Bay Zoning Code Section 25.44.050(E)(1) and the proposed

development is a non-major remodel within the footprint of an *existing* legal nonconforming single-family residence, which itself does not meet the LCP's 25-ft. setback policy but is still set back from the bluff edge, supports the conclusion that it is appropriate to allow the proposed development.

Geotechnical Recommendations

Regarding the feasibility of the proposed project the geotechnical investigation prepared by Geofirm, states:

The proposed structural improvements at the subject site are considered geotechnically feasible provided the recommendations herein are integrated into design, construction, and long-term maintenance of the property...

...Temporary caisson-shoring is locally anticipated to facilitate grading of lowest-level pads...

...The proposed residence additions may utilize conventional foundations constructed in competent terrace deposits or new engineered fill...

...During a seismic event, the proposed foundation system supporting the additions may perform differently than the foundation system for the existing residence. The structural engineer should evaluate the structural connections between the proposed and existing structures, and provide additional requirements, if warranted, to reduce the potential for distress along such structural components.

The applicants propose to retain 100% of the existing foundation. Existing footings, however, will be underpinned with nine 1.5-ft. deep concrete pads to ensure uniform distribution of loading and help balance the existing foundation supporting the existing residence and new foundation that will support the lower level addition. The new foundation system proposed for the addition will be a slab-on-grade foundation. In addition, three concrete piers will be installed on the easternmost portion of the property, approximately 5 ft. landward of the bluff edge and adjacent to the lower-level addition for shoring. All of this proposed work is no further seaward than the existing foundation system.

Finally, the subject site is located on San Onofre Breccia, which is a highly stable geologic formation. The applicants' geotechnical investigation and supplemental reports dated August 11, 2015 and February 3, 2017, respectively, determined that the proposed new development will not be threatened or destroyed based on the expected erosion rate over the next 75 years; thus a smaller setback is satisfactory and will minimize risk to life and property, consistent with section 30253 of the Coastal Act.

The geologic consultant has found that the subject site is suitable for the proposed development provided the recommendations contained in the geotechnical investigation prepared by the consultant are implemented in design and construction of the project. Adherence to the recommendations contained in the above-mentioned geotechnical investigation is necessary to ensure that the proposed project assures stability and structural integrity, and neither creates nor

contributes significantly to erosion, geologic instability, or destruction of the site or surrounding area. Therefore, **Special Condition 2** requires that the applicants conform to the geotechnical recommendations in the above mentioned geotechnical investigation, as summarized above.

Sea Level Rise

The report, *Wave Uprush and Bluff/Shoreline Erosion Analysis* by GeoSoils Inc. dated August 21, 2015 indicates that the shoreline erosion rate in this location will be the same as it has historically been, even with the most severe sea level rise scenario of 66 inches by the year 2100 (National Research Council 2014). The analysis concludes that the site is grossly stable and that the rate of erosion is sufficiently low that the proposed residence will be safe for at least an anticipated 75-year life of the development. Because of the presence of erosion resistant bedrock on the southern ocean fronting coastal bluff, the expected erosion rate from today until 2050 is less than 1 inch per year. Given sea level rise, the analysis indicates that the most conservative (worst case scenario) estimate for bluff retreat is 5.2 ft. by the year 2100. However, retreat of coastal bluffs can be episodic, especially if the bluff is undermined by wave attack at the toe of the bluff.

The coastal bluffs in this location are more than +90 ft. above the beach and the maximum expected wave run-up is +37 ft.; therefore wave up-rush will not impact the existing structure or proposed addition, although wave up-rush may contribute to episodic collapse or erosion.

Approximately half of the existing residence encroaches onto the bluff face. An erosional retreat or a bluff collapse equal to 5.2 ft. has the potential to impact the existing residence and the existing cantilevered deck. However, given that the scope of the proposed development does not trigger the major remodel or redevelopment standard, and that the existing residence was legally constructed before the Coastal Act was enacted, Commission staff does not here review potential adaptation or alternatives strategies for worst-case scenario episodic collapse or erosion impacts on the ***existing*** structure other than to require the applicant to assume the risk and waive liability of the identified coastal hazards. Severe storms and stormwater flows could also affect the bluff face, and could expose the lower level. Future redevelopment of the site would be required to maintain a 25-ft. bluff edge setback to maximize safety in the event of gradual bluff erosion or bluff collapse. The addition is proposed to be within the existing footprint of the structure and inland of the most seaward-point of the existing development. As conditioned to require the applicants to accept the risks of the development and the waiver of liability in light of the identified coastal hazards, the project can be approved consistent with the Coastal Act.

