

**CALIFORNIA COASTAL COMMISSION**

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# F23e

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## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 5-18-0223

**Applicant:** Bill Walsh

**Agents:** d'Arcy & Associates Architecture, Inc. (Attn: Chad Peterson)

**Location:** 11 La Senda Place, Laguna Beach (Three Arch Bay), Orange County (APN: 056-193-31)

**Project Description:** Remodel and addition to an approximately 4,003 sq. ft., 21.8-ft. high (above upper property line), two-story, single-family residence over partially subterranean basement and a detached 643.3 sq. ft. three-car garage on an ocean-fronting blufftop lot. The proposed project includes a net addition of approximately 375.2 sq. ft., replacement of patio and spa with new 20-ft. by 10-ft. pool, interior renovations, and hardscape and landscape improvements. No change in height proposed.

**Staff Recommendation:** Approval with conditions.

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### SUMMARY OF STAFF RECOMMENDATION

The applicant is requesting a remodel of and 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 (LCP) 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; therefore, the project requires a coastal development permit from the Coastal Commission.

The existing two-story residence was constructed in 1932, prior to passage and implementation of the Coastal Act. In 1984, the Commission approved CDP 5-83-896 authorizing an addition to the single-family residence and the garage.

The proposed project is a remodel with landward additions to the pre-Coastal Act 21.8-foot high (above upper property line)<sup>1</sup>, 4,002.8-square-foot single-family residence with a basement level. The proposed project includes an approximately 62.4-square-foot basement level addition, a 330.6-square-foot addition to the first floor, and demolition of 17.8 square feet of second floor living space. The proposed project also includes interior renovations (e.g. relocation of mechanical room to accommodate new staircase, larger basement bedroom and bathroom, relocation of kitchen, removal of bedroom on second floor to accommodate larger master bedroom and a walk-in closet, replacement of fixtures and cabinetries).

The structure has an existing habitable basement level which will be enlarged by 62.4 square feet. The proposed additions and pool will be on the landward side of the residence. Approximately 155.3 square feet of the proposed addition will be within the footprint of the existing residence. The remodel will increase the overall square footage of the residence from 4,002.8 to approximately 4,378 square feet. New hardscape and landscape with irrigation improvements are proposed as part of the proposed project. Approximately 112 cubic yards of grading is proposed for the enlargement of the basement.

The existing roof and exterior walls will be altered<sup>2</sup> approximately 30.2 percent and approximately 33.7 percent, respectively. Regarding interior remodeling, approximately 59.2 percent (based on floor area) of the interior of the residence is proposed to be altered. The applicant proposes to retain and use the existing foundation (i.e. existing footings/slab and raised wood floor) (Zero percent alterations). Therefore, although difficult to estimate precisely, based on the project plans and the above figures, the total percentage of the existing residence as a whole proposed to be altered is approximately 30.78 percent.

The minimum bluff edge setback for new development in the certified areas of Laguna Beach (and many other jurisdictions) is 25 feet, but since the subject property is within an area of deferred certification, the LCP policy that requires the minimal setback is not the standard of review, which is Chapter 3 of the Coastal Act (however, the LCP may be used as guidance). The Commission staff's Geologist, Dr. Joseph Street, has reviewed the applicant's geotechnical analysis, bluff edge

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<sup>1</sup> Maximum building height is 21.8 feet high above upper property line, or 33 feet high above grade.

<sup>2</sup> For purposes of this analysis, the term and variations of the term "alter" are used to encompass the terms "demolition, removal, replacement, structural reinforcement, and/or reconstruction," as these are all proposed as part of this project.

determination, topographic survey, cross-sections, and proposed architectural plans, and has determined that the bluff edge is located at an elevation of approximately 87 feet above mean sea level (MSL) based on the definitions of bluff edge in the Coastal Act and Commission's regulations, as well as the Laguna Beach Land Use Element, which is reviewed as guidance.

