

**CALIFORNIA COASTAL COMMISSION**

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



# Th18a

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## STAFF REPORT: APPEAL – DE NOVO

**Application No.:** A-5-LGB-16-0098

**Applicant:** Charles Kinstler

**Local Government:** City of Laguna Beach

**Appellant:** Mark Fudge

**Project Location:** 31505 Bluff Drive, City of Laguna Beach, Orange County;  
APN# 658-092-47

**Project Description:** Exterior & interior alterations/renovations and addition to a 2,585 sq. ft. two-level single-family residence with an attached garage on an ocean-fronting bluff. Project work includes an approximately 1,603 sq. ft. net addition of gross floor area, conversion of 107 sq. ft. of floor area into garage space, 227 sq. ft. mechanical space additions, net new 264-sq. ft. addition of deck area, removal of wood stairs on the bluff face, interior renovations and modifications, 425 cu. yds. of grading, and new landscaping.

**Staff Recommendation:** Denial

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## SUMMARY OF STAFF RECOMMENDATION

On October 13, 2016, the City of Laguna Beach approved a local coastal development permit for an addition to, and remodel of, an existing single-family residence, elevated deck additions, grading, retaining walls, air conditioning units, pool, spa, and landscaping. This local coastal development permit was subsequently appealed to the Commission on December 1, 2016. On August 9, 2017, the Commission found a substantial issue exists with respect to the grounds on which Appeal No. A-5-LGB-16-0098 had been filed because the City-approved development is on the bluff face and retention and expansion of a nonconforming structure on the bluff face raised a substantial issue

as to the project's consistency with the City of Laguna Beach certified Local Coastal Program (LCP). After the Commission found substantial issue, the applicant revised the proposal to eliminate the construction of a new pool and pool deck with stairs, seaward of the existing residence.

The applicant proposes alterations/renovations to, and more than 50 percent expansion of floor area of, an existing residence on an ocean-fronting coastal bluff property. The subject property is currently developed with a 2,585-square-foot, one-story (above street level) single-family residence (c. 1955) with a partial lower floor level, an attached garage, and a set of wood stairs that extend seaward on the slope of a coastal bluff in the City of Laguna Beach. The existing lower floor level is partially subterranean but daylights on the seaside.

The proposed project includes a 1,603-square-foot net addition of gross floor area. The proposed project also includes new deck additions, as well as additional alterations/renovations to the major structural components of an existing bluff residence. The proposed alterations/renovations are expected to increase the life of the 64-year old residence by an additional 75 years according to the applicant's coastal hazards engineer.

The primary issues raised by the proposed project are consistency with LCP policies regarding coastal hazards and development on coastal bluffs. Land Use Element (LUE) Action 7.3.5 prohibits development on bluff faces, Action 10.2.7 requires a minimum 25-foot setback from the bluff edge for principal and major accessory structures, and LUE Action 10.2.8 requires a minimum 10-foot setback from the bluff edge for minor accessory structures (e.g. decks, stairways, and landscaping). Commission staff Geologist, Dr. Joseph Street, and Senior Coastal Engineer, Dr. Lesley Ewing, have reviewed the applicant's geotechnical analysis, bluff edge determination, topographic survey, cross-sections, and proposed architectural plans, and have determined that the bluff edge is located near the landward edge of the residence near Bluff Drive. Consequently, the existing residence is located almost entirely seaward of the bluff edge and the majority, if not all, of the proposed development would be sited on the bluff face. This is inconsistent with Actions 7.3.5, 10.2.7 and 10.2.8 of the certified LCP.

LUE Action 7.3.10 allows improvements to oceanfront and oceanfront bluff homes that are legally nonconforming as to the oceanfront and/or oceanfront bluff edge setbacks unless they increase the size or degree of the non-conformity, in which case, the improvements constitute "new development" and the entire structure must comply with the certified LCP, including bluff edge setbacks required by Actions 10.2.7 and 10.2.8.

In this case, the proposed development would increase the degree of nonconformity of the existing residence as to the LCP-required bluff edge setbacks. The applicant's proposal would require significant grading of the bluff face to accommodate construction of the proposed addition on a bluff face and within the bluff edge setback area. Furthermore, the proposed addition would also increase the gross floor area and the horizontal and vertical volumetric footprint of the residence on the coastal bluff face, and the proposed deck additions would increase the total area of deck space that would encroach onto the bluff face. In addition, the project includes more than a 50 percent increase in gross floor area of the residence, which meets the LCP definition of a "major remodel." Therefore, the proposed improvements constitute new development under LUE Action 7.3.10, and the project cannot be approved because the remodeled residence would not comply with the LCP-required bluff edge setbacks.

The proposed project includes an addition to the existing residence, which is new development in and of itself, and deck additions. The proposed additions to the residence and appurtenant structures would not be consistent with either setback as required by the LCP (25 feet for primary structures and 10 feet for accessory structures).

The proposed development also requires the construction of bluff/shoreline protective devices such as caissons and retaining walls to assure geologic stability. Therefore, the project is also inconsistent with LCP policies prohibiting the construction of bluff/shoreline protective devices and requiring minimization of landform alteration, including Action 7.3.9, Action 7.3.12, and Policy 10.2.

There is an alternative that would allow the applicant to continue to enjoy reasonable use of the residence. Although LUE Action 7.3.10 prohibits improvements that constitute new development (e.g. improvements that would increase the size or degree of nonconformity or major remodels) on a coastal bluff face, it allows oceanfront bluff homes that are legally nonconforming as to the oceanfront bluff edge setback to be repaired and maintained; however this is not proposed at this time.

As proposed, the project has the potential to set a negative precedent of authorizing new development on a bluff face that requires bluff/shoreline protective devices to assure geologic stability, contrary to numerous policies in the certified LCP for Laguna Beach designed to protect natural landforms, assure structural integrity, and minimize impacts to visual resources.

Therefore, Commission staff recommends **denial** of the proposed development.

