

**CALIFORNIA COASTAL COMMISSION**

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# Th7a

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## STAFF REPORT: CONSENT CALENDAR

**Application No.:** 5-19-0238

**Applicant:** T&L AOAL, LLC

**Agent:** C.J. Light Associates (Attn: Scott Shafer)

**Location:** 88/90 S. La Senda Drive, Laguna Beach, Orange County  
(APNs: 056-193-49 & 056-193-79)

**Project Description:** Remodel of and addition to an existing 34-ft. high, 2-story (plus basement), 6,892 sq. ft. single-family residence. The area of addition totals 323 sq. ft. and is confined to infill in the interior courtyard. Approximately 477 sq. ft. of floor area will be removed, resulting in a net 154 sq. ft. reduction in floor area. No grading is proposed. Landscaping will incorporate native, drought-tolerant plantings. The project also includes construction of a new spa within an existing deck.

**Staff Recommendation:** Approval with conditions

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### SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing a remodel to an existing 34-ft. high, 2-story, 6,832 sq. ft. single-family residence. The remodel includes 323 sq. ft. of additions to the first story and 477 sq. ft. of floor area removed from the first story, as well as interior remodeling. In addition, the applicant proposes the installation of a new outdoor spa within an existing deck on the seaward side of the residence, as well as two cantilevered deck additions. The project site is an ocean-fronting bluff top lot that slopes gently seaward between the road and the existing residence, and then descends sharply to the sandy beach. Although the project is located within the City of Laguna Beach (which has a certified LCP), the proposed development requires 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 CDP application is the Coastal Act. The certified Laguna Beach LCP may be used as guidance.

The main issue raised is whether or not the proposed development can be found consistent with the hazards policies of the Coastal Act. Specifically, the proposed development must minimize risks to life and property in hazardous areas, must neither create nor contribute significantly to erosion or geologic instability, and must not require protective devices that would substantially alter natural landforms (i.e. bluffs, cliffs, shoreline).

Coastal Act Section 30251 requires that new development minimize the alteration of natural land forms. The proposed residential additions are located within the envelope of the existing residence, and the proposed accessory development is located within an existing deck area. No additional grading is required or proposed for this project. Furthermore, none of the proposed developments would rely on bluff protection devices for support, so a bluff protection device is not being proposed as part of this application. Therefore, the project can be found to be consistent with Sections 30251 with regard to minimizing landform alteration.

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 setting development back from the edge of the bluff can substantially decrease risk to life by decreasing the likelihood of destruction of a structure caused by geologic instability. The applicant's geologist determined the bluff edge to be located at the approximately 79-foot elevation contour line, consistent with the bluff edge determination utilized by the Commission in past actions on this site. However, the Commission staff's geologist has determined the natural bluff edge to be located at the approximately 100-ft. elevation contour, approximately 21 ft. landward of the previously estimated bluff edge. Under the 100-ft. contour bluff edge, the existing residence observes a nonconforming setback. The proposed plans indicate that less than 50 percent of the existing structure will be altered, and the square footage of the existing structure will not be increased by 50 percent or more. Therefore, the proposed project is not a major remodel (which is likened to new development) and the existing structure may maintain its non-conforming bluff edge setback.

The proposed residential additions would be set back at least 48 ft. from the 100-ft. bluff edge, which is consistent with the 25-ft. minimum setback requirement for primary structure development on coastal bluffs. The proposed in-ground spa would be constructed within an existing patio area, would not require additional engineering (i.e. no caissons for support), and would be set back 24 ft. from the 100-ft. bluff edge, consistent with the ten ft. minimum setback for accessory structure development on coastal bluffs. However, the cantilevered deck additions, as originally proposed by the applicant, would have been set back just 8 ft. from the approximate 100-ft. bluff edge, which is less than 10-ft. minimum setback typically required by the Commission for accessory structure development on coastal bluffs. As such, the deck additions could not be found to be consistent with the hazards and visual resources policies of the Coastal Act. The applicant has agreed to remove the cantilevered deck additions from the proposed plans, and confirmed through re-submitted plans. The applicant's geotechnical report indicates that the existing residence (including the areas of the proposed residential additions) and the accessory structures are located within an area with greater than a 1.5 factor of safety and further, that the project site is adequately stable to accommodate the proposed development.

