

**CALIFORNIA COASTAL COMMISSION**

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# W25a

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Hearing Date: 09/11/2019

## STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE & DE NOVO

**Appeal No.:** A-5-LGB-17-0049

**Applicant:** Laguna Lido Condo

**Agent:** Marshal Innins

**Local Government:** City of Laguna Beach

**Local Decision:** Approval with Conditions

**Appellant:** Mark Fudge

**Project Location:** 31755 Coast Highway, City of Laguna Beach, Orange County (APN: 658-101-55)

**Project Description:** Appeal of City of Laguna Beach local coastal development permit for elevated deck additions to 44 decks totaling 4,928 sq. ft. on seaward side of a non-conforming 48-unit condominium complex on an ocean-fronting bluff property.

**Staff Recommendation:** Determine that a substantial issue exists, and deny the de novo permit.

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**IMPORTANT HEARING PROCEDURE NOTE:** The Commission will not take public testimony during the “substantial issue” phase of the appeal hearing unless at least three Commissioners request it. If the Commission finds that the appeal raises a substantial issue, the “de novo” phase of the hearing will follow, during which the Commission will take public testimony.

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### SUMMARY OF STAFF RECOMMENDATION

The City's action on Local CDP No. 17-0875 authorizes the lateral expansion of 44 elevated decks (balconies) (addition of approximately 112 square feet of deck space per balcony) of a 48-unit condominium complex, which is comprised of two condominium buildings (an upper and lower building) located on a coastal bluff and on a beach. The upper condominium building is located higher up on the bluff property at an elevation between approximately 85 to 100 feet NGVD29. The lower condominium building extends down to the toe of the bluff and onto the beach below. The subject site is an approximately 73,799-square-foot ocean-fronting bluff lot.

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which appeal number A-5-LGB-18-0012 has been filed for the following reasons: the City's decision that the development is consistent with the provisions of the LCP regarding non-conformities and new development on an ocean-fronting bluff or bluff face was not adequately supported by documents in the record file or the Local CDP's findings.

The primary issue raised is the locally approved development's consistency with LCP policies regarding development on an oceanfront and oceanfront bluff site. The proposed deck additions would be approximately 112 square feet in size and would connect to existing deck areas. However, because the existing decks (and possibly the structures themselves) are nonconforming as to the oceanfront and oceanfront bluff edge setback according to the City of Laguna Beach certified Local Coastal Program (LCP), the proposed deck additions would also be nonconforming to these setbacks, inconsistent with certified LCP policies. Therefore, Commission staff also recommends that, after a public hearing, the Commission **deny the de novo permit**.

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**APPENDICES**

- Appendix A – Relevant LCP Policies and Definitions
- Appendix B – Substantive File Documents

**EXHIBITS**

- Exhibit 1 – Project Location
- Exhibit 2 – Project Plans
- Exhibit 3 – Appeal
- Exhibit 4 – City Resolution for local CDP No. 17-0875
- Exhibit 5 – CSLC Letter dated May 28, 2019

## I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

**Motion:** *I move that the Commission determine that Appeal No. A-5-LGB-17-0049 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

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

**Resolution:**

*The Commission hereby finds that Appeal No. A-5-LGB-17-0049 presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access policies of the Coastal Act.*

## II. APPELLANT’S CONTENTIONS

The Commission received a notice of final local action for City of Laguna Beach Local Coastal Development Permit (CDP) 17-0875 on July 25, 2017. Local CDP No. 17-0875 approves the construction of elevated deck additions totaling approximately 5,000 square feet to two existing condominium buildings, one located on the coastal bluff and the other sited at the toe of the bluff and on the beach below.

On September 6, 2017 the appeal was filed by Mr. Mark Fudge (**Exhibit 3**). Mr. Fudge contends that the City’s approval does not comply with the City’s certified Local Coastal Program (LCP) and the Coastal Act. More specifically, his concerns regard:

- 1) The City-approved project requires four variances – 1) to encroach into the ocean-front building setback; 2) to encroach into the blufftop setback; 3) to exceed the allowable building height; and 4) to permit new construction where a nonconforming use exists.
- 2) Bluff edge determination has not been made pursuant to the certified LUP definition and, therefore, all requirements relating to blufftop development have not been properly assessed (such as setbacks). In addition, the City’s action is inconsistent with the LCP because it approved development that likely does not conform to the LCP’s required oceanfront and bluff setbacks and likely extends onto the bluff face.
- 3) Because the existing structure does not conform to the required oceanfront and yard setbacks, the proposed new development should be brought to conformity.
- 4) The City did not impose conditions requiring the applicant to waive the right to future shoreline protective device(s), require construction best management practices to minimize runoff from the building site, and assure continued public access during construction activities (construction staging).

- 5) It is possible that the new development proposed would trigger the requirement of public access as per LBMC 25.53.020(A)(2).
- 6) The oceanward building seems to encroach over the property line.

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

On November 10, 2016, the City of Laguna Beach Design Review Board (DRB) for the coastal development permit application and other discretionary approvals for the project. During this public hearing, the DRB denied the Local Coastal Development Permit (CDP) No. 17-0875 for the lateral expansion of 44 elevated decks (approximately 5,000 square feet total) of the Laguna Lido Condominium complex, as well as Design Review 17-0874 and Variance 17-0876. The applicant requested Variance 17-0876 to allow the project development to encroach into the LCP oceanfront building setback; to encroach into the LCP blufftop setback; to exceed the LCP allowable building height; and to permit new construction where a nonconforming use exists. Public testimony related to concerns regarding variance requests, mass and scale, lack of public access and CEQA. The DRB denied the application because they could not justify approval of the requested variances and believed an Initial Study should be prepared pursuant to the California Environmental Quality Act (CEQA).

The property owners filed a local appeal of the DRB's decision. On January 24, 2017, the City Council of the City of Laguna Beach conducted a legally noticed public hearing on the property owners' request. The City Council's motion failed to uphold the appeal and failed to overturn the DRB's denial of the application.