Future Protective Devices

The proposed development is located on a bluff top ocean front lot. In general, lots comprised of bluffs are inherently hazardous. It is the nature of bluffs, and especially ocean bluffs, to erode. Bluff failure can be episodic, and bluffs that seem stable now may not be so in the future. Even when a thorough professional geotechnical analysis of a site has concluded that a proposed development is expected to be safe from bluff retreat hazards for the life of the project, it has been the experience of the Commission that in some instances, unexpected bluff retreat episodes that threaten development during the life of a structure sometimes do occur. In the Commission's experience, geologists cannot predict with absolute certainty if or when bluff failure on a particular site may take place, and cannot predict if or when a residence or property may be come endangered.

Section 30253(b) of the Coastal Act requires that new development shall not require construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The proposed development could not be approved as being consistent with Section 30253 of the Coastal Act if projected bluff retreat would affect the proposed development and necessitate construction of a protection device that would substantially alter natural landforms along bluffs and cliffs.

The geotechnical investigation reports prepared by Geofirm indicate that the subject site is suitable for the proposed landward additions totaling 461 sq. ft. and remodel of the existing single-family residence, provided the recommendations contained in the geotechnical investigations prepared by the consultant are implemented in design and construction of the project.

The geotechnical consultant's slope stability analysis indicates there is a factor of safety of 1.5 for the global static conditions, but only 1.1 for the pseudo-static conditions. The Coastal Commission has in the past approved projects only if they have a minimum 1.5 factor of safety³ for approving new development, which must minimize risk of life and property over the economic life of the project. In addition, the applicant's geologist has indicated that the entire project site is grossly stable (above 1.5) whether or not the Commission-approved shotcrete repair (CDP 5-99-432; see **Exhibit 5**) was in place or not, which was installed to address a localized stability concern.

The Coastal Act limits construction of these protective devices because they have a variety of negative impacts on coastal resources including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach. The proposed project can only be found consistent with Section 30253 of the Coastal Act if a shoreline/bluff protective device that would substantially alter natural landforms along bluffs and cliffs is not required to protect the new development in the future. The applicants' geotechnical consultant has indicated that the site is grossly stable, that the project will be safe for the life of the project, and that no shoreline or bluff protection devices that would substantially alter natural landforms along bluffs and cliffs will be needed. If not for the information provided by the applicants that the site is safe for the new proposed development, the Commission could not conclude that the proposed development will not in any way "require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs." However, as stated above, geologic conditions change over time and predictions based upon the geologic sciences are inexact. Even though there is evidence that geologic conditions change, the Commission must rely upon, and hold the applicants to their information which states that the site is safe for development without the need for new or expansion of protective devices that would substantially alter natural landforms along bluffs and cliffs. Therefore, the Commission imposes **Special Condition 3** which requires that the applicants, on behalf of themselves and all successors and assigns, agree that no expansion of existing bluff protective devices or new bluff or shoreline

³ Although not the standard of review, Action 10.2.6 of the certified Laguna Beach Land Use Plan (used as guidance in this case) states, in relevant part: *Require all new development located on an oceanfront bluff top to be setback from the oceanfront bluff edge a sufficient distance to ensure stability, ensure that it will not be endangered by erosion, and to avoid the need for protective devices during the economic life of the structure (75 years)...To assure stability, the development must maintain a minimum factor of safety against landsliding of 1.5 (static) or 1.2 (pseudostatic...) for the economic life of the structure.*

protective device(s) that would substantially alter natural landforms along bluffs and cliffs shall ever be constructed to protect the development approved pursuant to this permit including, but not limited to, the proposed development as it relates to the residence, foundations, decks, balconies and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, erosion, sea level rise or other natural coastal hazards in the future. **Special Condition 3** also requires that, by acceptance of this permit, the applicants waive, on behalf of themselves and all successors and assigns, any right to construct protective devices to protect the proposed project that may exist under section 30235.