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### APPENDICES

Appendix A – Substantive File Documents

### EXHIBITS

Exhibit 1 – Project Location

Exhibit 2 – Project Renderings

Exhibit 3 – Project Plans & Elevations

Exhibit 4 – CCC Bluff Edge Determination:

- Memorandum (Exhibit 4, Pg. 1-3)
- Annotated Topo and Cross Sections (Exhibit 4, Pg. 4-7)

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. A-5-LGB-16-0098 for the development proposed by the applicant.*

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit 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 denies a Coastal Development Permit for the proposed development and adopts the findings set forth below on grounds that the development would not be in conformity with the certified Local Coastal Plan and/or the public access and recreation policies of the California Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.*

## II. FINDINGS AND DECLARATIONS

### A. PROJECT DESCRIPTION AND LOCATION

The applicant proposes exterior and interior alterations/renovations and addition to a 2,585-square-foot one-story (above street) single-family residence with a partial subterranean lower floor level<sup>1</sup> that daylights along the seaside. The project work includes an approximately 1,603-square-foot net addition of gross floor area (or living space); 227-square-foot mechanical space additions<sup>2</sup>, conversion of 107-square foot of floor area to garage space, net 264-square-foot addition of deck area, interior renovations and modifications, air conditioning units, 425 cubic yards of grading, removal of wood stairs on bluff slope, and landscaping (**Exhibits 2 & 3**). The 1,603-square-foot net addition to the existing residence consists of: a 69-square foot net reduction of living space at the upper floor level (first-floor, street level); a 1,032-square-foot net addition of living space at the lower floor level; and the construction of a new partially-enclosed living space that the applicant describes as a “covered patio” under the existing lower floor level, which would add approximately 640 square feet to the total gross floor area of the residence. Approximately 200 square feet of the proposed 1,603-square-foot addition would encroach further seaward beyond the existing residence. The addition to the existing partial lower floor level would mostly involve, but would not be

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<sup>1</sup> Due to an inadvertent typographical error, the residence is described as a three-level residence in the substantial issue staff report for this appeal. However, the residence is accurately described as a one-story (above street level) residence with a partial subterranean lower floor level.

<sup>2</sup> The dimension of the mechanical room is separated from the dimension provided for the total proposed additions because the City of Laguna Beach’s certified Local Coastal Program (LCP) defines “floor area, gross”, in relevant part, as: *the sum of the gross horizontal areas of the several floors of a building, excluding areas used for garage purposes and such other basement, cellar or attic areas as are devoted exclusively to uses accessory to the operation of the building.*

limited to, the conversion of a crawl space into living space. New caisson-supported foundation and retaining walls are proposed for the additions, and underpinning and deepening of the existing foundation is proposed.

The oceanfront site is located at 31505 Bluff Drive, Laguna Beach, Orange County (**Exhibit 1**). The site is a 6,692-square-foot bluff lot that is currently developed with a 2,585-square-foot single-family residence built in 1955 with an attached 365-square-foot two-car garage. Oceanfront and bluff top single-family residences characterize the surrounding area.

## **B. PROJECT HISTORY**

In 2016, the applicant submitted to the City of Laguna Beach a coastal development permit application for the remodel and addition to an existing residential development including new seaward decks, a covered patio, pool and spa, and landscaping (Case No. 16-0841).

On June 23, 2016 and August 11, 2016, the City of Laguna Beach Design Review Board (DRB) held public hearings for the coastal development permit application, along with other discretionary approvals. Public testimony and input from the DRB was given related to issues concerning views, privacy, neighborhood compatibility, and the CEQA determination. The item was continued twice for a third public hearing.

On October 13, 2016, the DRB held a third public hearing on the application, and approved local Coastal Development Permit (CDP) No. 16-0841 and Design Review 16-0840 with conditions.

The project description of Resolution No. 16.51 approving Local CDP No. 16-0841 reads as follows:

“Permission is granted to construct an addition to an existing single-family residence in the R-1 (Residential Low Density) zone.”

The City’s approval of local CDP No. CA 16-0841 included the following conditions:

- 1) The south facing wall be pulled back twelve inches at both the upper and lower levels;
- 2) The lower deck glass railing to be opaque;
- 3) The exterior lighting to be a maximum of three-watt LED fixtures;
- 4) The nature of highly disturbed archaeological materials should be submitted to the California Register of Historical Resources (CHRIS) with an assessment of Ineligibility to the California Register of Historical Resources (CRHR); and
- 5) Require a County-certified archaeologist with paleontological background to monitor the limited ground disturbing activities during construction.

Moreover, a CEQA Categorical Exemption was adopted by the Review Board. The Coastal Commission’s South Coast District Office received the notice of final action on November 18, 2016.

On December 1, 2016, the appeal was filed by Mr. Mark Fudge during the ten (10) working day appeal period. No other appeals were received. That same day, on December 1, 2016, Commission staff issued a letter to notify the City and applicant of the appeal. In 2017, Commission staff scheduled both the Substantial Issue and De Novo hearings together for the August 2017 public

Commission meeting with recommendations that the Coastal Commission find that a substantial issue exists based on the grounds on which the appeal was filed and that the de novo permit be denied for inconsistency with the certified LCP. However, prior to the public hearing, the applicant requested postponement of the public hearing for the de novo permit. Therefore, at a public hearing on August 9, 2017, the Commission found that a substantial issue exists with respect to the proposed project's consistency with the City of Laguna Beach's certified LCP policies, and no action was taken on the de novo permit.

In 2018, the applicant revised the proposal to eliminate a new pool and pool deck with stairs on the seaside of the property to reduce the scope of the project. In addition, in July 2018, the applicant's representative indicated that an alternative foundation design was being considered that would not require caissons. However, on October 31, 2018, the applicant's representative an email to Commission staff indicating the proposal would still include caissons underneath the horizontal footprint of the existing residence to support the residence and new additions.

Because the Commission found that a substantial issue existed based on the grounds on which the appeal was filed in 2017, the Commission's action voided the local coastal development permit and the Commission is still required to hold a de novo hearing on the merits of the project.

### **C. STANDARD OF REVIEW**

Section 30604(b) of the Coastal Act states:

*(b) After 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 certified local coastal program.*

In addition, Section 30604(c) of the Coastal Act states:

*(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).*

Therefore, the standard of review for projects heard on appeal by the Coastal Commission that are located between the first public road and the sea, like this one, are the City's certified Local Coastal Program and the public access and public recreation policies of the Coastal Act. The City of Laguna Beach Local Coastal Program was certified by the Commission on January 13, 1993 (except for the areas of deferred certification: Three Arch Bay, Hobo Canyon, and Irvine Cove). The subject site falls within the City's certified LCP jurisdiction. The City's LCP Land Use Plan portion is comprised of a variety of planning documents including the Land Use Element (LUE), Open Space/Conservation Element (OSC), and the Coastal Technical Appendix. The Implementation Plan portion of the LCP is comprised of a number of documents including Title 25 Zoning.