The applicant re-applied for essentially the same scope of work that was previously considered by the DRB in November 2016 but modified the project to include new sliding glass doors for access to the proposed expanded deck areas from the bedrooms. On June 8, 2017, the DRB held a second public hearing. Public comments received and public testimony given related to privacy and view equity, mass and scale concerns, sand settling, and CEQA. After public testimony and deliberation, the DRB subsequently denied the application. The DRB denied the application the second time on the basis that they could not make the findings to approve the coastal development permit; could not justify approval of the requested variances; and found that the deck expansion would create inappropriate additional mass and scale and an increase in noise and privacy issues, and that the proposal is not compatible with hillside guidelines for development.

The property owners subsequently appealed the DRB's June 2017 decision to the City Council. On July 25, 2017, the City Council granted the appeal and overturned the DRB's denial of the project, and subsequently approved Local CDP No. 17-0875 finding that the alteration of natural landforms had been minimized because the infill proposed elevated deck additions did not require foundation work; visual impacts would be minimized because the infill proposed decks are similar in size to other decks within the subject property, privacy impacts would be minimized because the infill decks create a separation for view intrusion and noise to the master bedrooms; and the proposed development would not create any adverse impacts to public coastal access. The City Council also approved Design Review 17-0874 and Variance 17-0876, and adopted a CEQA Section 15301 Class 1 Exemption for the project.

The project description of Resolution No. 17.047 (**Exhibit 4**) approving Local CDP No. 17-0875 reads only as follows: ...*Coastal Development Permit 17-0875 to construct elevated deck additions to a 48-unit condominium building at 31755 Coast Highway.*

The Coastal Commission's South Coast District Office received a Notice of Final Action (NOFA) on August 16, 2017. However, the project description on the NOFA was unclear and project plans were not provided showing the approved development. On August 21, 2017, Coastal Commission staff issued a Notification of Deficient Notice for the City's Final CDP Action. Therefore, the City's NOFA was rendered invalid. On August 29, 2017, the Commission received a valid notice of final action from the City for Local CDP No. 17-0875. On September 6, 2017, the appeal was filed by Mr. Mark Fudge during the ten (10) working day appeal period (**Exhibit 3**). No other appeals were received. The City and applicants were notified of the appeal by Commission staff in a letter dated September 6, 2017.

#### **IV. APPEAL PROCEDURES**

After certification of Local Coastal Programs (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Development approved by cities or counties may be appealed if they are located within certain geographic appealable areas, such as those located between the sea and the first public road paralleling the sea or within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of a coastal bluff. Furthermore, developments approved by counties may be appealed if they are not a designated "principal permitted use" under the certified LCP. Finally, any local government action on a proposed development that would constitute a major public work or a major energy facility may be appealed, whether approved or denied by the city or county [Coastal Act Section 30603(a)].

Section 30603 of the Coastal Act states in relevant part:

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

Section 30603(a)(1) of the Coastal Act establishes the project site as being in an appealable area because it is located between the sea and the first public road paralleling the sea and within 300 feet of the inland extent of any beach. The project site would also qualify as an appealable area based

on Section 30603(a)(2) because of its location on the bluff. The issues raised in the subject appeal, on which the Commission finds there is a substantial issue as described further below, apply to proposed development located in the appeals area.

### **Grounds for Appeal**

The grounds for appeal of an approved local CDP in the appealable area are stated in Section 30603(b)(1), which states:

*(b)(1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.*

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a) of the Coastal Act. If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered presumed, and the Commission will proceed to the de novo public hearing on the merits of the project. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review. (Coastal Act Section 30604(b).) In addition, for projects located between the first public road and the sea, a specific finding must be made at the de novo stage of the appeal that any approved project is consistent with the public access and recreation policies of the Coastal Act. (*Id.* Section 30604(c).) Sections 13110-13120 of Title 14 of the California Code of Regulations further explain the appeal hearing process.

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

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

Upon the close of the public hearing, the Commission will vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will follow at a later date during which the Commission will take public testimony.

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

### **A. PROJECT DESCRIPTION AND LOCATION**

The City-approved project is described only as infill elevated deck (or balcony) additions to 44 condominium decks totaling approximately 4,928 sq. ft. on the seaward side of 48-unit condominium complex, which is comprised of two condominium buildings (upper and lower buildings) located on a coastal bluff and beach (**Exhibit 2**). The upper condominium building is located higher up on the bluff property at an elevation between approximately 85 to 100 feet NGVD29. The lower condominium building extends down to the toe of the bluff and onto the beach below. Each deck addition would be approximately 112 square feet in size and would connect to existing deck areas. No new foundation or grading is proposed.

The subject site is an approximately 73,799-square-foot ocean-fronting, and beach and bluff property located at 31755 Coast Highway in Laguna Beach, Orange County (**Exhibit 1**). The site is located above Totuava Bay, and between the first public road (Coast Highway) and the sea (an area where development approved by the City of Laguna Beach pursuant to its certified LCP is appealable to the Coastal Commission). The subject property extends approximately 205 feet seaward from Coast Highway and down to the beach. The project site is currently developed with: a six-story, 28-unit apartment building adjacent to the beach; a five-story, 20-unit apartment building closer to Coast Highway, overlooking the Pacific Ocean; pool; three garage buildings; and other appurtenant structures. The Laguna Lido condominium complex was constructed in the early 1960s.

Single-family residences abut the subject property on the northwestern and southwestern sides. Public access from Pacific Coast Highway to the beach is only available via a public access stairway located approximately 1,500 feet downcoast of the project site.

### **B. LOCAL COASTAL PROGRAM CERTIFICATION**

The City of Laguna Beach Local Coastal Program was certified on January 13, 1993. The City's LCP is comprised of a variety of planning documents including the Land Use Element (LUE), Conservation/Open Space Element, Coastal Technical Appendix, and Fuel Modification Guidelines (of the Safety Element of the City's General Plan as adopted by Resolution 89.104). 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.