Assumption of Risk

Although adherence to the geotechnical consultant's recommendations will minimize the risk of damage from erosion, the risk is not eliminated entirely. The site is an oceanfront bluff lot, where conditions are inherently hazardous. Given that the applicants have chosen to implement the project despite potential risks from bluff and slope instability, sea level rise, erosion, landslides and wave uprush or other tidal induced erosion, the applicants must assume the risks. Therefore, the Commission imposes **Special Condition 6**, requiring the applicants to assume the risk of the development. In this way, the applicants are notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicants to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand the hazards. In addition, the condition ensures that future owners of the property will be informed of the risks and the Commission's immunity from liability. As conditioned, the Commission finds the proposed project is consistent with Section 30253(a) of the Coastal Act.

Drainage and Landscaping

Because of the fragile nature of coastal bluffs and their susceptibility to erosion and collapse, the Commission requires a special condition regarding the types of vegetation to be planted. The installation of in-ground irrigation systems, inadequate drainage, and landscaping that requires intensive watering are potential contributors to accelerated weakening of some geologic formations; increasing the lubrication along geologic contacts and increasing the possibility of failure, landslides, and sloughing, which could necessitate protective devices. Use of non-native vegetation that is invasive can have an adverse impact on the existence of native vegetation. Drought tolerant native plants require less water than other types of vegetation, thereby minimizing the amount of water introduced into the bluff top. Drought resistant plantings and minimal irrigation encourage root penetration which increases bluff stability. Water on site can be reduced by limiting permanent irrigation systems. Consequently, irrigation must be limited to temporary irrigation only as needed to establish plants. New landscaping is proposed as part of this project, therefore, **Special Condition 4** requires that the applicants accept that no invasive or facultative vegetation will be planted on the site. **Special Condition 5** requires final drainage and erosion control plans for the treatment of runoff to be maintained for the life of the project. As conditioned, the development will be consistent with section 30253 of the Coastal Act.

Conclusion

The existing residence and proposed additions are located within an existing developed residential neighborhood. The Commission finds that only as conditioned as described above, can the proposed development be found consistent with Sections 30251 and 30253 of the Coastal Act which require

that landform alteration be minimized, development not rely on shoreline or bluff protective devices, scenic coastal views be protected, and geologic stability be assured.

D. DEVELOPMENT

As described in the Hazards Section above, the Coastal Act requires new development to minimize risks to life and property in areas of high geologic, flood, and fire hazard and assure stability and structural integrity. In order for the proposed development to minimize risk and assure stability, the development must be setback a safe distance from the bluff edge. Therefore, **Special Condition 1** requires the applicants to submit revised final architectural plans, foundation plans, grading plans, and drainage and erosion control plans which identify the correct location of the bluff edge in relation to the existing home and the proposed addition, and shall depict the location of the CCC 25-ft. bluff edge setback. The condition also requires that the plans reflect no new development or improvements of principal structures or accessory structures further seaward than the existing home's current seaward line of development.

The development is located within an existing developed area and the proposed development is compatible with the character and scale of the surrounding area, which consists of one- to two-story single-family residences. As proposed the project is consistent with Chapter 3 policies of the Coastal Act for new development. However, the proposed project raises concerns that future development of the project site potentially may result in a development which is not consistent with the Chapter 3. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission imposes **Special Condition 7**, which requires either an amendment or an additional coastal development permit from the Commission for any future improvements to the single-family residence not authorized by this permit.

E. PUBLIC ACCESS AND RECREATION

Section 30604(c) of the Coastal Act requires that every coastal development permit issued for any development between the nearest public road and the sea include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3.

Section 30210 of the Coastal Act states:

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, **rights of private property owners**, and natural resource areas from overuse (**emphasis added**).*

Section 30214 of the Coastal Act states in relevant part:

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case ...

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution.

The proposed project is located within an existing locked-gate community located between the sea and the first public road paralleling the sea. Public access through this community does not currently exist. The proposed development on an existing residential lot will not affect the existing public access conditions. The fact that this locked-gate community, including the existing residence, impedes public access from the nearest public road to the shore, is considered a baseline condition for purposes of the proposed development considering that the homes which comprise this locked gate community predate the Coastal Act. As conditioned, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities which do not already exist due to the existing residence onsite and the greater locked gate community within which the existing residence is situated.