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, new development would have to conform to the current building standards and Coastal Act requirements for an adequate setback from the bluff edge. In addition, if the existing structure were altered sufficiently, then the Commission could require that the entire structure would need to conform to current standards. The Commission has often used the label "major remodel" to describe a situation where it finds that alterations have reached that level. In this case, the proposed project is not a major remodel because the applicant is proposing to alter less than 50 percent of the existing residence, and the project will not increase the square footage of the existing building or structure by 50 percent or more. Also, no change to the existing structure's bluff edge setback is proposed. Nevertheless, the proposed project does involve new development in the form of additions and major accessory structures (i.e. pool) that require a structural foundation, and as such, all of that new development must comply with the applicable standards, in this case from Chapter 3 of the Coastal Act.

The proposed additions and pool will be landward of existing development and will be setback more than 25 feet from the edge of the coastal bluff, consistent with the required setback in the City's certified Land Use Plan. The applicant's geotechnical investigations 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 applicant's geotechnical consultants. The applicant's 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 proposed remodel and addition, which will be constructed on the landward side of the existing residence, is, or can easily be made, consistent with the relevant Chapter 3 policies, Commission staff is recommending conditional approval based on that consistency.

Staff recommends **approval** with conditions that require the applicant 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 residence'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; 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 5**.

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### APPENDICES

Appendix A – Substantive File Documents

### EXHIBITS

Exhibit 1 – Project Location

Exhibit 2 – Project Plans & Elevations

Exhibit 3 – CCC Top of Bluff

Exhibit 4 – Letter of Opposition

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 5-18-0223 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 No. 5-18-0223 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 applicant 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 depict the existing bluff edge line (“CCC Top of Bluff”) as depicted in **Exhibit 3** of the staff report dated July 27, 2018, and shall depict a 25-foot bluff edge setback from that CCC Bluff Edge. The revised site plan shall also identify the 1984 public access easement located within the property area seaward of the toe of the bluff.

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 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 applicant 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 the recommendations contained in the Preliminary Geotechnical Investigation dated February 28, 2018, prepared by Geofirm.

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

3. **Landscaping – Drought Tolerant, Non-Invasive Plants.**
  - A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant 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 that no amendment is legally required.

**4. Drainage and Run-off Control Plan.**

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant 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 permittee 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.

5. **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 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.
  
6. **Future Improvements.** This permit is only for the development specifically described in Coastal Development Permit 5-18-0223. 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 the development governed by Coastal Development Permit 5-18-0223. 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 5-18-0223 or shall require an additional coastal development permit from the Commission.
  
7. **Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.** By acceptance of the permit, the permittee 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 permittee agrees that the following measures shall be used during construction:

- vi. The permittee 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 permittee shall develop and implement spill prevention and control measures;
  - viii. The permittee 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 permittee shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.
8. **Structural Reinforcement.** By acceptance of this permit, the applicant acknowledges and agrees that all building/structural elements identified on the project plans as to “remain” or “keep” do not count toward the total amount of authorized alterations (demolition, removal, replacement, and/or reconstruction), as these elements have been determined to be structurally sound and will not require any structural reinforcement, and will not be reinforced or altered in any way.
9. **Confirmation of the Extent of Demolition, Removal, and/or Replacement.** After demolition, removal, and/or replacement has been completed, the applicant shall provide the Executive Director, for review and approval, a certified copy of the City of Laguna Beach Building Department job card showing that such work has been performed pursuant to the plans approved under this coastal development permit.

If the Building Department job card, accepted by the Executive Director, indicates additional demolition, removal, and/or replacement has already occurred or must occur due to the deteriorated state of building/structural elements which were proposed by the applicant to remain/keep, the applicant 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 building/structural elements identified as to “remain” or “keep” are intact and structurally sound; or
- b) The applicant submits 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 submits 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 applicant 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, removal, replacement, and/or structural reinforcement will be necessary in order for the structure to meet building and safety standards, the applicant 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 applicant submits 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 submits 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 bluff edge setback area measured 25 feet inland of “CCC Top of Bluff” as depicted in **Exhibit 3** of

the staff report dated July 27, 2018, shall be permitted, except to bring the development into complete conformity with the 25-foot bluff edge setback.