### **C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS**

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal has been filed pursuant to Section 30603(a) of the Coastal Act. The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission's regulations simply indicates that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." In previous decisions on appeals, the Commission has considered the following factors.

1. The degree of factual and legal support for the local government's decision that the



- development is consistent or inconsistent with the relevant provisions of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
  3. The significance of the coastal resources affected by the decision;
  4. The precedential value of the local government’s decision for future interpretations of its LCP; and,
  5. Whether the appeal raises local issues, or those of regional or statewide significance.

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

Staff is recommending that the Commission find that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a) of the Coastal Act.

#### **D. SUBSTANTIAL ISSUE ANALYSIS**

As stated in Section IV of this report, the grounds for an appeal of a CDP issued by the local government are the project’s conformity with the policies of the Local Coastal Program (LCP) and with the public access policies of the Coastal Act. The appellant raises several substantial issues discussed in detail below. Therefore, Staff is recommending that the Commission find that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a) of the Coastal Act. See Appendix A for a list of relevant and applicable definitions and policies of the LCP.

#### **Appellant’s Argument: Bluff face/edge and Bluff Development Constraints; Oceanfront and Oceanfront Bluff setback requirements; Special Conditions.**

The appellant asserts that the existing development (two condominium buildings) appear to be within the required bluff edge setbacks and/or on the bluff face. The appellant also maintains that a bluff edge determination has not been made pursuant to the Land Use Plan definition. Therefore, a bluff edge determination, consistent with the definition of Oceanfront Bluff edge contained in the certified Land Use Element (LUE) of the LCP is necessary to properly consider and review the project’s consistency the minimum required bluff edge setbacks.

The certified Land Use Plan (LUP) provides for minimum bluff edge setbacks for new development such as additions to a principal structure. Action 10.2.7 of the LUE of the certified Land Use Plan (LUP) 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 LUE of the certified LUP 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.*

LUE Action 10.2.7 and 10.2.8 (cited above) and OS/C Element Policy 1-L require that development be sited to meet a building stringline but not less than a 25-foot setback from the bluff edge for principal structures and major accessory structures that require a structural foundation, and a 10-foot setback from the bluff edge for minor accessory structures/improvements (e.g. decks, landscaping, etc.).

Policy 1-L of the OS/C Element of the certified LUP states (*emphasis added*):

*The City shall impose a **25-foot minimum setback** or a distance ascertained by stringline measurements for all blufftop development, notwithstanding the fact that ecological and environmental constraints may require an additional setback.*

Additionally, Section 25.50.004(B) of the IP requires a minimum bluff edge setback of 25 feet from the top of an oceanfront bluff for not only new buildings and additions to existing buildings but also to structures and *improvements*. Section 25.50.004(B) of the IP of the certified LCP states, in relevant part (*emphasis added*):

(B) *Building Setbacks on or Adjacent to the Pacific Ocean and Beaches. There is established building setback lines along the ocean frontage of all property within the city fronting up and adjacent to the Pacific Ocean and its beaches, as provided in this subsection, and no building, structure or improvements shall be erected or constructed after the effective date of the ordinance codified in this section on the sandy portion of any beach except that which is determined by the city council to be necessary for the public health, safety and welfare. In addition, no building, structure or improvement shall be erected or constructed after the effective date of the ordinance codified in this section on the oceanward side of the following building setback lines:...*

(4) *In addition to (1), (2) and (3) above, **no new building, additions to existing buildings, 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.** Greater setback may be required by the city engineer or building official in order to protect the public health, safety or welfare. Pools and spas shall be no closer than twenty-five feet to the top of bluff. Public accessways shall be exempt from this provision...*

Section 25.50.004(B) indicates that the most restrictive setback shall be required, and consistent with the LUP, it may be more than 25 feet. The LUP specifies that 25 feet is the *minimum*.

The existing condominium buildings, particularly the lower building, appear to be non-conforming to the 25-foot and 10-foot bluff setback requirements of the certified LCP. However,

to properly determine the location of the bluff edge, geotechnical and topographical information, as well as topographical cross-sections need to be provided. No geotechnical information has been provided for the City-approved development. Consequently, all setbacks from the oceanfront and oceanfront bluff edge appropriate for new accessory development have not been fully considered as required by the certified LCP.

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.*

Beyond the project plans simply identifying the “bluff-top” (or bluff edge), there is no rationale or other information in the City’s record detailing the bluff edge’s consistency with the certified LCP. The information provided to Commission staff is not sufficient to adequately determine the bluff edge of the development site.

In any case, the City Council approved the project and granted four variances from LCP requirements that the City determined the project required – 1) to encroach into the ocean-front building setback; 2) to encroach into the blufftop setback; 3) to exceed the allowable building height; and 4) to permit new construction where a nonconforming use exists. The variances authorizing encroachments within the oceanfront building setback and blufftop setback reflect that the existing buildings and the proposed elevated deck additions would not conform to the certified LCP.

Action 7.3.5 of the LUE of the certified LUP 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.*

The City-approved development may not be consistent with Action 7.3.5 of the LUE, which explicitly prohibits private development on ocean front bluff faces. The applicant’s coastal engineer states that the lower condominium building is founded in the bedrock material of the bluff near the base of the bluff (or bluff face). The location of the upper condominium building in relation to the bluff edge is less clear. Although the proposed elevated deck additions would not extend further seaward beyond the existing development line on the property, the City-approved

development appears to not comply with the setback requirements for decks under Action 10.2.8, which requires decks to be set back at least 10 feet from the bluff edge. Therefore, concerns regarding the project site's location on the bluff and whether or not the proposed development is consistent with the LCP policies concerning development on a bluff face and bluff edge setbacks have not been adequately addressed by the local coastal development permit.