### **D. HAZARDS**

Laguna Beach Land Use Element:

Policy 7.3 states:

*Design and site new development to protect natural and environmental sensitive resources,*

*such as areas of unique scenic quality, public views, and visual compatibility with surrounding uses and to minimize natural landform alterations.*

Action 7.3.2 states: *Review all applications for new development to determine potential threats from coastal and other hazards.*

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

Action 7.3.4 states: *Require new development to assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic stability, 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.*

Action 7.3.5 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 7.3.6 states: *Require new development on oceanfront blufftop lots to incorporate drainage improvements, removal of and/or revisions to irrigation systems, and/or use of native or drought-tolerant vegetation into the design to minimize threats to oceanfront bluff recession.*

Action 7.3.8 states: *On oceanfront bluff sites, require applications where applicable, to identify and removal all unpermitted and/or obsolete structures, including but not limited to protective devices, fences, walkways, and stairways, which encroach into oceanfront bluffs.*

Action 7.3.9 states: *Ensure that new development, major remodels and additions to existing structures on oceanfront and oceanfront bluff sites do not rely on existing or future bluff/shoreline protection devices to establish geologic stability or protection from coastal hazards. A condition of the permit for all such new development on bluff property shall expressly require waiver of any such rights to a new bluff/shoreline protection device in the future and recording of said waiver on the title property as a deed restriction.*

Action 7.3.10 states: *Allow oceanfront and oceanfront bluff homes, commercial structures, or other principal structures, that are legally nonconforming as to the oceanfront and/or oceanfront bluff edge setback, to be maintained and repaired; however, improvements that increase the size or degree of nonconformity, including but not limited to development that is classified as a major remodel pursuant to the definition in the Land Use Element Glossary, shall constitute new development and cause the pre-existing nonconforming oceanfront or oceanfront bluff structure to be brought into conformity with the LCP.*

Action 7.3.12 states: *Site and design new structures to avoid the need for shoreline and/or oceanfront bluff protective devices during the economic life of the structure (75 years).*



Action 7.3.13 states: *Limit the use of shoreline/bluff protective devices to the minimum required to protect existing development in danger of erosion. Site and design any such protective devices as far landward as possible. "Existing development" for purposes of this policy shall consist only of a principal structure, e.g. residential dwelling, required garage, or second residential unit, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping etc. No shoreline/bluff protective device shall be allowed for the sole purpose of protecting an accessory structure.*

Policy 10.2 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 landform alterations. (Same as Policy 7.3)*

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

Action 10.2.5 states: *On bluff sites, requires applications where applicable, to include a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contain statements that the project site is suitable for the proposed development and that the development will be safe from geologic hazard for its economic life. For development on oceanfront bluffs, such reports shall include slope stability analyses and estimates of the long-term average bluff retreat/erosion rate over the expected life of the development. Reports are to be prepared/signed by a licensed professional Engineering Geologist or Geotechnical Engineer.*

Action 10.2.6 states: *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). Such setbacks must take into consideration expected long-term bluff retreat over the next 75 years, as well as slope stability. The predicted bluff retreat shall be evaluated considering not only historical bluff retreat data, but also acceleration of bluff retreat made possible by continued and accelerated sea level rise, future increase in storm or El Nino events, and any known site-specific conditions. To assure stability, the development must maintain a minimum factor of safety against landsliding of 1.5 (static) or 1.2 (pseudostatic,  $k=0.15$  or determined through analysis by the geotechnical engineer) for the economic life of the structure.*

Action 10.2.7 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 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.*

Open Space/Conservation Element Policies:

Policy 7-K states:

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

Policy 10-C states:

*Require projects located in geological hazard areas to be designed to avoid the hazards, where feasible. Stabilization of hazard areas for purposes of development shall only be permitted where there is no other alternative location or where such stabilization is necessary for public safety. The more unstable areas should be left ungraded and undeveloped, utilizing land use designations such as Open Space.*

Policy 10-E states:

*Development in the areas designated “Residential/Hillside Protection” on the Land Use Plan Map or within potential geologic hazard areas identified on the Geological Conditions Map of the Open Space/Conservation Element shall not be permitted unless a comprehensive geological and soils report is prepared pursuant to Title 22 of the City’s Municipal Code, and adequate mitigation measures have been approved and implemented by the City’s geologist. For projects located in areas subject to hazards as identified on the Geologic Conditions Map or subject to erosion, landslide or mudslide, earthquake, flooding or wave damage hazards confirmed by a geologic assessment, as a condition of approval or new development a waiver of liability shall be required through a deed restriction.*

The proposed development would occur on an ocean-fronting bluff lot. 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. The hazards policies of the LCP require, among other things, that all new development be (per the policies cited above): adequately evaluated to ascertain potential negative impacts on natural resources and on existing adjacent development; designed and sited to avoid hazardous areas and minimize risks to life and property from coastal and other hazards; and 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.

As discussed in greater detail below, the project does not comply with the LCP hazards policies (particularly Policy 7.3 and 10.2, and Actions 7.3.3, 7.3.4, 7.3.5, 7.3.9, 10.2.6, 10.2.7, and 10.2.8 of the Laguna Beach Land Use Element (LUE) of the Land Use Plan (LUP)) because the proposed development is not consistent with the minimum bluff edge setbacks, would rely on bluff/shoreline protection devices, does not meet the minimum factors of safety, and would increase the degree of nonconformity of the existing residence that is predominantly sited on a coastal bluff face.

## Setbacks

LUE Policy 7.3 and Actions 7.3.3, 7.3.5, 10.2.7, 10.2.8 (cited above) require that new development minimize the alteration of natural landforms and not contribute to geologic instability. 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 could increase the rate of erosion and bluff retreat.

In addition, Policy 7-A of the certified Land Use Plan requires that the quality of public views from the hillsides and along the city's shoreline be preserved to the maximum extent feasible, and 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.

The project is not consistent with LCP hazards policies regarding bluff edge setbacks and development on bluff faces. LUE Action 10.2.7 requires a minimum bluff edge setback of 25 feet<sup>3</sup> from the edge of the coastal bluff for primary structures (i.e. single-family residence and additions) and major accessory structure that require structural foundation (i.e. pools), LUE Action 10.2.8 requires a 10-foot setback for minor accessory structures (e.g. landscaping, decks) that do not require structural foundations.

The project is not consistent with LCP hazards policies regarding bluff edge setbacks and development on bluff faces. LUE Action 7.3.5 prohibits private development on an oceanfront bluff face (with a few exceptions for public improvements). LUE Action 10.2.7 requires a minimum bluff edge setback of 25 feet<sup>4</sup> from the edge of the coastal bluff for primary structures (i.e. single-family residence and additions) and major accessory structure that require structural foundation (e.g. pool). LUE Action 10.2.8 requires a 10-foot setback for minor accessory structures that do not require structural foundations. LUE Action 7.3.10 allows structures that are not conforming to the bluff edge setback to be repaired and maintained; however, any improvements that would increase the size or degree of the non-conformity, including major remodels, must be treated as "new development and cause the pre-existing nonconforming oceanfront or oceanfront bluff structure to be brought into conformity with the LCP."