- B. The permittee 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 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.

## IV. FINDINGS AND DECLARATIONS

### A. PROJECT DESCRIPTION & LOCATION

The subject site is an ocean-fronting blufftop 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. A two-story single-family residence over a basement level and detached garage occupies the pad portion of the 11,877-square-foot (net 9,267.7-square foot) 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 La Senda Place right-of-way to the north, and the shoreline to the south (**Exhibit 1**).

The proposed project is a remodel with landward additions to a pre-coastal approximately 4,003-

square-foot, 21.8-foot high (above upper property line) single-family residence above a basement level.<sup>3</sup> The proposed project includes an approximately 62.4-square-foot basement level addition, a 330.6-square-foot addition to the first floor, demolition of 17.8 square feet of second floor living space, replacement of patio and spa with new 20-ft. by 10-ft. pool, and hardscape and landscaping improvements (**Exhibit 2**). The proposed additions and pool will be on the landward side of the residence. The additions will increase the overall square footage of the residence from 4,002.8 to 4,378 square feet. Approximately 155.3 square feet of the proposed addition will be within the footprint of the existing residence. The remodel also includes renovations to the interior of the residence (e.g. relocation of mechanical room to accommodate new staircase, larger basement bedroom and bathroom, relocation of kitchen, removal of bedroom on second floor to accommodate larger master bedroom and a walk-in closet, replacement of fixtures and cabinetry). Approximately 112 cu. yd. of grading is proposed for the enlargement of the basement. No change in height of the existing residence is proposed.

Based on the project plans, the applicant proposes to retain and use all of the existing foundation (i.e. existing footings/slab or raised wood floor). The new foundation system proposed for the addition will be a slab-on-grade foundation supported by new footings and grade beams. No new foundation elements for the proposed additions will be constructed further seaward than the existing foundation system.

### ***Permit History***

On January 12, 1984, the Commission conditionally approved Coastal Development Permit (CDP) 5-83-896 for an addition to and remodel of an existing single-family residence. The additions consisted of an approximately 220-square-foot addition on the landward side of the then-existing single-family residence and an approximately 240-square-foot addition to the then-existing garage located adjacent to the street, landward of the residence. The Commission imposed one special condition requiring the recordation of an offer to dedicate an easement for public access and passive recreational use along the shoreline, seaward of the toe of the bluff to the mean high tide line.

On February 20, 2017, the applicant submitted an exemption request for the development subject to this CDP application (5-18-0223). However, the proposed development involves improvements to a single-family residence within 50 feet of the edge of a coastal bluff, which is not exempt and requires a CDP pursuant to Section 13250(b)(1) of the Commission's Administrative Regulations. The exemption application was returned to the applicant on March 10, 2017.

On May 1, 2017, a CDP application (5-17-0371) was submitted for the development subject to this CDP application (5-18-0223). Due to Permit Streamlining Act deadline requirements, the applicant withdrew the application on January 19, 2018 to allow all parties more time to address and review outstanding items regarding site geologic conditions.

## **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.

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<sup>3</sup> Maximum building height is 21.8 feet high above upper property line, or 33 feet high above grade.

Certification of the Three Arch Bay area was deferred by the Commission due to uncertainty over 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:

*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.*

The applicant originally provided a geotechnical investigation report prepared by Coastal Geotechnical dated August 10, 2016, which was supplemented with a slope stability analysis dated September 27, 2017. These reports were subsequently superseded by a preliminary geotechnical investigation report with a slope stability analysis prepared by Geofirm, Inc. dated February 28, 2018. All geotechnical reports were reviewed by the Commission's geologist and the superseding documents were deemed acceptable. This geologic report presents results and recommendations regarding the proposed development at the subject site.