Given the questions as to the bluff edge determination, the City record does not demonstrate that the City-approved development is wholly consistent with the policies of the LCP or that all the necessary and appropriate conditions (e.g. minimum bluff setbacks, no development on the bluff face, etc.) have been imposed. The City Council approved the project and made broad findings that the proposed development is consistent with the certified LCP, even though the project is clearly inconsistent with the LCP setback policies for decks (e.g., Action 10.2.8), as well as the prohibition on development on a bluff face (7.3.5). The City Council's findings fail to provide an adequate degree of factual and legal support for its decision to approve the proposed development and grant a Local CDP. Therefore, the Commission finds that the appeal does raise a substantial issue with respect to the project's conformance to the certified LCP.

**Appellant's Argument: Special Conditions.**

The appellant also contends that the City did not condition the permit in any meaningful way to ensure the project's consistency with the certified LCP. More specifically, the appellant asserts that the City did not properly condition the permit to address future bluff protection, best management practices to minimize runoff during construction, and assure continued public access during construction activities through appropriate construction staging.

Action 7.3.9 of the LUE of the certified LUP 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 of the property as a deed restriction.*

LUE Policy 7.3.9 provides that the City shall impose a special condition requiring a waiver of bluff protective devices for new development, major remodels, and additions to existing structures on oceanfront and oceanfront bluff sites, and the City did not impose such a special condition in this case. As written, LUE Policy 7.3.9 clearly applies to additions to existing oceanfront structures, and the proposed deck additions could be classified as additions to an existing oceanfront structure. However, there is a separate LCP policy that already prohibits the construction of shoreline/bluff protective devices for the protection of accessory or ancillary structures (such as decks), which are typically considered appurtenant development that inherently do not qualify for shoreline/bluff protection. Action 7.3.13 of the LUE of the certified LUP states (*emphasis added*):

*Limit the use of shoreline/bluff protective devices to the minimum required to protect existing development in danger from 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 principle 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.*

Therefore, there is an issue as to whether the imposition of the waiver of future shoreline/bluff protective devices special condition is necessary in this case when LUE Policy 7.3.13 already explicitly prohibits shoreline/bluff protection devices for the sole protection of any accessory or ancillary structures (i.e. decks). In any case, the City should have addressed this issue and made findings to substantiate the project's consistency with LUE Action 7.3.9.

With regard to protection of water quality, the certified LCP Open Space/Conservation Element (OS/C Element) includes water quality protection policies that require best management practices be implemented with development, that minimization of volume and velocity of site runoff be considered, that minimization of the introduction of pollutants be considered, and that minimization of construction impacts be considered. The City's certified LCP contains water quality protection policies, such as the following:

Policy 7.7 of the LUE of the certified LUP states:

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

Policy 4-A of the OS/C Element of the certified LUP states:

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

Policy 4-C of the OS/C Element of the certified LUP states:

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

Policy 4-D of the OS/C Element of the certified LUP states:

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

Policy 4-G of the OS/C Element of the certified LUP states:

*Ensure that all development minimizes erosion, sedimentation and other pollutants in runoff from construction-related activities to the maximum extent practicable. Ensure that development*

A-5-LGB-17-0049 (Laguna Lido Condo)  
Appeal – Substantial Issue & De Novo

*minimizes land disturbance activities during construction (e.g., clearing, grading and cut-and-fill), especially in erosive areas (including steep slopes, unstable areas and erosive soils), to minimize the impacts on water quality*

Policy 4-H of the OS/C Element of the certified LUP states:

*Require the property owner, homeowner's association or local government, as applicable, to continue the application and maintenance of Source Control and/or Structural Treatment Control BMPs as necessary to reduce runoff pollution, including appropriate construction related erosion and sediment control measures.*

Also, 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, even during construction.

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.*

The City did not impose special conditions to ensure that best management practices are implemented to minimize runoff during construction, and assure continued public access during construction activities through appropriate construction staging. The City has the authority and responsibility to impose conditions as necessary to ensure consistency with the certified LCP, but it did not fully do so in this case. Therefore the Commission finds that the project does raise a substantial issue regarding conformity with LCP and the public access policies of Chapter 3 of the Coastal Act.

**Appellants' Argument: City did not adequately consider public access requirements for project site.**

The appellants assert that the City did not consider the policies of the certified LCP that require that public access be provided when new development is proposed since the appellants maintains that the City-approved development would constitute new development under Policy 7.3.10 (cited above).

The appellant specifically cites Policy 3-L of the LUP and Section 25.53.020(A)(2) of the IP of the certified LCP.

Policy 3-L of the Open Space Conservation Element (OS/C Element) of the certified LUP states:

*Procure public access in South Laguna as shown on Figure 5 (see Addendum), consistent with Coastal Act policies and other legal requirements.*

Section 25.53.020 of the Implementation Plan (IP) of the certified LCP states:

*Coastal zone access shall be required for certain types of projects.*

*(A) As a condition of approval and prior to issuance of a permit or other authorization for any new development identified in subsections (A)(1) through (A)(4) of this section, except as provided in subsection B, an offer to dedicate an easement (or other legal mechanism pursuant to Section 25.53.022(I)(2)) for one or more of the types of access identified in Section 25.53.022 shall be required and shall be supported by findings required by Section 25.53.024; provided that no such condition of approval shall be imposed if the analysis required by Section 25.53.024 establishes that the development will not adversely affect, either individually or cumulatively, the ability of the public to reach and use public tidelands and coastal resources.*

*(1) New development on any parcel or location identified in the land use plan;*

*(2) New development between the nearest public roadway and the sea;*

*(3) New development on any site where there is substantial evidence of a public right of access to the sea acquired through use, or a public right of access through legislative authorization;*

*(4) New development on any site where a trail, bluff-top access or other recreational access is necessary to mitigate impacts of the development on public access.*

*(B) Exceptions to subsections (A)(1) through (A)(4) above shall apply in the following instances:*

*(1) Projects excepted from the definition of new development as defined in subsections (A)(1) through (A)(4) above;*

*(2) Where the findings required by Section 25.53.024 establish any of the following:*

*(a) Public access is inconsistent with the public safety, military security needs, or protection of fragile coastal resources,*

*(b) Adequate access exists nearby, or*

*(c) Agriculture would be adversely affected.*

*Exceptions identified in subsections (2)(a) through (c) above shall be supported by written findings as required in Section 25.53.024(C).*

OS/C Element Policy 3-L and IP Section 25.53.020 require that public coastal access be procured on properties between the first public road and the sea if new development is proposed. The appellant asserts that the City-approved project constitutes “new development” within the meaning of OS/C Element Policy 3-L and IP Section 25.53.020 of the certified LCP and, therefore, the beach and/or bluff top public coastal access should have been required through an irrevocable offer to dedicate consistent with these policies.