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<sup>3</sup> Section 25.50.004(B) of the IP also requires a minimum bluff edge setback of 25 feet from the top of an oceanfront bluff for additions to existing buildings. Section 25.50.004(B) of the IP of the certified LCP states, in relevant part, "*no new building, additions to existing building, or structures or improvements shall encroach beyond the applicable building stringline or shall be closer than twenty-five feet to the top of an oceanfront bluff; the more restrictive shall apply.*" Although certain components of Section 25.50.004(B) conflict with the certified LUP, this aspect of the section related to the minimum 25-foot setback from the bluff top reflects the minimum 25-foot setback from the bluff edge requirement of the LUP.

<sup>4</sup> Section 25.50.004(B) of the IP also requires a minimum bluff edge setback of 25 feet from the top of an oceanfront bluff for additions to existing buildings. Section 25.50.004(B) of the IP of the certified LCP states, in relevant part, "*no new building, additions to existing building, or structures or improvements shall encroach beyond the applicable building stringline or shall be closer than twenty-five feet to the top of an oceanfront bluff; the more restrictive shall apply.*" Although certain components of Section 25.50.004(B) conflict with the certified LUP, this aspect of the section related to the minimum 25-foot setback from the bluff top reflects the minimum 25-foot setback from the bluff edge requirement of the LUP.

### ***Bluff Edge Determination***

Critical to all of these LCP policies is a determination of the location of the bluff edge. Entry 101 of the Land Use Element (LUE) Glossary, 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.*

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.

Commission staff Geologist, Dr. Joseph Street, and Senior Coastal Engineer, Dr. Lesley Ewing, have reviewed the applicants' geotechnical analyses, bluff edge determination, topographic survey, cross-sections, coastal hazard analyses and proposed architectural plans, and have determined that the applicants' bluff edge determination is not consistent with the definition of the bluff edge in the certified LUE. The applicant's bluff edge analysis is based on where the topographic profile transitions to greater than 1:1 (horizontal/vertical). The applicant's site plans identify the bluff top, or bluff edge, at elevations between 55 and 58 feet MSL; however, Commission technical staff believe that these elevations more accurately demarcate the position of the slope break and not the bluff edge.

As discussed in greater detail in Dr. Street's and Dr. Ewing's memo (see **Exhibit 4**), based on the LUE definition, the bluff edge line occurs at elevations of approximately 113 to 114 feet above mean sea level (MSL) as depicted in **Exhibit 4**, at the topmost terrace or "riser" resulting from the grading cuts made during construction of the existing residence and at the level of the adjacent public road (Bluff Drive); seaward of this bluff edge line constitutes the bluff face. The CCC bluff edge is approximately 92 to 123 feet landward of the applicant's bluff edge determination. The bluff edge line as determined by Commission staff runs mostly along the landward limits of the residence, with only a small portion running under the residence; this means the existing residence is sited almost entirely on the coastal bluff face. Therefore, the existing single-family residence does not conform to any of the required bluff setbacks.

### ***Expansion or Enlargement of Non-conforming Oceanfront Bluff Residence***

The *existing residence* does not conform to LCP policies regarding bluff edge setbacks and development on the bluff face because almost the entire residence, with the exception of approximately 76 square feet, is located seaward of the bluff edge, as determined by staff.

Under LUE Action 7.3.10, existing residences that do not conform to LCP bluff edge setbacks may be maintained and repaired, however, proposed improvements that increase the size or degree of the

non-conformity, including major remodels, are “new development” and require the entire non-conforming structure to comply with the certified LCP. This provision is designed to implement the goal of phasing out over time structures that do not conform to bluff edge setbacks to avoid the perpetuation of such nonconforming structures in a potentially hazardous location for which future protective measures or armoring would eventually be necessary, with resultant adverse impacts to the public access and recreation, visual quality of the shoreline and sensitive resources of the beach. The proposed project is considered new development under Action 7.3.10 for two independent reasons.

*Action 10.2.7 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 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.*

First, the project requires grading and removal of approximately 425 cubic yards of the bluff face in order to construct the additions, including the expansion of the existing lower floor level and a new below-ground partially-enclosed living space underneath the existing lower floor level; thus, the proposed project would increase the amount of landform alteration within the bluff-edge setback area (and alteration of the bluff face itself) and increase the vertical volumetric footprint of the residence. In addition, the proposed project includes a 1,603-square-foot net addition to the existing residence, and although the bulk of the proposed addition would be constructed underneath the horizontal footprint of the existing upper floor level (street level), approximately 200 square feet would encroach seaward beyond the existing residence, pushing the footprint of the residence further onto the bluff face and within the bluff edge setback required by the LCP policies discussed above. Furthermore, the proposed 264 square feet of seaside deck additions would increase the total area of deck space that would also encroach onto the bluff face and within the bluff edge setback required by the LCP policies. Therefore, the project would increase both the size and degree of the existing structure’s non-conformity as to the bluff edge setbacks. Under LUE Action 7.3.10, improvements that increase the size or degree of a structure’s non-conformity qualify as new development.

Second, the proposed 1,603-square-foot net addition would significantly increase the size of the non-conforming residence. Increasing the square footage, or gross floor area, of an existing building by 50 percent or more meets the LUP and Implementation Plan (IP) definition of a “major remodel.”

The term ‘major remodel’ is defined by the City’s certified LUP 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.*

In addition, the ‘major remodel’ is also defined by the City’s certified IP as:

*...a structural renovation and/or addition, which equals or exceeds fifty percent of the original gross floor area of the structure on the lot*

The proposed 1,603 net addition consists of: a 69-square foot net reduction of living space at the upper floor level (street level); a 1,032-square-foot net addition of living space at the lower floor level; and the construction of a new semi-enclosed living space (hereafter referred to as “Level 0”) under the existing lower floor level that would add approximately 640 square feet to the total gross floor area of the residence. Level 0 would be partially subterranean, daylighting on the seaside of the property, and enclosed on three sides. The applicant characterizes this new floor level as a “covered patio” and not as living space that counts towards the gross floor area of the residence. However, Level 0 would be enclosed on three sides by the walls of the residence, accessible from an internal staircase in the residence, dependent on an “enhanced foundation system”, and screened by a Resysta wood screen/gate that functions much like a wall on the seaside. In addition, Section 25.08.012 of the City’s certified LCP defines “gross floor area” as “the sum of the gross horizontal areas of the several floors of a building, excluding areas used for garage purposes and such other basement, cellar or attic areas as are devoted exclusively to uses accessory to the operation of the building.” Per this definition, the Level 0 is considered an addition to the floor area of the residence. Thus, the new partially enclosed Level 0 would for all practical purposes provide living space that increases the gross floor area of the residence. Given these considerations, the Commission has treated similar partially-enclosed living spaces as adding to the floor area of a residence (e.g. CDP Application No. 6-18-0182).