Staff is recommending **approval** of the proposed coastal development permit with eleven **(11)** special conditions. The special conditions would: 1) require the applicant to submit final plans that acknowledges the 100-ft. contour as the bluff edge, and further emphasize the minimum setbacks for bluff development; 2) ensure that the development is undertaken in accordance with the recommendations laid out in the geotechnical study; 3) ensure that runoff is contained and treated onsite; 4) ensure that the proposed development does not contribute to increased pollution of marine waters; 5) ensure that landscaping incorporates entirely drought-tolerant, non-invasive plantings; 6) require the applicant to assume the risk of developing within a known hazardous area; 7) require the applicant to follow best practices to prevent future leakage of the in-ground spa; 8) require the applicant to confirm that less than 50 percent of the existing residence is remodeled; 9) require the applicant to acknowledge that no future bluff or shoreline protective device shall be constructed to protect the development; 10) require the applicant to assume the risk of developing within a hazardous area ; 10) acknowledge that future development on the site requires a CDP; and 11) require a deed restriction to reference the special conditions of this CDP.

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### APPENDICES

Appendix A - Substantive File Documents

### [EXHIBITS](#)

[Exhibit 1 - Vicinity Map](#)

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – Approximate Bluff Edge Location](#)

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.*

Staff recommends a **YES** vote. Passage of this motion will result in approval of all of the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

## II. STANDARD CONDITIONS:

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent 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 permittee 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, but shall be revised to depict the existing bluff edge line at the 100-ft. contour line as determined by the Commission's staff geologist, and shall depict a 25-ft. bluff setback and a 10-ft. bluff setback based on the Commission staff geologist's identification of the bluff edge (100 ft. contour line). No primary structure development shall occur within 25 ft. of the bluff edge as

determined by the Commission's staff geologist. Similarly, no accessory structure development shall occur within 10 ft. of the bluff edge as determined by the Commission's staff geologist. Plans for the proposed development shall be revised accordingly.

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 July 20, 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. **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.

4. **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.

**5. 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.

**6. Best Management Practices - Proposed Spa.** Best Management Practices (BMP’s) designed by the applicant’s subject matter expert to mitigate the potential for leakage from the proposed future spa shall be implemented prior to the onset of such activity. The spa 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 and post-construction maintenance:

- i. The spa shall contain an interior waterproof surface lining or coating to be applied to surface of the concrete structure and the proposed tile finished surfacing. Secondary protection should be obtained by the use of a concrete mix design for the spa structure in accordance with the American Concrete Institute (ACI) publication 218-08, Table 4.3.1, Requirements for Special Exposure conditions for “Concrete intended to have low permeability when exposed to water:

In accordance with ACI Table 4.3.1 it is recommended that the concrete mix used for the referenced spa be formulated with a maximum water cementitious materials ratio of 0.45 and a minimum 28 day concrete compressive strength of 4500 psi. Experience has shown this concrete mix has been successful in attaining low permeability for concrete structures such swimming pools and spas. The ACI has considerable documentation on attainment of low permeability when using this type of concrete mix.

- ii. The spa shall have a sub-drain system installed below the spa in accordance with recommendations by the project geotechnical engineer. The sub drain system shall be connected to the proposed sump pump drain system designed by the project civil engineer.
- iii. The proposed Best management practices described above are intended to satisfy requirements to prevent water exfiltration from the spa onto adjacent properties including the existing slope located towards the rear of the subject site.
- iv. Expected water consumption of the spa is based upon yearly temperature, and will likely be within normal limits during summer months. Typical Southern California temperatures during summer months should result in an evaporation rate of approximately two inches of water in a seven day period of time. This evaporation rate is less in coastal climate areas such as the project site. Volumetric consumption may be assumed to be two inches of water the exposed surface of the spa.
- v. The spa water fill system shall be provided with an automatic cut-off switch programmed such that the cut-off of water is activated if water usage in a three hour period exceeds the normal and expected flow. The cut-off shall have an override control of up to two hours to allow for the maintenance and cleaning of the spa.
- vi. All recommendations included herein as well as any additional provisions intended for leakage prevention should be inspected and verified during the constructions process of the spa.

7. **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.