The applicant has also provided a wave runup and bluff/shoreline erosion analysis prepared by GeoSoils, Inc. dated July 25, 2017.

#### ***Extent of Demolition***

Where existing and/or proposed development is undertaken under the auspices of a 'remodel' or 'remodel-addition', it is important to determine the nature, extent, and location of work that is occurring on the existing structure. This assessment is necessary in order to determine whether the extent of the development is such that the resulting structure actually constitutes a replacement structure or is otherwise so extensively altered that it 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. For purposes of this analysis, ‘major remodel’ will be used as terms of art to indicate situations where the work is so extensive as to trigger the requirement described above, that the entire resulting structure be brought into compliance with all of the standards that would apply to any new development. One way the Commission<sup>4</sup> has assessed whether a ‘major remodel’ of a site is occurring is to look at the extent of alterations<sup>4</sup> occurring to the existing structure and the location within the existing structure where such alterations are taking place. The applicant has submitted information regarding the extent of alterations proposed. The Commission has typically found that if less than 50 percent of the existing structure is altered, the project can be reviewed as a remodel rather than as a ‘major remodel’. 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 in a structure that is the subject of a major remodel, such as existing development within the setback area as is the case here, would need to be brought to conformity. The 50 percent 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 percent of the existing structure will be altered, so the proposed project is not a major remodel. Also, the square footage of the existing structure will not be increased by 50 percent or more. The net 375.2-square-foot addition is not more than 50 percent of the total square footage of the existing residence (4,002.8 square feet). In addition, the proposed project includes alterations to the existing roof and exterior walls totaling 30.2 percent and 33.7 percent, respectively. While the City does not typically factor in changes to the foundation, the Commission has typically considered the extent of such work. In this case, the existing foundation will be retained (Zero percent to be altered). Regarding interior remodeling, approximately 59.2 percent (based on floor area) of the interior of the residence is proposed to be altered. Therefore, although difficult to estimate precisely, based on the project plans and the above figures, the *total* percentage of the existing residence as a whole proposed to be altered is approximately 30.78 percent. 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 alterations to the existing residence occur in the manner proposed. Should quantity or location of alterations

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<sup>4</sup> For purposes of this analysis, the term and variations of the term “alter” are used to encompass the terms “demolition, removal, replacement, structural reinforcement, and/or reconstruction,” as these are all proposed as part of this project.

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 alteration/demolition plan. The Commission imposes **Special Condition 8** notifying the applicant that all building/structural elements identified on the project plans as to “remain” or “keep” are not counted toward the total amount of authorized alteration, as these elements have been determined to be structurally sound and will not require any structural reinforcement. **Special Condition 9** requires that the applicant submit a copy of the City Building Department job card after any proposed alterations are complete. The City’s card would verify the extent of work and the condition of the residence remaining. If the card indicates that more alterations have occurred than was approved or that the elements of the residence originally proposed to remain are not structurally sound on their own and would require reinforcement, the applicant 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 alterations to 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.

Moreover, the Commission imposes **Special Condition 11**, which does not allow improvements to the existing non-conforming development (except as may be specifically authorized by this CDP) and identifies permit requirements if the permittee decides to change the plans with respect to the non-conforming development. **Special Condition 6** notifies the permittee 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 (or top of the bluff) 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. The location of the applicant's bluff edge was depicted at the approximately 85-foot elevation contour line. Based on this bluff edge, the plans indicate that the existing residence has a current 12- to 17-foot setback from the bluff edge.

However, Commission staff's Geologist, Dr. Joseph Street, has reviewed the applicant's geotechnical analysis, bluff edge determination, topographic survey, cross-sections, and proposed architectural plans, and has determined that the applicant's bluff edge determination is not consistent with the definition of the bluff edge in the Coastal Act.

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 applicant's bluff edge, the Commission's Geologist estimates the natural bluff edge to be located at the approximately 87-foot elevation contour based on an evaluation of the cross section and the topography as shown in **Exhibit 3**. Based on the definitions of bluff edge in the Coastal Act and Commission's regulations, as well as the Laguna Beach Land Use Element as guidance, the bluff edge is located at an elevation of approximately 87 feet above mean sea level (MSL) at 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.