Although, ideally public access from the nearest public road to the shore would be provided within this locked-gate community, at the present time staff has not identified a legal mechanism for requiring such public access (hence why this area of Three Arch Bay was deferred for LCP certification). Staff will continue to explore future possibilities with the City and stakeholders to provide future public access in this area at which time this area of deferred certification may be able to be certified for inclusion with the remainder of the already-certified LCP, but in the meantime the proposed development can be found consistent with the public access policies of the Coastal Act. Thus, as conditioned, the proposed development conforms with the Chapter 3 public access protection policies of the Coastal Act.

F. WATER QUALITY AND BIOLOGICAL PRODUCTIVITY

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Since the subject site is adjacent to the ocean, the proposed development has the potential for a discharge of polluted runoff from the project site into geologically and environmentally sensitive

coastal bluffs and coastal waters. A final drainage and run-off control plan is required by **Special Condition 5**, which states that runoff from all roofs, patios, driveways and other impervious surfaces and slopes on the site shall be directed to dry wells, trench drains or vegetated/landscaped areas to the maximum extent practicable within the constraints of City requirements; and where City code prohibits on-site infiltration, runoff shall be collected and discharged via pipe or other non-erosive conveyance to the frontage street to the maximum extent practicable. Runoff from impervious surfaces that cannot feasibly be directed to the street shall be discharged via pipe or other non-erosive conveyance to a designated outlet point to avoid ponding or erosion either on- or off- site. Runoff shall not be allowed to pond adjacent to the structure or sheet flow directly over the coastal bluff to the beach below; and the functionality of the approved drainage and runoff control plan shall be maintained throughout the life of the development. The Commission also imposes **Special Condition 8**, which requires the applicants to implement construction best management practices. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, the use of noninvasive drought tolerant vegetation to reduce and treat the runoff discharged from the site, and for the use of post-construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

G. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition 12**, which requires that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

H. LOCAL COASTAL PROGRAM

Section 30604 (a) of the Coastal Act states:

Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

The City of Laguna Beach Local Coastal Program was certified with suggested modifications, except for the areas of deferred certification, in July 1992. In February 1993 the Commission

concluded with the Executive Director's determination that the suggested modification had been properly accepted and the City assumed permit issuing authority at that time.

The subject site is located within the Three Arch Bay area of deferred certification. Certification in this area was deferred by the Commission due to uncertainty of how to certify land use policies consistent with Chapter 3 of the Coastal Act and implementing ordinances consistent with the land use plan for this specific area, given issues of public access arising from the locked-gate nature of the community. However, as discussed above, the proposed development will not further decrease or impact public access within the existing locked-gate community. Therefore the Commission finds that approval of this project, as conditioned, will not prejudice the ability of the City of Laguna Beach from preparing a total Local Coastal Program for the areas of deferred certification that conforms with and is adequate to carry out the Chapter 3 policies of the Coastal Act.

I. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096(a) of the Commission's 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).

Under Section 15251(c) of Title 14 of the California Code of Regulations, the Commission's CDP regulatory process has been certified as the functional equivalent to the CEQA process. As a certified regulatory program, Section 21080.5(d)(2)(A) of CEQA still applies to the Commission's CDP regulatory process and 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 purposes of CEQA; on January 13, 2017, the City determined that the proposed addition and remodel was categorically exempt from CEQA requirements (Class 1 addition to an existing structure that will not result in an increase of more than 50% of the floor area of the structure before the addition or 2,500 sq. ft., whichever is less, per 14 CCR § 15301(e)(1)).

As conditioned to minimize risks associated with natural hazards, preserve visual resources, and avoid adverse impacts to water quality and biological productivity, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that 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 can be found consistent with the requirements of the Coastal Act to conform to CEQA.

Appendix A – Substantive File Documents

1. City of Laguna Beach certified Local Coastal Program (1992)
2. City of Laguna Beach Approval In Concept dated 2/23/2016.
3. *Preliminary Geotechnical Investigation, Proposed Residence Remodel and Additions* by Geofirm, dated 8/21/2015.
4. *Supplemental Investigation of Bluff Slope Stability, Proposed Residence Remodel and Additions* by Geofirm, dated 2/3/2017.
5. *Wave Uprush and Bluff/Shoreline Erosion Analysis for Remodel Project*, by GeoSoils Inc., dated 8/11/2015.