Taken together, the total square footage of the proposed additions to the existing residence increase the gross floor area (measured in square feet) of the existing residence by approximately 1,603 square feet, which is more than 50 percent of the square footage of the existing 2,585-square-foot residence. As such, the proposed project qualifies as a “major remodel” pursuant to the LUP definition cited above, and, under LUE Action 7.3.10, based on this second, independent basis, would be considered new development and could only be approved if the entire remodeled residence was brought into conformance with the LCP.

As the existing home is located on a bluff face, as determined by Commission staff, it is not possible to find that the remodeled home is consistent with the LCP hazards policies regarding bluff edge setbacks and development on bluff faces.

In addition to the proposed expansion of gross floor area of a residence, the LCP definition of “major remodel” also refers to “demolition, removal, replacement and/or reconstruction of 50 percent or more of the existing structure.” The LCP provides a 50 percent threshold as one way to offer a broad but objective method of dealing with existing non-conformities associated with extensive major remodel projects that involve alterations and renovations to an existing structure.

In this case, in the project plans the applicant has provided an assessment of the extent of demolition of exterior elevations, floor, roof, and foundation proposed. According to the applicant’s

assessment, less than 50 percent of demolition of the existing structure is proposed and, therefore, the applicant characterizes the renovation work as a minor remodel. However, this assessment seems to only consider demolition even though the LCP states that one is to consider not only demolition, but also reconstruction, replacement, and removal of a structure. The project plans and assessment do not clearly detail or provide sufficient information to refute that the proposed alterations/renovations would not result in more than 50 percent of “removal, replacement, and/or reconstruction.” Therefore, the assessment provided by the applicant does not adequately demonstrate that the proposed renovations/alterations are not a major remodel according to the LCP definitions; however, there also is not sufficient evidence before the Commission to find that the extent of the renovations/alterations surpasses the 50 percent threshold. Accordingly, the proposed development qualifies as a “major remodel” based only on the fact that the addition increases the gross floor area of the residence by more than 50 percent.

***Project’s Inconsistency with Bluff Edge/Bluff face LCP Policies***

In any case, regardless whether the proposed project qualifies as new development based on an increase in size or degree of nonconformity, or a “major remodel” based on an increase of more than 50 percent of gross floor area, additions in general are a type of new development in and of themselves that must conform to certified LCP. Section 25.07.008(A) of the certified IP, states, in relevant part:

*Improvements to Single-family Homes. Improvements to single-family dwellings and mobilehomes including structures normally associated with a single-family residence such as garages, swimming pools, fences, storage sheds and landscaping are exempt unless classified as one of the following: ...*

*(2) Improvements to any structure located on a beach, wetland or stream, or where the structure or proposed improvements would encroach within fifty feet of a coastal bluff edge; ...*

*(3) Improvements to any structure between the sea and first public roadway paralleling the sea, or within three hundred feet of the inland extent of any beach, whichever is the greater distance when such improvements would constitute or result in any of the following:*

*(a) An increase of ten percent or more of the internal floor area of the existing structures(s) on the building site or an additional increase in floor area bringing the aggregate increase to ten percent or more...*

Under Section 25.07.008(A)(2-3), the proposed addition qualifies as a type of new development that requires a coastal development permit because it would: 1) encroach fifty feet of a coastal bluff edge, and 2) be located between the sea and first public road (Bluff Drive) and would result in an increase of ten percent or more of the internal floor area of the existing structure. Because the proposed addition requires a coastal development permit, it must be reviewed for consistency with all the provisions of the certified LCP relating to new development on the bluff face and bluff edge setbacks.

Given Commission staff’s bluff edge determination, the proposed additions to the residence do not conform to the LCP policies regarding siting development a safe distance from the bluff edge, specifically, the prohibition of development on an oceanfront bluff face (LUE Action 7.3.5), and the requirements that principle structures and major accessory structures must be setback at least 25 feet from the bluff edge (Action 10.2.7 ), and minor accessory structures must be set back at least 10 feet

from the bluff edge (Action 10.2.8). The proposed addition would be located seaward of the bluff edge and on the bluff face and, therefore, within the 25-foot setback required for principle structures. In addition, the project includes deck additions that also would be located on the bluff face and seaward of the 10-foot bluff edge setback required for minor accessory structures. On this basis alone, the proposed project is inconsistent with the LCP and must be denied.

### **Geologic Stability and Bluff/Shoreline Protection Devices**

As discussed above, the proposed project qualifies as “new development” under LUE Action 7.3.10, both because it increases the size and degree of non-conformity of the structure and because it increases the square footage of the living area by more than 50%. Therefore, the entire remodeled house must comply with LCP policies relating to geologic stability and shoreline protection. Action 10.2.5 of the certified LUP (cited above) requires, on bluff sites, that applications include a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and that contains statements that the project site is suitable for the proposed development and that the development will be safe from geologic hazard for its economic life. Action 10.2.6 specifies that the analysis concerning geologic stability be guided by the industry-accepted standards for slopes (codified in many local grading ordinances), which require that a particular minimum “Factor of Safety” against landslides be attained. Pursuant to Action 10.2.6 of the LCP, development must maintain a minimum factor of safety (FoS) against landslides of 1.5 (for static conditions) or 1.2 (for pseudostatic conditions) to assure geologic stability.<sup>5</sup>

A preliminary geotechnical investigation report with a slope stability analysis was prepared for the proposed development by Anderson Geology, LLC dated January 2016, which was supplemented in May 2016, July 2016, May 2018, and October 2018. 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.