**8. No Future Bluff or Shoreline Protective Device**

- a) By acceptance of this Permit, the applicant agrees, on behalf of itself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-19-0238 including, but not limited to, 323 sq. ft. of residential additions and a new in-ground spa, including in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, bluff retreat, landslides, or other coastal hazards in the future, and as may be exacerbated by sea level rise. By acceptance of this Permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under applicable law.
- b) By acceptance of this Permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner shall remove the development authorized by this Permit, including 323 sq. ft. of residential additions and a new in-ground spa, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above, or if any public agency requires the structures to be removed. [If any portion of the development at any time encroaches onto public property, the permittee shall either remove the encroaching portion of the development or apply to retain it. Any application to retain it must include proof of permission from the owner of the public property.

9. **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.

10. **Future Improvements.** This permit is only for the development specifically described in Coastal Development Permit 5-19-0238. 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 5-19-0238. 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 5-19-0238 or shall require an additional coastal development permit from the Commission.

11. **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 LOCATION & DESCRIPTION

The applicant is proposing a remodel to an existing 34-ft. high, 2-story, 6,832 sq. ft. single-family residence. The remodel includes 323 sq.ft. of additions to the first story and 477 sq. ft. of floor area removed from the first story, as well as interior remodeling. In addition, the applicant proposes the installation of a new outdoor spa within an existing deck on the seaward side of the residence ([Exhibit 2](#)). The proposed residential additions are to be located within existing interior courtyards within the main residence, will remain within the existing residence footprint, and will not extend further seaward. The created floor area will be supported with a slab-on-grade foundation, and will not require bluff protection devices. The floor area proposed to be removed is primarily garage area located at the landward side of the residence. However, approximately 170 sq. ft. of existing living area on the seaward side will also be removed, which would increase the overall building setback from the bluff edge by an additional five ft. The proposed in-ground spa would be constructed within an existing patio area, and would not require additional engineering (i.e. no caissons for support).

The project site is an ocean-fronting bluff top lot that slopes gently seaward between the road and the existing residence, and then descends sharply to the sandy beach. The lot is developed with a 34-ft. high, two-story (over a basement) single-family residence and filled patio area. The project site is designated as Village Low Density, which allows for single-family residences. The adjacent parcels are also developed with single-family residences.

The project is located within the locked gate community of Three Arch Bay in the City of Laguna Beach ([Exhibit 1](#)). Laguna Beach has a certified Local Coastal Program (LCP) except for the four areas of deferred certification: Irvine Cove, Blue Lagoon, Hobo Canyon, and Three Arch Bay.

Certification of the Three Arch Bay area was deferred due to access issues arising from the locked gate nature of the community. Because the site is located within a locked gate community, no public access exists through the Three Arch Bay community between the nearest public road (Pacific Coast Highway) and the coast. However, the public may access the tidelands below the mean high tide line by sea and by walking laterally along the coast. 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 nearest public beach access exists at 1,000 Steps Beach, located approximately one mile north of the project site.

The proposed development requires 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 CDP application is the Coastal Act. The certified Laguna Beach LCP may be used as guidance. The main issue raised is whether or not the proposed development can be found consistent with the hazards policies of the Coastal Act. Specifically, the proposed development must minimize risks to life and property in hazardous areas, must neither create nor contribute significantly to erosion or geologic instability, and must not require protective devices that would substantially alter natural landforms (i.e. bluffs, cliffs, shoreline).

### **Project History**

In 1986, the Commission issued Coastal Development Permit No. 5-86-310 for the demolition of an existing single-family residence on one lot, and the addition of 3,000 sq. ft. to an existing single-family residence on the adjacent lot, resulting in one two-story, 7,141 sq. ft. single-family residence spanning both lots. The residence that resulted from CDP 5-86-310 was treated as new development, and therefore serves as the baseline to determine whether future improvements would constitute redevelopment (discussion to follow below).