The 87-foot elevation contour line places the CCC bluff edge approximately 3 to 7 feet landward of the applicant's bluff edge determination.



Because the bluff edge runs along a contour, the bluff edge is further from the residence on the southeast side and nearer on the southwest side. From the bluff edge at the approximately 87-foot elevation contour line, the existing residence is setback approximately 7 feet on the southwest side to 10 feet on the southeast side.

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 Three Arch Bay, the Commission has in past projects analyzed the appropriate setback from the bluff edge and has required a minimum bluff edge setback of 25 feet from the edge of the coastal bluff for primary structures (i.e. the enclosed living area of residential structures) and a 10-foot setback for accessory structures (e.g. decks and patios). These setbacks are consistent with Actions 10.2.7 and 10.2.8 of the Land Use Element. In this case, the existing residence is only setback approximately 7 to 10 feet from the bluff edge at the approximately 87-foot elevation contour line. However, considering that the existing single-family residence constitutes a legal nonconforming use that predates the Coastal Act and that the proposed alterations to the residence do not rise to the level of a major remodel, there is no basis to require the existing elements of the single-family residence, to be setback as far as would be required under the Coastal Act if they were proposed as new development today. On the other hand, the proposed additions and pool are proposed to be setback 50 to 82 feet from the ocean-fronting bluff edge as determined by Commission staff and, as explained below, do conform with the hazards policies of the Coastal Act.

### ***Geotechnical Recommendations***

The subject site is located on San Onofre Breccia, which is a highly stable geologic formation. Therefore, regarding the feasibility of the proposed development, the geotechnical investigation prepared by Geofirm, dated February 28, 2018, states that the proposed landward expansion of the residence is geotechnically feasible. The report further states that the “site is anticipated to remain grossly stable based on its historic performance, favorable geology, and stability and analyses performed to establish the factory of safety lines on the property. Shallow piecemeal instability on the bluff face occur seasonally, but without impact to the proposed improvements”.

The applicant’s geotechnical consultant determined that the proposed new development will not be threatened or destroyed based on the expected erosion rate over the next 75 years; thus the 50-82 foot setbacks proposed for the new development are satisfactory and will minimize risk to life and property, consistent with section 30253 of the Coastal Act.

The geotechnical 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 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 applicant conform to the geotechnical recommendations in the above-mentioned geotechnical investigation dated February 28, 2018, as summarized above.

### ***Sea Level Rise***

The report, *Wave Runup and Bluff/Shoreline Erosion Analysis* by GeoSoils Inc. dated July 25, 2017 indicates that the shoreline erosion rate in this location will be the same as it has historically been, even with predicted rise in sea level. 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 one inch per year. Given sea level rise, the analysis indicates that the most conservative (worst

case scenario) estimate for bluff retreat is four to five feet 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 +85 to 100 feet above the beach; therefore wave runup is not anticipated to reach the existing residence or proposed additions, although wave up-rush may contribute to episodic collapse or erosion.

An erosional retreat or a bluff collapse equal to four to five feet has the potential to impact the existing residence and the existing cantilevered deck and balcony. However, given that the scope of the proposed development does not trigger the major remodel 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. 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 bluff edge setback sufficient to minimize risk to life and property in the event of gradual bluff erosion or bluff collapse. The additions and pool are proposed landward of the existing residence.

### ***Assumption of Risk***

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.

The geotechnical investigation reports indicate that the subject site is suitable for the proposed landward additions totaling net 375.2 square feet, pool, 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 the required factors of safety of 1.5 and 1.1 for gross stability and seismic stability were achieved. The Coastal Commission has in the past approved projects only if they have a minimum 1.5 factor of safety<sup>5</sup> for approving new development, which must minimize risk of life and property.