In this case, the geotechnical consultant’s slope stability analysis indicates that the bluff at the

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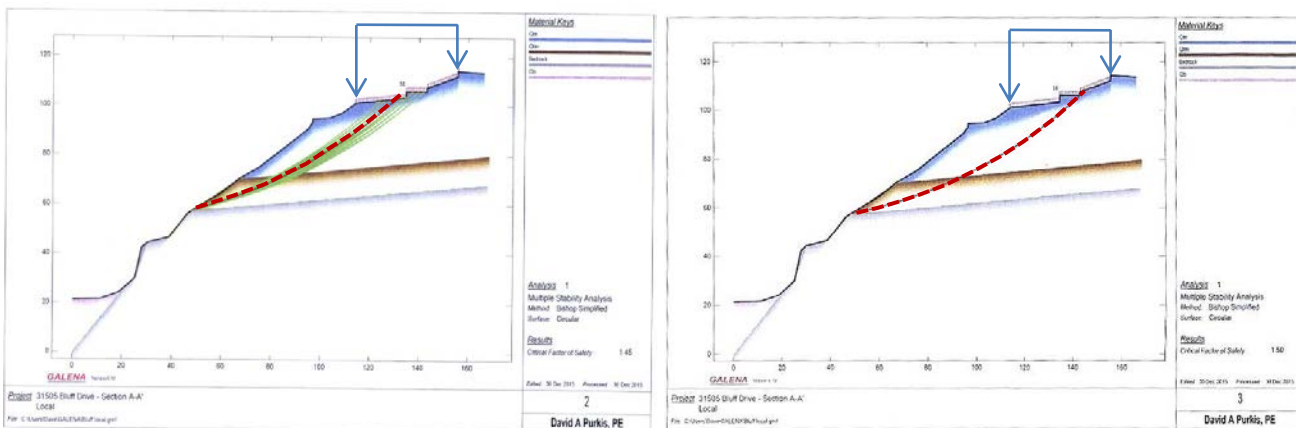
<sup>5</sup> The applicant’s agent states that the standards of Action 10.2.6 do not apply in this case because the proposed project would be sited on an oceanfront bluff *face* and not on an oceanfront bluff *top* based on Commission’s staff bluff edge. However, Action 7.3.5 prohibits any development on an oceanfront bluff face. Development on an oceanfront bluff top is allowed, but only when it complies with LCP policies regarding geologic stability and minimization of hazards. Thus, it would make no sense for the LCP to include a policy specifically addressing the standard for assuring geologic stability of new development on an oceanfront bluff face, as Action 10.2.6 does for new development on a bluff top, because no such development is allowed. However, under Actions 7.3.3, 7.3.4, 10.2.1, 10.2.5, and 10.2.6 and Policy 10-C of the LUP, all development must assure geologic stability; thus, where development is proposed on a bluff face (which is problematic because such development would be incompatible with Action 7.3.5), it is reasonable to apply the specific industry-accepted standards provided in Action 10.2.6 to determine whether proposed development on a bluff will be geologically stable. In any case, Action 10.2.6 does apply in this instance because part of the existing residence straddles the line between the bluff face and the bluff top. At the same time, the applicant does not agree with Commission staff’s bluff edge determination and asserts that the existing residence is located on the bluff top; therefore, under the applicant’s view, Action 10.2.6 would also apply.



subject site has a local FoS ranging from 1.45-1.50 for static conditions. Regarding stability for pseudostatic conditions, the slope stability analysis indicates that the bluff has a FoS of 1.09, which is not consistent with the LCP’s minimum requirement of a FoS of 1.2 for pseudostatic conditions.

While the FoS for static conditions preliminarily appears to meet the LCP’s minimum requirement of 1.5, an assessment of where the FoS lines are located on the bluff relative to the location of the residence and the proposed development is also necessary because Action 10.2.6 requires that the *development* maintain the required factor of safety. Based on the location that the local FoS lines appear on the bluff face, and based on the existing residence in relation to those FoS lines, the existing residence is not completely sited in a location that assures geologic stability.

Figure 1: Local stability of the upper bluff (bedrock contact and above) - Critical Factor of Safety (FoS) of 1.45 and 1.50 for static conditions (Note: Blue arrows indicate location of residence; Red lines demarcate the 1.45 (left) and 1.50 (right) FoS lines)



(Source: Anderson Geology, LLC, 2015)

Figure 1 above depicts that the factor of safety lines of 1.45 and 1.50 for static conditions daylight (appear on the bluff face) under the existing residence. This is likely due to the fact that the coastal bluff surficially consists of poorly-consolidated marine and non-marine terrace deposits, even though the subject site is underlain by conglomerate bedrock known as San Onofre Breccia, which is a highly stable geologic formation. In addition to landslide potential, the bluff is also subject to erosion and retreat over time. As the bluff retreats, the factors of safety of the project site are also expected to decrease. Therefore, the project site seaward of the 1.5 FoS lines are not suitable for the new development (including additions). The portions of the existing residence and associated structures seaward of the minimum factors of safety will likely be threatened by erosion within the next 75 years.

The applicant’s geotechnical consultant found that the subject site could be suitable for the proposed development, provided that bluff retention devices (i.e. caissons and retaining walls) be constructed, and that the existing foundation be underpinned and deepened, to bring the entire residence, not just portions located landward of the FoS lines, to conform with the minimum requirement of FoS of 1.5 (for static conditions) and 1.2 (for pseudostatic conditions) to assure geologic stability.

Numerous LCP policies cited above (Actions 7.3.4, 7.3.9, 7.3.12, 7.3.13, and 10.2.6) require that new development not rely on existing or future bluff or shoreline protection devices to establish geologic stability, and require that landform alteration be minimized. In particular, LUE Action 7.3.9 provides that new development, major remodels, and *additions* to existing structures on

oceanfront bluff sites may not rely on “existing or future bluff/shoreline protection devices to establish geologic stability or protection from coastal hazards.” The certified LCP limits construction of bluff/shoreline protection devices, including bluff retention devices, because they can have a variety of negative impacts on coastal resources, including adverse effects on coastal views, sand supply, public access, natural landforms, and overall shoreline beach dynamics on and off site. In addition, the construction of a bluff/shoreline protection device to protect new development would conflict with Policies 7.3 and 10.2, and Actions 7.3.4 and 7.3.5 of the certified LUE that state that permitted development shall minimize the alteration of natural landforms.

Consistent with the recommendation of the geotechnical consultant, the applicant is proposing caissons and retaining walls to assure geologic stability and to protect the existing residence and proposed residential improvements against erosion. Thus, the proposed bluff retention structures are clearly intended to serve as bluff/shoreline protection devices. Consequently, the remodeled house would conflict with LUE Action 7.3.9 because it requires the construction of bluff/shoreline protective devices to establish geologic stability and protection from coastal hazards.