In 1992, after the development of the current single-family residence, the applicant constructed a caisson-tieback stabilization system in response to an onsite slope failure of a portion of the subject property. In 1993 the applicant treated the soil behind this system with cement grout to re-establish slope contours in response to slumping and erosion of marine terrace deposits west of the caisson-tieback stabilization system. The applicant did not obtain coastal development permits from the Commission for either the caisson-tieback stabilization system or the cement treated soil. According to the applicant's geotechnical consultants, approximately 3.5 to 10 feet of bedrock and previously placed cement treated soils have failed west of the existing caisson-tieback stabilization structure and the steep failure scar exposes between 7 and 16 feet of the upper caissons as well as inter-caisson terrace and bedrock deposits. The applicant did not obtain coastal development permits from the Commission at the time that the abovementioned actions were taken on the project site. However, the Commission issued CDP No. 5-06-405 in 2006 for the after-the-fact authorization of the described bluff-stabilization activities.

The Commission approved Coastal Development Permit No. 5-02-345 in 2003 for the remodel and net addition of 1,132 sq. ft. to the residence, resulting in an 8,273 sq. ft. residence. The application included a proposal for the reconstruction of an at-grade patio, as well as a new greenhouse and pool within the 25-ft. bluff top setback area. The Commission did not approve the greenhouse and

pool under CDP 5-02-345, but found that the at-grade patio could be reconstructed because the reconstructed patio would serve to improve site drainage and bluff stability overall.

### **Scope of the Development**

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 the scope of the development—i.e., whether the extent of the development is such that the resulting structure actually constitutes a replacement structure that requires the applicant to address all heretofore existing non-conformities with the Coastal Act, such as inadequate or absent bluff edge setbacks, and to ensure that the entire proposed development complies with all applicable Chapter 3 policies. “New development” or redevelopment requires a permit and must comply with all Coastal Act Chapter 3 policies—and, hence, include sufficient setbacks from the bluff edge. (Public Resource Code §§ 30600(a) & 30604(a); 14, Cal. Code Regs. §§ 13252(b)). 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.

While the dividing line between an improvement (or repair and maintenance)<sup>1</sup> and “redevelopment” is not always clear, at a certain point, substantial alterations to a home can no longer be considered minor improvements, but instead must be considered new development. Thus, Coastal Act Section 30610(a) allows certain types of “improvements” to existing single-family residences without a coastal development permit, which may include modest additions. Although the Coastal Act and its implementing regulations do not define “improvement,” the regulations acknowledge that “improvements” generally include additions that result in an increase of up to 10 percent of internal floor area of an existing home. (see 14 Cal. Code Regs § 13250(b)(4).) Section 13252(b) of the Commission’s regulations also states that the “replacement” of 50 percent or more of a single-family residence constitutes a replacement structure requiring a coastal development permit, rather than repair or maintenance.

In applying Section 13252(b), the Commission has found (see A-5-VEN-17-0009 (Thomas), A-5-LGB-18-0012 (Bracamonte); 6-18-0182 (Harris); 5-18-0223 (Walsh)) that a structure is considered redeveloped and, therefore, new development, if one of the following takes place: 1) 50% or more of the major structural components are replaced; 2) there is a 50% or greater increase in gross floor area; 3) replacement of less than 50% of a major structural component results in cumulative alterations exceeding 50% or more of that major structural component (taking into account previous replacement work on the same structure); and/or 4) less than a 50% increase in floor area where the alteration<sup>2</sup> would result in a cumulative addition of 50% or more of the floor area, taking into account previous additions to the structure.

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<sup>1</sup> In general, improvements to single-family residences, and repair and maintenance, are exempt from the Coastal Act’s requirement to obtain a coastal development permit, except when the improvements/activities involve a risk of adverse environmental impacts. (see Public Resources Code § 30610(a) (improvements to single-family residences) and § 30610(d) (repair and maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of the repairs); 14 Cal. Code Regs § 13250(b)(4) (outlining situations where improvements to a single-family residence requires a permit because of they involve a risk of adverse environmental harm)).