Coastal Act Section 30212 and OS/C Element Policy 3-G also require certain types of new development to provide access from the nearest roadway to the shoreline and along the coast.

Section 30212 of the Coastal Act states, in relevant part:

*(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resource, (2) adequate access exists nearby, or (3) agriculture would be adversely affected...*

*(b) For purposes of this section, “new development” does not include:*

*...*

*(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure...*

Policy 3-G of the Open Space Conservation Element (OS/C Element) of the certified LUP states:

*Lateral public access along the shoreline shall be assured by requiring as a condition of any new development, including approval for new building construction, additions greater than 10% to building, variances or subdivisions on property between the first public road and the sea, the recordation of an irrevocable offer to dedicate an easement for public access and recreational use on and along the beach. The easement shall extend from the mean high tide line to a specific landward reference point. Depending upon site characteristics, that reference point shall be either: a) the seaward extend of the building; b) the top of the vertical seawall; c) the intersection of sand and revetment; or d) the toe of the bluff.*

Most neighborhoods in Orange County between the sea and the first public road have a public access way in between the private development. However, in this particular residential community in Laguna Beach, there is no public access way from the road to the shoreline that would allow the public to gain access to the wet sand (mean high tide line), the area of the public tidelands seaward of the private lands. Because of the natural coves and rocky cliffs, the nearest public access point to the public beach is approximately 1,500 feet away from the project site at Thousand Steps beach. The beach below the subject property is Totuava Beach. This beach (on dry land) is only accessible from Thousand Steps Beach during low tide.

The appellant does not assert any public access impact as a result of the City-approved development but does note that the lower condominium building appears to encroach beyond the seaward property line.

Based on the assessor’s map for the subject property, the seaside property boundary is determined by the line of high tide of the Pacific Ocean. Because the high tide line can or potentially has migrated inland due to sea level rise, there is a potential that the existing lower condominium building encroaches onto public tidelands. Accordingly, the seaside decks of the lower condominium building may also be encroaching onto public tidelands. A determination by the California State Lands Commission may be necessary to distinguish between the public and private beach at the project site.



Because the proposed decks additions may cantilever over public beach, they could result in negative public access impacts due to the perception of the privatization of the public beach. Public access is a statewide issue; therefore, the Commission finds that the project does raise a substantial issue regarding conformity with LCP and the public access policies of Chapter 3 of the Coastal Act.

**SUBSTANTIAL ISSUE FACTORS:**

Applying the five factors typically relied upon by the Commission in making a determination whether an appeal raises a substantial issue or not confirms that the appeal does raise a “substantial issue” per Section 30625(b)(2).

**1. The degree of factual and legal support for the local government’s decision that the development is consistent with the relevant provisions of the Coastal Act.** The City’s approval does address a number of factors regarding the project in its approval. However, the contentions raised by the appellant identify areas where factual and/or legal support of the decision is absent, particularly areas regarding the project’s consistency the bluff top/face policies of the certified LCP. The City’s record provides no detail with regard to the location of bluff edge and bluff setback. Overall, there is a low degree of factual and legal support for the local government’s decision, and this factor supports a finding of substantial issue.

**2. The extent and scope of the development as approved or denied by the local government.** The local government granted a Local CDP for deck improvements (e.g. deck additions totaling approximately 5,000 square feet) to a 48-unit condominium complex that is legally non-conforming to the certified LCP’s oceanfront and oceanfront bluff setback requirements and the additional square footage would exacerbate the non-conformities. This factor supports a finding of substantial issue.

**3. The significance of the coastal resources affected by the decision.** The subject site is an oceanfront bluff lot, which may raise specific concerns that are not routinely raised on interior, in-fill lots. California’s coastal bluffs are a significant resource, and represent a rare and visually pleasing landform which California citizens and governments have historically sought to preserve. Coastal bluffs are dynamic geologic formations, and development on them increases the potential for geologic hazards. Development on coastal bluffs and adjacent to public beaches also can have significant impacts on scenic resources and public access opportunities. The LCP and the Coastal Act provide coastal bluffs with special protections. This factor supports a finding of substantial issue.

**4. The precedential value of the local government’s decision for future interpretations of its LCP.** The subject site is an oceanfront bluff property. The majority of ocean-fronting development in Laguna Beach is sited on bluff properties, and the decision of the local government for this project might influence future permit decisions made in the City’s Coastal Zone. Allowing the local government’s decision to approve improvements potentially encroaching into bluff edge setback areas or sited on a bluff face would set a negative precedence for future interpretations of its LCP. If the subject local CDP is found to be consistent with the LCP based on the current record, there is a potential that future applicants, especially within the vicinity, will reference this permit if they wish to develop other oceanfront coastal bluff sites, of which there are hundreds in Laguna Beach. Without adequate information to determine the bluff edge and the extent and scope of the proposed

development, allowing the City's local CDP approval to stand would result in adverse precedence regarding application of the LCP's various resource protection policies (specifically, relating to bluff top/face development). This factor supports a finding of substantial issue.