In addition, because LUE Action 7.3.9 applies to new development, major remodels *and* additions, even if the Commission does not find that the proposal qualifies as new development or a major remodel, the proposed additions are inconsistent with LUE Action 7.3.9 because the additions would require bluff/shoreline protection to establish geologic stability.<sup>6</sup>

Likewise, as previously mentioned, it is not necessary to find that the project involves redevelopment of the existing residence or that the project qualifies as “major remodel” based on an increase of more than 50 percent gross floor area to find that the proposed addition does not comply with all of the policies relating to bluff/shoreline protection, and not just Action 7.3.9. The proposed addition on its own qualifies as a type of new development that requires a coastal development permit as discussed above and, therefore, must comply with all of the applicable provisions of the certified LCP including Policies 7.3 and 10.2, and Actions 7.3.4 and 7.3.5 of the certified LUE, which state that permitted development shall minimize the alteration of natural landforms (Action 7.3 and Policy 10.2), site new development to avoid hazardous areas and minimize risks to life and property from coastal hazards (Action 7.3.3), require new development not require the construction of protective devices that would substantially alter natural landforms (Action 7.3.4), and prohibit development on oceanfront bluff faces (Action 7.3.5). As proposed, the addition does not comply with these hazards policies of the LCP.

### **Sea Level Rise**

Many of the coastal hazards issues described above may be affected by expected sea level rise. Sea level has been rising for many years. The State of California has undertaken significant research to understand how much sea level rise to expect over this century and to anticipate the likely impacts of such sea level rise. In April 2017, a working group of the Ocean Protection Council’s (OPC)

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<sup>6</sup> The Coastal Commission has previously approved bluff stabilization projects in the Pacific Palisades, but usually based on site-specific considerations not present in this case, such as the location of the project site inland of a major highway, lack of influence of marine erosion, and the extent of bluff alteration that has occurred prior to the Coastal Act. In addition, there is no certified LCP for the Pacific Palisades subarea, whereas the project site at issue here is governed by the City of Laguna Beach’s specific bluff protection policies.

Science Advisory Team released *Rising Seas in California: An Update on Sea-Level Rise Science*.<sup>7</sup> This report synthesizes recent evolving research on sea level rise science, notably including a discussion of probabilistic sea level rise projections as well as the potential for rapid ice loss leading to extreme sea level rise. The updated projections in the 2017 Rising Seas report and the 2018 OPC Guidance, which are based on the current best available science on sea level rise, suggest that sea levels could rise between 2.1 and 6.7 feet by 2100 at the Los Angeles tide gauge,<sup>8</sup> depending on future greenhouse gas emissions. The OPC Guidance recommends that development of only moderate adaptive capacity, including residential development, use the high end of this range, 6.7 feet, to inform decisions regarding development. The updated Rising Seas science report and OPC Guidance also include an extreme scenario (termed the “H++” scenario) of 9.9 feet of sea level rise by 2100 based on recent modelling efforts that look at possible sea level rise associated with rapid ice sheet loss.

As our understanding of sea level rise continues to evolve, it is possible that sea level rise projections will continue to change as well (as evidenced by the recent updates to best available science). While uncertainty will remain with regard to exactly how much sea levels will rise and when, the direction of sea level change is clear and it is critical to continue to assess sea level rise vulnerabilities when planning for future development. Importantly, maintaining a precautionary approach that considers high or even extreme sea level rise rates and includes planning for future adaptation will help ensure that decisions are made that will result in a resilient coastal California.

The applicant has provided a coastal hazards analysis (sea level rise, wave runup and bluff/shoreline erosion analysis) prepared by GeoSoils, Inc. dated December 28, 2015. The analysis concludes that the rate of seacliff retreat is sufficiently low and that the project site is reasonably safe from sea level rise related hazards (e.g. wave runup, retreat of the seacliff, and flooding). Therefore, it is anticipated that the hazards relating to geologic stability of the bluff that are discussed above would not be significantly affected by sea level rise. However, the applicant’s coastal hazards analysis is only based on the sea level rise projections provided in the Coastal Commission’s 2015 Sea-Level Rise Policy Guidance document and has not been supplemented in consideration of the updated projections on rising sea levels provided for in the 2017 Rising Seas report and the 2018 OPC Guidance.

## **Conclusion**

The applicant proposes a substantial increase to the floor area of a legally non-conforming residence as to the bluff edge setback, located on an ocean-fronting bluff face, as well as alterations to the exterior walls, the floors and roof, and foundation of the existing residence. The Commission finds that the proposed improvements to the residence are so significant that the entire remodeled home must be treated as new development that must comply with LCP policies relating to coastal hazards, both because: 1) the proposed addition increases the gross floor area of the residence by more than 50% and 2) the proposed improvements increase the size and degree of the existing home’s non-

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<sup>7</sup> Griggs, G, Árvai, J, Cayan, D, DeConto, R, Fox, J, Fricker, HA, Kopp, RE, Tebaldi, C, Whiteman, EA (California Ocean Protection Council Science Advisory Team Working Group). *Rising Seas in California: An Update on Sea-Level Rise Science*. California Ocean Science Trust, April 2017.

<sup>8</sup> The OPC Guidance provides sea level rise projections for 12 California tide gauges, and recommends using the projections from the tide gauge closest to the project site. The projections for the LA tide gauge can be found on page 72 of the OPC Guidance.

conformity as to the bluff edge setback. Because the remodeled home does not meet the LCP's minimum bluff edge setback requirements for the primary residence or accessory structures (Actions 10.2.7 & 10.2.8), encroaches into the coastal bluff face (Actions 7.3.5 & 7.3.10), and improperly relies on bluff/shoreline protection devices to assure geologic stability (Actions 7.3.4, 7.3.9, 7.3.12, 7.3.13, & 10.2.6), it cannot be found consistent with the certified LCP. In addition, even if the Commission does not find that the proposal qualifies as new development, the proposed additions cannot be found consistent with the LCP, because they, too, would need to conform to the required bluff edge setbacks and cannot rely on bluff/shoreline protection to assure geologic stability. Therefore, the permit application must be denied.

There is an alternative that would allow the applicant to continue to enjoy reasonable use of the residence. Although LUE Action 7.3.10 prohibits improvements that constitute new development (e.g. improvements that would increase the size or degree of nonconformity or major remodels) on a coastal bluff face, it allows oceanfront bluff homes that are legally nonconforming as to the oceanfront bluff edge setback to be repaired and maintained; however this is not proposed at this time.

#### **E. PUBLIC ACCESS/RECREATION**

Projects located between the sea and the first public road paralleling the sea, such as the subject site, must be consistent with the public access and recreation policies of the Coastal Act.