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

Although not the standard of review for this project, the certified LCP provides guidance as to the project's consistency with Chapter 3 policies. The City's certified Land Use Element defines "major remodel" 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.*

Furthermore, Policy 7.3.10 of the Land Use Element 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.*

Here, the applicant has submitted information regarding the extent of proposed alterations to the existing residence. The proposed plans indicate that less than 50 percent of the existing structure, and less than 50% of any major structural components, will be altered, and the square footage of the existing structure will not be increased by 50 percent or more. The overall square footage of the residence is being *reduced* by approximately 154 sq. ft., the roof area is being altered by 40.3 percent, and there are no projected changes to the existing foundation. There is, however, some confusion as to the amount of exterior wall demolition that would occur under the project. The floor plans submitted by the applicant indicate that the alterations to the exterior walls of the residence would only total 26.2 percent. However, the applicant's exterior wall demolition elevations indicate that 45 percent of the walls would be demolished under the proposal, an 18.8 percentage point increase over the estimate tabulated from the floor plans. In either case, less than 50 percent of the exterior walls are proposed to be removed. However, as detailed below, extra precautions should be taken to ensure that approved development is consistent with the applicant's proposal.

As mentioned earlier, the Commission has typically looked at *cumulative* development over time when determining whether or not a project constitutes redevelopment. In this case, CDP No. 5-02-345) authorized a 1,132 sq. ft. addition to the single-family residence. The staff report findings indicate that the project removed three percent of the exterior walls, far below the 50 percent threshold. Using the total exterior wall demolition calculated from the floor plans (26.2%), the cumulative total of exterior wall demolition is 29 percent, still below the 50 percent threshold. Using the upper demolition estimate of 45 percent (tabulated from the submitted exterior wall demolition plans), the cumulative wall demolition total rises to 48.2 percent, just short of the 50% threshold. Assuming the 48.2 percent cumulative exterior wall demolition estimate, even small improvements that may not ordinarily need a CDP (such as replacing doors and/or windows) could push the total exterior wall alteration total over the 50 percent threshold, thus qualifying the residence as new development that would be required to conform to the current building standards (including the bluff edge setback). To ensure that the development is consistent with the Coastal Act and does not prejudice the LCP, the Commission imposes **Special Condition 10**. This

condition requires a new CDP or amendment for all future improvements, including repair and maintenance actions that would ordinarily not require a permit.

As analyzed by staff, the proposed project in this case does not constitute a major remodel, will not result in a replacement structure, and is not new development that would require the entire structure to conform with Chapter 3 policies; therefore, the existing structure may maintain its non-conforming bluff edge setback, as long as the proposed additions to the structure comply with all Chapter 3 requirements.

Although the project plans indicate that the project is a remodel, and not new development, conditions must be imposed to assure that the quantity and location of alterations to the existing residence occur in the manner proposed. First, the Commission imposes **Special Condition 1**, which requires the applicant to undertake development only in accordance with the Commission-approved final plans. Any changes to the approved plans would require an amendment to the CDP, unless the Executive Director finds that an amendment is not required. Should quantity or location of alterations 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 therefore imposes **Special Condition 7**, which requires that the applicant submit a copy of the City Building Department job card after any proposed alterations are complete. The City's job card would verify the extent of work and the condition of the residence remaining. If the job card indicates that more alterations have occurred than were 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.

## **Hazards**

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 the character of its setting.*

With regard to hazards, 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 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. The project site is also vulnerable to erosion, flooding, wave runup, and storm hazards. These hazard risks are exacerbated in consideration of sea-level rise that is expected to occur over the coming decades. In this geographic area, the main concern raised by beach fronting and blufftop development is whether hazardous conditions might eventually lead to a request to build a shoreline protection device or a bluff protection device to protect the proposed development.

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

Sea-level has been rising for many years. Several different approaches have been used to analyze the global tide gauge records in order to assess the spatial and temporal variations, and these efforts have yielded sea-level rise rates ranging from about 1.2 mm/year to 1.7 mm/year (about 0.5 to 0.7 inches/decade) for the 20th century, but since 1990 the rate has more than doubled, and the rate of sea-level rise continues to accelerate. Since the advent of satellite altimetry in 1993, measurements of absolute sea-level from space indicate an average global rate of sea-level rise of 3.4 mm/year or 1.3 inches/decade – more than twice the average rate over the 20th century and greater than any time over the past one thousand years.<sup>3</sup> Recent observations of sea-level along parts of the California coast have shown some anomalous trends; however, the climate is warming, and such warming is expected to cause sea-levels to rise at an accelerating rate throughout this century.