**5. Whether the appeal raises local issues, or those of regional or statewide significance.**

Bluff face and blufftop development are issues of statewide significance, given that coastal bluffs are an important coastal resource throughout the state, not just in Laguna Beach. (*See* third factor above.) Requiring consistency with the certified LCP (particularly policies relating to bluff face/top development) and the public access and recreation provisions of the Coastal Act is significant to all the people of California who wish to enjoy the public beaches of California. Unsubstantiated application of these policies could have regional or statewide ramifications regarding other similar LCPs and their policies regarding bluffs. This factor supports a finding of substantial issue.

**Conclusion**

In conclusion, staff recommends that the Commission find that a substantial issue exists with respect to whether the local government action conforms with the policies of the City's certified LCP and the public access policies of the Coastal Act.

## VI. MOTION AND RESOLUTION – DE NOVO PERMIT

**Motion:** *I move that the Commission **deny** Coastal Development Permit No. A-5-LGB-17-0049 as proposed by the applicant.*

Staff recommends a **NO** vote. Passage 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 Coastal Development Permit Application No. A-5-LGB-17-0049 on the ground that the development will not conform with the policies of the certified LCP or the public access and recreation policies of the 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.*

## VII. FINDINGS AND DECLARATIONS – DE NOVO

### A. PROJECT DESCRIPTION & LOCATION

The City-approved project is described only as infill elevated deck (or balcony) additions to 44 existing condominium decks. Each deck addition would be between approximately 112 square feet in size and would connect to existing deck areas (**Exhibit 2**). No grading is proposed.

The applicant's agent has indicated that the applicant is proposing other improvements to the existing decks, which were not described by the City's permit or shown or annotated on the project plans and, therefore, were not approved by the City's local coastal development permit (CDP). These improvements to the existing decks include: structural retrofitting; new glass rails; new stucco at the bottom of the deck; re-surfacing of the decks; waterproofing; and replacement of dry rot members. Because these other improvements were not authorized by the City's local CDP and are not included in the project plans, these improvements are not currently before the Coastal Commission.

The subject site is an approximately 73,799-square-foot ocean-fronting, and beach and bluff property located at 31755 Coast Highway in Laguna Beach, Orange County (**Exhibit 1**). The site is located above Totuava Bay, and between the first public road (Coast Highway) and the sea (an area where development approved by the City of Laguna Beach pursuant to its certified LCP is appealable to the Coastal Commission). The subject property extends approximately 205 feet seaward from Coast Highway and down to the beach. The project site is currently developed with: a six-story, 28-unit apartment building adjacent to the beach; a five-story, 20-unit apartment building closer to Coast Highway, overlooking the Pacific Ocean; pool; three garage buildings; and other appurtenant structures. The Laguna Lido condominium complex was constructed in the early 1960s. Single-family residences abut the subject property on the northwestern and southwestern sides.

## **B. 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 is comprised of a variety of planning documents including the Land Use Element (LUE), Conservation/Open Space Element, Coastal Technical Appendix, and Fuel Modification Guidelines of the Safety Element of the City's General Plan. 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.

## **C. HAZARDS**

Laguna Beach Land Use Element:

*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.*

*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*

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*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 Niño 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:

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.*

Both the City’s certified Local Coastal Program (LCP) and the Coastal Act require a coastal development permit for new development. The City’s certified LCP Implementation Plan (IP) *Title 25 Zoning*, Section 25.07.006(D), which basically tracks the Coastal Act definition of development, defines development as follows:

*“[t]he placement or erection of any solid material or structure on land or in or under water; the discharge or disposal of any dredged material or of any gaseous, liquid, solid or thermal waste; the grading, removing, dredging, mining or extraction of any materials; a change in the density or intensity of use of land including, but not limited to, the subdivision of land pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code) and any other division of land, including lot splits; change in the intensity of use of water, or of access, thereto; the construction, reconstruction, demolition or **alteration of the size of any structure**, including any facility of any private, public or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes; and kelp harvesting.”* [Emphasis added.]

Thus, the proposed project constitutes development and requires approval of a coastal development permit.

The proposed development would occur on an ocean-fronting bluff lot. The Commission has consistently found that development on an oceanfront or oceanfront 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 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 Actions 7.3.5, 7.3.9, and 10.2.8 of the Laguna Beach Land Use Element (LUE) of the Land Use Plan (LUP)) because the proposed development is located on the bluff face and is not consistent with the minimum bluff edge setbacks to ensure stability and safety of the development.

### **Setbacks**

Setting development back from the edge of the bluff can substantially decrease risk to life and property, 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.

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 10.2.8 requires a 10-foot set back for minor accessory structures (i.e. decks) that do not require structural foundations.

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

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 or on the bluff face, as is the case here; the subject bluff property has been modified through previous grading and development.

Despite Commission staff's request, the applicant has chosen not to provide a geotechnical analyses, formal bluff edge determination, topographic survey, or cross-sections; these materials are necessary for Commission staff's experts to make a formal bluff edge determination. Beyond the project plans simply identifying the "bluff-top" (or bluff edge), there is no rationale or other information in the City's record detailing the bluff edge's consistency with the certified LCP. Consequently, the information provided to Commission staff is not sufficient and Commission staff cannot formally determine the bluff edge of the site at this time.

However, even though the applicant did not prepare a formal bluff edge determination, based on aerials and observable topography and based on the limited information provided by the applicant and in the City's record, the proposed deck additions would not meet the LCP's minimum bluff edge setback requirements for accessory structures (Actions 10.2.8) and would encroach into the coastal bluff face (Actions 7.3.5).

The subject 48-unit condominium complex is comprised of two condominium buildings (upper and



lower buildings) located on a coastal bluff. According to Dr. Joseph Street, Commission staff's geologist, based on aeriels and the observable topography of the project site, the lower building is clearly sited on the beach and backs onto the bluff face. Moreover, in a coastal hazards analysis report, the applicant's coastal engineer states that the lower condominium building is founded in the bedrock material of the bluff near the base of the bluff (or bluff face), which supports Dr. Street's preliminary determination. In addition, based on the applicant's "bluff top" line drawn on the project plans, the lower building is located seaward of this bluff top line and, therefore, is sited on the bluff face.