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<sup>5</sup> 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.*

The applicant's 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. However, as stated above, geologic conditions change over time and predictions based upon the geologic sciences are inexact. In addition, although adherence to the geotechnical consultant's recommendations will minimize the risk of damage from erosion, the risk is not eliminated entirely. Given that the applicant has 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 applicant must assume the risks. Therefore, the Commission imposes **Special Condition 5**, requiring the applicant to assume the risk of the development. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant 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 onsite 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 3** requires that the applicant accept that no invasive or facultative vegetation will be planted on the site and that water conservative irrigation systems for any new landscaping will be utilized. **Special Condition 4** 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 additions and pool meet the minimum bluff setback requirements, will be landward of the existing residence, and will not be visible from the public portion of the beach below the site. Therefore, adverse impacts to public coastal views are not anticipated. In addition, the proposed development is a non-major remodel to an *existing* legal nonconforming single-family residence, which itself does not meet the LCP's 25-foot setback policy but is still set back from the bluff edge. Therefore, it is appropriate to allow the proposed development in this case.

The Commission finds that as conditioned as described above the proposed development is 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.

A letter from Mr. Gordon J. Fielding & Mrs. Kathleen M. Fielding, local residents, was submitted to the South Coast District Office on June 1, 2017 in opposition to the proposed project (**Exhibit 4**). Issues raised include concerns regarding potential impacts to private views to the residents of Three Arch Bay, new construction in the required bluff edge setback, and lack of a geology report. However, as addressed above, the project is not anticipated to have any significant impacts to public coastal views, an addition to a residence that is within the setback area but where the proposed new development is well inland of existing development has been deemed permissible in this case, and geology reports have been submitted and reviewed for the project.

#### **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 applicant 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 residence and the proposed addition and pool, and shall depict the location of the CCC 25-foot 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 residence'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. In addition, all of the proposed development will be inland of the existing line of development and, therefore, will be in character with the existing line of development of the residence and the surrounding residences. As conditioned herein 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 that is not consistent with Chapter 3. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission imposes **Special Condition 6**, 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 this 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 because it will have no new impacts on public access.

With regard to the above-mentioned letter of opposition, Mr. and Mrs. Fielding also raised their concerns regarding the potential elimination of dedicated 1980's public easements. However, approval of this coastal development permit will not affect the previously mentioned 1984 public access easement that exists along the shoreline, seaward of the toe of the bluff to the mean high tide line.

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 4**, 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 7**, which requires the applicant 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 non-invasive drought-tolerant vegetation and water conservative irrigation systems 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 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 (LCP) was certified with suggested modifications, except for the areas of deferred certification, in July 1992. In February 1993 the Commission concurred 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 Land Use Plan of the LCP consists of the Coastal Land Use Element, the Open Space/Conservation Element, and the Coastal Technical Appendix. The Coastal Land Use Element of the LCP was updated and replaced in its entirety via LCPA 1-10 in 2012. The certified Implementation Plan of the LCP is comprised of a number of different documents, but the main document is the City's Title 25 *Zoning Code*. The Open Space/Conservation Element and Title 25 have been amended a number of times since original certification.

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 to prepare a 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 April 20, 2017, the City determined that the proposed addition, pool, and remodel was categorically exempt from CEQA requirements (Class 1 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.

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### **Appendix A – Substantive File Documents**

1. City of Laguna Beach certified Local Coastal Program
2. City of Laguna Beach Approval-In-Concept dated 4/20/2017.
3. *Geotechnical Investigation, Proposed Building Addition and Swimming Pool* by Coastal Geotechnical, dated August 10, 2016.
4. *Slope Stability Analysis* by Coastal Geotechnical, dated 9/27/2017.
5. *Wave Runup and Bluff/Shoreline Erosion Analysis for Remodel/Addition Project*, by GeoSoils Inc., dated 07/25/2017.
6. *Preliminary Geotechnical Investigation, Proposed Residence Remodel and Bluff Edge Stability Report* by Geofirm, dated February 28, 2018.