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. On November 7, 2018, the Commission adopted a science update to its Sea-Level Rise Policy Guidance. This document provides interpretive guidelines to ensure that projects are designed and built in a way that minimizes sea-level rise risks to the development and avoids related impacts to coastal resources, consistent with Coastal Act Section 30253. These guidelines state, “to comply with Coastal Act Section 30253 or the equivalent LCP section, projects will need to be planned, located, designed, and engineered for the changing water levels and associated impacts that might occur over the life of the development.”

The project site is located between the sea and the first public road in a developed residential neighborhood south of 1,000 Steps Beach. Because the project site is located at the first line of development adjacent to the beach, a coastal hazards survey was submitted for the proposed project. The report, dated January 15, 2019, concluded that the proposed development is safe from coastal hazards, particularly because the project site is located at the top of a coastal bluff. The report states that the subject site is located on San Onofre Breccia, which is considered to be a highly stable formation. Because the San Onofre Breccia formation resists weathering and erosion, the report concluded that bluff retreat due to wave action is considered very low. Based on studies conducted by the retained geotechnical consultant, the report anticipates approximately 10-20 ft. of bluff retreat from the geologic bluff edge over the next 50-75 years. With regard to basal retreat, the report concludes that a negligible amount of basal retreat would occur within the next 40 years, and a less than one-ft. retreat for the remaining 75-year project life of the structure.<sup>4</sup> Bedrock

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<sup>3</sup> <http://www.opc.ca.gov/webmaster/ftp/pdf/docs/rising-seas-in-california-an-update-on-sea-level-rise-science.pdf>

<sup>4</sup> Basal retreat refers to a retreat of the bluff face, not the bluff top.

outcroppings within the surf zone at this site act as a breakwater to incoming waves, which reduces the risk of coastal erosion.

In addition to reviewing the coastal hazards analysis submitted by the applicant, staff utilized the USGS Coastal Storm Modeling System (CoSMoS) to evaluate the project site's vulnerability to coastal hazards. Staff followed the methodology outlined in the OPC's 2018 Sea-Level Rise document to establish a projected sea level range for the new development. The 2018 OPC guidance uses NOAA tide gauges, a projected project lifespan, and risk aversion scenario to estimate a sea level rise range. The sea level rise analysis assumed a 75-year projected lifespan for the project, consistent with the Commission's Sea-Level Rise Policy Guidance for residential development. According to the 2018 OPC update, the projected sea level rise range for the project site is tied to the Los Angeles NOAA Tide Gauge. This tide gauge estimates a range between 5.4 and 6.7 ft. of sea level rise by 2100 (which falls within the 75-year projected lifespan for the project). With regard to the risk-aversion scenario, both the Commission's Sea-Level Rise Policy Guidance and the OPC documents recommend a medium-high risk scenario for residential developments. Under a 75-year projected lifespan, a medium-high risk scenario, and the project's location within the Los Angeles NOAA tide gauge, staff estimated 6.7 ft. of sea level rise within the project vicinity.

Using the sea level rise estimates listed above, staff used CoSMoS to analyze the project site's vulnerability to sea level rise impacts. Staff ran the CoSMoS model using a 6.6 ft. sea level rise scenario (the closest available option that was within the determined sea level range) and a 100-year storm scenario to represent the worst-case scenario. Under an estimated 6.6 ft. sea level rise and 100-yr. storm scenario, the project site is not anticipated to be subject to inundation due to coastal flooding or wave uprush, primarily due to the site's location at the top of a coastal bluff. Therefore, the project site is predicted to be relatively safe from coastal hazards.

### ***Geologic Hazards***

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.

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.*

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.*

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, among other things. The applicant’s geologist identified a “geologic bluff edge” line at elevations ranging from approximately 82 to 90 feet ([Exhibit 3](#)). In the July 20, 2018 updated geotechnical report, the applicant’s geologist notes the difficulties of delineating the natural bluff edge “in strict accordance with the Coastal Act” on a developed, heavily-altered site, and states that “[the Coastal Act] bluff edge is not depicted” in its attached geotechnical plot plan. Rather, the applicant’s bluff edge line appears to correspond to a distinct slope break, beyond which the slope of the bluff face steepens noticeably, but it does not account for the more gently sloping portion of the upper bluff across the project site. The project plans indicate that the existing residence is set back more than 25 ft. from the “geologic bluff edge” identified by the applicant’s geologist.