The location of the upper condominium building in relation to the bluff edge is less clear and would require formal bluff edge determination but Coastal staff is unable to make such a determination as explained above. However, based on the applicant's drawn "bluff top" line, the upper building partially encroaches into the LCP prescribed 25-foot bluff setback for principal structures (Action 10.2.7; cited above) and 10-foot bluff setback for accessory structures (Action 10.2.8). In addition, the applicant's agent has acknowledged that the upper building partially encroaches into the LCP prescribed setbacks. Therefore, the proposed elevated deck additions would encroach into the 10-foot bluff edge setback for accessory structures (Action 10.2.8) and the bluff face (Action 7.3.5).

In addition, when the City Council approved the project, it required four variances from LCP requirements – 1) to encroach into the ocean-front building setback; 2) to encroach into the blufftop setback; 3) to exceed the allowable building height; and 4) to permit new construction where a nonconforming use exists. The required variances authorizing encroachments within the LCP oceanfront building setback and blufftop setback are indicative that the existing buildings are non-conforming to the required bluff setback requirements, along with other setbacks and standards. Accordingly, the proposed elevated deck additions will also not conform to the LCP policies prohibiting development on the bluff face and within 10 feet of the bluff edge (for accessory structures).

Therefore, the project would result in 5,000 new square feet of deck space on the seaside of the two non-conforming condominium buildings, increasing the total area of deck space that would encroach onto the bluff face and within the bluff edge setback required by the LCP policies, and would cantilever over the private and/or public beach. Because the proposed improvements to the deck would not comply with the LCP's minimum bluff edge setback requirements for accessory structures (Actions 10.2.8) and encroaches into the coastal bluff face (Actions 7.3.5), the City-approved project cannot be found consistent with the certified LCP.

### **Conclusion**

The applicant proposes deck additions to legally non-conforming condominium units as to the bluff edge setback, located on an ocean-fronting bluff face. Because the project does not meet the LCP's minimum bluff edge setback requirements for accessory structures (Actions 10.2.8) and encroaches into the coastal bluff face (Actions 7.3.5), it cannot be found consistent with the certified LCP. Therefore, the permit application must be denied.

The use and enjoyment of the units of the principal structures are not diminished by the Commission's denial the additions to the decks. The existing legal non-conforming decks are allowed to remain as is, consistent with LCP policies. Because the project is not consistent with the aforementioned LCP polices for hazard-avoidance, the project must be denied.

## **D. DEVELOPMENT**

Laguna Beach Land Use Element:

Goal 2 states:

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

Policy 2.1 states:

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

Policy 2.2 states:

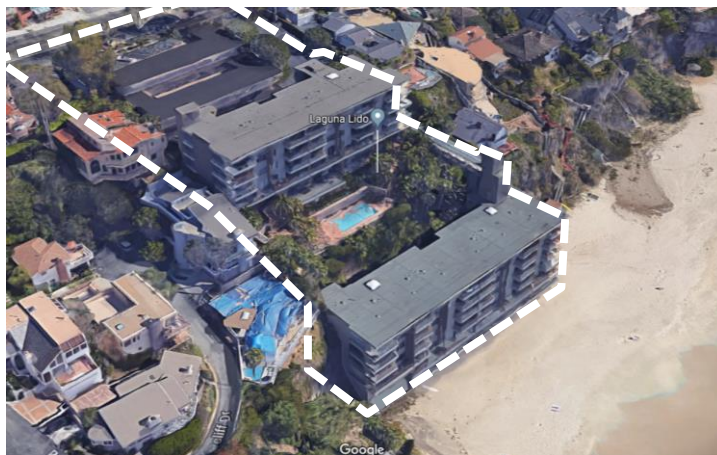
*Encourage the preservation of historically significant residential structures and protect the character-defining components of Laguna Beach’s traditional neighborhoods.*

Policy 2.8 states:

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

The project site is currently developed with: a six-story, 28-unit apartment building adjacent to the beach; a five-story, 20-unit apartment building closer to Coast Highway, overlooking the Pacific Ocean; pool; three garage buildings; and other appurtenant structures. The project site is shown on Image 1 below.

**Image 1:** Aerial view of project site and existing development (Source: Google, LLC.)



LUE Policies 2.1, 2.2, and 2.8 require development be sited and designed to be compatible with the surrounding residences and features, and protect neighborhood character. The existing cantilevered decks (or balconies) of the subject condominiums encroach into the oceanfront and oceanfront

blufftop building setback according to the City of Laguna Beach. Moreover, six out of the 44 decks proposed to be expanded currently partially cantilever over the public beach beyond the property line demarcated on the applicant's site plan. The proposed project includes seaward additions totaling 5,000 square feet to these existing nonconforming decks, which are simply appurtenant to the principal condominium units. The proposed deck additions would increase the mass and scale of the condominium buildings, which are already not compatible with the character and scale of existing development in the immediate surrounding area. The project site is surrounded predominantly by bluff single-family residences. Such an increase in mass and scale would be inconsistent with LUE Policies 2.1, 2.2 and 2.8.