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.*

Section 30211 of the Coastal Act states:

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

In addition, regarding promoting public access the City's certified LCP includes the following policies:

Land Use Element:

Policy 4.3 states:

*Maintain and enhance access to coastal resource areas, particularly the designated public beaches, by ensuring that access points are safe, attractive, and pedestrian friendly.*

*Action 4.3.1 states: Continue to pursue dedication and acceptance of beach access and other offers-to-dedicate throughout the City. The City shall maintain an inventory of public access and open space dedication or offers-to-dedicate to ensure such areas are known to the public and are protected through the coastal development permit process. (Same as Action 6.9.1)*

*Action 4.3.2 Maintain and improve public pedestrian access to and along beaches and oceanfront bluff using public rights-of-way and public easements. Protect, and where feasible, formalize, continued public use over areas used historically by the public (i.e. public prescriptive rights) to gain access to and along beaches, oceanfront bluffs, and other recreational areas.*

Coastal Land Use Plan Technical Appendix:

*The location and amount of new development shall maintain and enhance public access to the coast by providing adequate parking facilities or providing substitute means of serving the development with public transportation.*

Open Space/Conservation Element:

Policy 3-A states:

*Retain and improve existing public beach accessways in the City, and protect and enhance the public rights to use the dry sand beaches of the City.*

The subject site is located between the Pacific Ocean and the first public roadway, which in this case is Bluff Drive. The site is located above Walk Street Beach, a public beach, and is within a developed single-family residential neighborhood on an approximately 70-foot NGVD29 high coastal bluff property. A public access stairway is located approximately 200 feet up-coast (north) of the site. Vertical access through the site is not available.

The project must be found consistent with both the public access and recreation policies of Chapter 3 of the Coastal Act and the LCP policies. In this case, the proposed project would not have negative impacts on the nearby access ways or public beach below, and could be found consistent with the access and recreation policies of Chapter 3, however it is inconsistent with the LCP policies, as explained in the Hazards findings above, and therefore must be denied.

## **F. VISUAL RESOURCES**

Laguna Beach Land Use Element:

Policy 2.10 states:

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

Open Space/Conservation Element:

Policy 7-A states:

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

Policy 7-K states:

*Preserve as much as possible the natural character of the landscape (including coastal bluffs, hillsides and ridgelines) by requiring proposed development plans to preserve and enhance scenic and conservation values to the maximum extent possible, to minimize impacts on soil*

*mantle, vegetation cover, water resources, physiographic features, erosion problems, and require re-contouring and replanting where the natural landscape has been disturbed.*

LCP Policy 2.10, 7-A, and 7-K require that existing public views and their quality be preserved to the maximum extent feasible, including views of coastal bluffs from along the City's shoreline. The property is located between the first public road and the sea, and is currently developed with a one-story residence over a partial lower floor level that is partially subterranean and daylighted on the seaside. Both the property and the existing residence are highly visible from the public beach below.

The project includes additions to the existing residence, which is predominantly sited within a coastal bluff face, and substantial grading of the bluff face. The proposed project includes a 1,032-square foot net addition of living space to the existing partial lower floor level. The proposed project also includes the construction of a new 640-square foot, partially subterranean and semi-enclosed living space (Level 0) underneath the existing lower floor level, which would increase the total numbers of floors (levels) of the existing residence and the vertical volumetric footprint of the residence on the coastal bluff face, which would be highly visible from the beach and would not preserve the visual quality of the bluff face. Further, a retaining wall is proposed on the seaside face of the residence underneath Level 0, which would increase the seaside surface area (face) of the residence. Moreover, although the bulk of the proposed additions would be constructed underneath the horizontal footprint of the existing upper floor level (street level), approximately 200 square feet would encroach seaward beyond the existing residence, pushing the residence further toward the ocean. In addition, the applicant is proposing to grade approximately 425 cubic yards of the coastal bluff face to accommodate the proposed additions and, therefore, would not preserve the natural character of the coastal bluff to the maximum extent possible.

Because the proposed project does not preserve the visual quality and the natural character of the bluff face to the maximum extent possible, the project cannot be found consistent with the visual resource preservation policies of the certified LCP. Therefore, for the reasons described above, the permit application must be denied.

### **G. LOCAL COASTAL PROGRAM (LCP)**

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.

As discussed in this staff report, the proposed development has been found to be inconsistent with the policies of the certified LCP and the public access and recreation policies of the Coastal Act that require new development (e.g. new residences, additions, etc.) to meet a minimum bluff edge setback of 25 feet, minimum Factor of Safety of 1.5, and provide for a 75 year economic life. Therefore, it must be denied.

#### **H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

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

The City of Laguna Beach is the lead agency for the purposes of CEQA review. On October 13, 2016, the Laguna Beach Design Review Board adopted a Section 15301, Class 1(e)(1) Categorical Exemption pursuant to CEQA, which allows the construction of an addition to an existing facility provided the addition will not result in an increase of more than 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less.

As proposed, the project would result in an increase of more than 50 percent of the floor area of the existing structure. In addition, the proposed development would not be consistent with the LCP's minimum bluff edge setback requirements, would encroach into the coastal bluff face, would improperly rely on bluff/shoreline protection devices to assure geologic stability, and would not minimize natural landform alterations or preserve visual resources. There are feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment, including, but not limited to, removal of the additions and new accessory structures/additions of this proposal. Therefore, the Commission finds that the proposed project does not adequately mitigate the identified impacts, is not the least environmentally damaging feasible alternative and cannot be found consistent with the requirements of the Coastal Act to conform to CEQA.

## Appendix A - Substantive File Documents<sup>9</sup>

- City of Laguna Beach Local Coastal Program (LCP)
- *Preliminary Geotechnical Investigation for Design and Construction of Proposed Improvements and Lower-level Addition to Existing Residence, 31505 Bluff Drive, City of Laguna Beach, California* (with Supplemental Slope Stability) prepared by Anderson Geology, LLC, January 2016.
- *Response to City of Laguna Beach Geotechnical Report Review Checklist, 31505 Bluff Drive, City of Laguna Beach, California* prepared by Anderson Geology, LLC, May 17, 2016.
- *Determination of The Coastal Bluff Setback, 31505 Bluff Drive, City of Laguna Beach, California*, Project No. 15009-01, prepared by Anderson Geology, LLC, July 2016.
- *Coastal Hazard Analysis for Remodel/Addition Project, 31505 Bluff Drive, Laguna Beach, Orange County, California*, prepared by GeoSoils, Inc., December 18, 2015.
- *Response to California Coastal Commission Review Comments* prepared by Anderson Geology, LLC, May 22, 2018.
- *Updated Foundation Recommendations* prepared by Anderson Geology, LLC, October 31, 2018.

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<sup>9</sup> Due to an inadvertent error, substantive file documents unrelated to the appeal at issue were listed in the Substantial Issue staff report dated July 28, 2017. Therefore, the Substantive File Documents listed herein shall supersede those listed in the Substantial Issue staff report dated July 28, 2017 for this appeal (A-5-LGB-16-0098).