The Commission’s staff geologist, Dr. Joseph Street, has reviewed the applicant’s geotechnical analysis, bluff edge determination, topographic survey, cross-sections, and proposed architectural plans, as well as topographic maps of the project vicinity provided by the U.S. Geological Survey and Orange County, and agrees that previous development (e.g., grading and fill associated with construction of the existing house and existing bluff stabilization structures) has modified that natural topography of the site, complicating the determination of the bluff edge. However, Dr. Street finds that the applicant’s bluff edge determination is not consistent with the bluff edge definitions contained in the Commission’s regulations and the Laguna Beach certified LUP. The available topographic information for the site ([Exhibit 3](#)) clearly indicates that the upper bluff slope continues above and inland of the applicant’s bluff edge, to elevations above 92 feet at the southern edge of the house, and above 104 feet at the northern edge (with an approximate gradient of 2.5:1, horizontal to vertical (h:v)). For comparison, the near-level bluff top inland of the house has a slope of approximately 12:1 (h:v). This suggests that the natural, pre-development bluff edge, consistent with the Commission’s definition (“*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*”) likely occurred at a location beneath the existing residence, in particular across the middle and northern portions of the property. In the absence of information about the

extent and nature of previous modifications to site topography (i.e., cut and fill) and lacking topographic data underlying most of the existing structures, Dr. Street believes it is reasonable to identify a provisional bluff edge line, for purposes of measuring required setbacks, at the edge of the existing structures, corresponding to elevations of approximately 104 feet at the northwestern corner and 92 feet at the southwestern corner ([see Exhibit 3](#)). This bluff edge line is necessarily very approximate, but relies on the available topographic data while minimizing assumptions. It represents the most landward position where the downward gradient of the bluff surface can be demonstrated to exceed the 12:1 (5 degree) gradient of the bluff top, and beyond which the gradient increases more or less continuously until it reaches the general gradient of the seacliff. In other words, this approximate bluff edge delineation is as consistent with the Commission's topography-based bluff edge definition as is possible in the present case.

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. The proposed residential additions are located within the envelope of the existing residence, and the proposed accessory development is located within an existing deck area. No additional grading is required or proposed for this project. Furthermore, none of the proposed developments would rely on bluff protection devices for support, so a bluff protection device is not being proposed as part of this application. Therefore, the project can be found to be consistent with Sections 30251 and 30253 with regard to minimizing landform alteration.

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 ft. from the edge of the coastal bluff for primary structures (i.e. the enclosed living area of residential structures) and a 10-ft. setback for accessory structures (e.g. decks and patios). These setbacks are consistent with Actions 10.2.7 and 10.2.8 of the Land Use Element. In this case, the position of the existing residence in relation to the pre-development bluff edge is not clear, but it is likely that the residence, at least in part, was constructed beyond the bluff edge (as defined by the Commission). However, considering that the existing single-family residence constitutes a legal nonconforming use and that the proposed alterations to the residence do not rise to the level of a major remodel/new structure, the existing elements of the single-family residence would not be required to be set back as far as would be required under the Coastal Act if they were proposed as new development today. The proposed residential additions would be set back at least 38 ft. from the provisional bluff edge identified by the Commission's geologist, which is consistent with the Action 10.2.7's 25-ft. minimum setback requirement for primary structure development on coastal bluffs. The proposed spa is proposed to be set back 16 ft. from this bluff edge, consistent with the Action 10.2.8's ten ft. minimum setback requirement for accessory structure development on coastal bluffs.

However, the cantilevered deck additions, as originally proposed by the applicant, would be located at or beyond the bluff edge, and thus would not meet Action 10.2.8's 10-ft. minimum setback requirement for accessory structure development on coastal bluffs. As such, using the certified LCP as guidance, the deck additions are not consistent with Section 30253 of the Coastal Act, because they would be located too close to the bluff edge. Therefore, the applicant has agreed to remove the cantilevered deck additions from the proposed plans, which staff has confirmed through re-submitted plans. Nevertheless, the Commission imposes **Special Condition 1** to confirm that no accessory structure development shall occur within 10 ft. of the bluff edge (As defined by Dr. Street), and that no primary structure development shall occur within 25 ft. of the bluff edge.

Moreover, the Commission imposes **Special Condition 7**, which requires that the applicant provide evidence that the development was implemented as proposed and no additional demolition, removal, and/or replacement of the residence has occurred beyond which was approved by this CDP). **Special Condition 10** requires that that all future improvements and repair and maintenance of the residence require a coastal development permit.

### ***Geotechnical Recommendations***

In general, coastal bluffs are subject to retreat due to ongoing effects of weathering, erosion and shallow instability of the soils that comprise the bluffs. The applicant submitted a Geotechnical Investigation of Bluff Slope Stability report dated July 20, 2018 that evaluated the bluff slope stability of the project site as well as the project site's vulnerability to bluff erosion. The report states that the subject site is located on San Onofre Breccia, which is considered to be a highly stable formation. Because the San Onofre Breccia formation resists weathering and erosion, the report concluded that bluff retreat due to wave action is considered very low. Based on studies conducted by the retained geotechnical consultant, the report anticipates approximately 10-20 ft. of bluff retreat from the geologic bluff edge over the next 50-75 years.

With regard to bluff slope stability, the Commission has typically required that proposed development maintain a slope stability factor of safety of at least 1.5<sup>5</sup> as determined through engineering analyses. This is consistent with the factor of safety requirements for many local jurisdictions throughout the state, including Laguna Beach. The applicant's geotechnical report concluded that the existing residence (including the areas of the proposed residential additions) and the accessory structures are located landward of the 1.5 factor of safety line and further, that the project site is adequately stable to accommodate the proposed development.

Overall, the geotechnical study concludes 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 July 20, 2018, as summarized above.

### ***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 that may 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. The proposed landscaped areas are limited to the interior courtyards, which are closer to the landward edge of the project site

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<sup>5</sup> The factor of safety, as it pertains to slope stability, is defined as the quotient of the sum of forces tending to resist failure divided by the sum of forces tending to cause failure.

than to the bluff edge. The Commission nevertheless imposes **Special Condition 5**, requiring the applicant to prepare a final landscaping plan providing that landscaped areas shall only consist of native plants or non-native drought tolerant plants that are non-invasive, and encouraging use of reclaimed water for irrigation and consideration of water conservation measures. **Special Condition 3** requires final drainage and erosion control plans for the treatment of runoff to be maintained for the life of the project.

### ***Conclusion***

As described above, the applicant's geotechnical consultant found the project site to be grossly stable, that the project is safe from coastal and geologic hazards, and that no bluff protection devices would be needed to support the proposed development. However, geologic and sea-level conditions change over time and predictions based upon the best-available science are inexact. In addition, although adherence to the geotechnical consultant's recommendations would minimize the risk of damage from bluff erosion, the risk is not eliminated entirely. Although the applicant has indicated that the proposed residential additions and spa (new development that is not afforded the right to shoreline or bluff protection) will not rely on shoreline protective devices, the Commission imposes **Special Condition 8**. This condition puts the applicant on notice that no bluff or shoreline protective device shall ever be constructed to protect the permitted development. This holds true even in the event that future erosion compromises the development approved under this permit. 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 9**, 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 Sections 30251 and 30253 of the Coastal Act.

### **B. PUBLIC ACCESS**

The proposed development will not affect the public's ability to gain access to, and/or to make use of, the coast and nearby recreational facilities. Therefore, as proposed the development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

### **C. WATER QUALITY**

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. Furthermore, uncontrolled runoff from the project site and the percolation of water could also affect the structural stability of bluffs and hillsides. To address these concerns, the development, as proposed and as conditioned, incorporates design features to minimize the infiltration of water and 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 for the use of post construction best management practices to minimize the project's adverse impact on coastal waters. The project proposes a new spa that is to be located within an existing patio. The applicant's geologist provided a list of best management practices to mitigate the potential for

leakage from the proposed spa. Such measures include an interior waterproof surface lining and a sub-drain system that connects to the sump pump drain system to direct water flow away from the bluff edge. 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.

#### **D. 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 one additional condition (**Special Condition 11**) requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

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

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. An LCP for Laguna Beach was effectively certified on July, 1992. However, the proposed development is occurring within an area of deferred certification. Consequently, the standard of review is the Coastal Act and the City's LCP is used only as guidance. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified LCP for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program for this area that is in conformity with the provisions of Chapter 3.

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

As conditioned, 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.