Additionally, the project site is zoned for R-1 (Residential Low Density). Section 25.10.008(D) of the certified LCP sets forth the height standard for properties zoned R-1; it states:

*(1) No new building, additions to existing buildings or structures in this zone shall have a height greater than permitted under the following table when measured from the finished or natural grade, whichever is more restrictive:*

<i>(a) Slope in Percent</i>	<i>Height Permitted (in feet)</i>
<i>0 to 15</i>	<i>25</i>
<i>16</i>	<i>26</i>
<i>17</i>	<i>27</i>
<i>18</i>	<i>28</i>
<i>19</i>	<i>29</i>
<i>20 and over</i>	<i>30</i>

Pursuant to Section 25.10.008(D), the allowable building height for the project site, and all surrounding residential properties zoned R-1, is 30 feet (above grade). The approximately 55-foot and 61-foot high condominium buildings are legally non-conforming to the certified LCP's building standards because they exceed the current allowable building height of 30 feet. Further, 28 decks out of the 44 decks to be expanded cantilever from the building at a height that also exceeds the allowable building height and, therefore, are also currently legally nonconforming to the LCP's height standard. Expansion of these 28 decks would result in more non-conforming development that would be constructed above the LCP prescribed height standard of 30 feet. Consequently, any proposed addition to or expansion of any of these 28 decks would be inconsistent with the LCP's prescribed height standard.

Therefore, the proposed development is not consistent with the LUE 2.1, 2.2, and 2.8 of the certified LCP that require that scale and bulk of development be minimized and compatible with the surrounding residences, and is not consistent with the LCP prescribed height standard. Therefore, the proposed project must be denied.

#### **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:

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*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.*

Also, 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.

The subject site is located between the Pacific Ocean and the first public roadway, which in this case is Coast Highway. A small natural cove exists along the base of the bluffs. Public access to this cove is limited due to existing development patterns and physical barriers such as steep bluffs

and rocky headlands to the north and south. The cove is accessible from Thousand Steps Beach during low tide. Thousand Steps Beach is accessed from the public stairway access located more than a quarter of a mile southeast (downcoast) of the subject site. Vertical access through the site is not available.

The appellant to this project did not assert any public access impact as a result of the City-approved development but did note that the lower building at the toe of the bluff appears to encroach beyond the seaward property line. Based on a record survey dated November 15, 1926 for the subject property, the seaside property boundary is determined by the line of “high tide” of the Pacific Ocean (**Exhibit 2**). The ordinary high tide line is ambulatory and can migrate inland. Because the high tide line can migrate inland, there is a potential that the seaside decks and façade of the lower condominium building may be encroaching onto public tidelands. In addition, as discussed in the Section C (Hazards) of this staff report, 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>1</sup> depending on future greenhouse gas emissions. Therefore, the high-tide-based property line is anticipated to migrate inland due to sea level.

After the appeal was filed, the applicant requested that a jurisdictional determination be made by the California State Lands Commission (CSLC) to determine the most current location of the ambulatory high tide property line and distinguish between the extend of public and private beach at the project site. The CSLC has jurisdiction and management authority over all un-granted tidelands, submerged lands, beds of navigable lakes and waterways, and over certain tidelands and submerged lands legislatively granted in trust to local jurisdictions. However, in a letter dated May 28, 2019, CSLC states that the extent of the State’s interest at this location will not be determined at this time and that based on the information now known to staff, a lease from CSLC would not be required for the project (**Exhibit 5**). The letter indicates that a lease may be required in the future once the exact extent of the State’s fee ownership is determined.

Section 30214 of the Coastal Act states:

- (a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:*
- (1) Topographic and geologic site characteristics.*
  - (2) The capacity of the site to sustain use and at what level of intensity.*
  - (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.*
  - (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.*

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<sup>1</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.

*(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.*

*(c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.*

Section 30214 of the Coastal Act recognizes the inherent conflicts likely to arise when private property abuts public use areas, but the Act prioritizes public access needs. The seaward property line on the subject parcel is ambulatory and therefore public access may be available on the wet sand under the decks, either now or in the future. The decks cantilevered over the sand leads to the perception that that area of the beach is private, regardless of whether or not it is public land and subject to the public trust doctrine.

Past Commission action has considered the Coastal Act's public access and recreation policies and specifically the need to protect public beach access by setting private development back from the public beach by conditioning a proper setback. Generally, without a clear marker of public land (a beach trail, a public patio, etc.) members of the public are uncomfortable congregating on the sand in areas too close to private residential development for fear that they may encroach into an unmarked private space.

In this case the existing cantilevered decks are non-conforming and their configuration creates the *impression* that the sand under the decks is private, whether or not it is. Allowing improvements to the non-conforming decks would allow the development to perpetuate into the future, and with the natural migration of public trust lands, would perpetuate the perception that this area under the decks is private property.

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. Because the proposed deck improvements would cantilever over a public beach, they could result in negative public access impacts due to the perception of the privatization of the public beach. The project is inconsistent with the public access and recreation policies of Chapter 3 of the Coastal Act and of the LCP 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.)*

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 7.3.5 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.*

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)*

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. In addition, LUE Policy 7.3 (same as Policy 10.2) requires, in part, that development be designed and sited in a manner that is protective of unique scenic qualities, public views, visual compatibility with surrounding uses. LUE Action 7.3.5 prohibits development on oceanfront bluff faces to ensure that development is visually compatible with the surrounding area to the maximum extent feasible. 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, which the public may access below the mean high tide line.

Both the coastal bluff property and the two existing condominium buildings are highly visible from the public beach. However, the coastal bluff at the project site has been significantly altered by the development of the condominium complex prior to the effective date of the Coastal Act (1977). The deck additions, as proposed, would not significantly or adversely affect the natural character of the bluff face because the additions would be elevated and cantilevered off the seaside façades of the buildings. In addition, the deck additions would not impede public coastal views from Coast Highway because views of the shoreline are already obstructed by the existing condominium buildings.

However, as described in Section VII.D (Development) of this staff report, the condominium buildings are not visually compatible with the surrounding development, and expansion of the condominium decks will only make them less so. Therefore, the project is not consistent with the visual resource policies of the certified LCP, and therefore must be denied.

### **G. LOCAL COASTAL PROGRAM**

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, the Coastal Technical Appendix, and Fuel Modification Guidelines (of the Safety General Element of the City's General Plan as adopted by Resolution 89.104). 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, including 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 that require development to meet the applicable minimum bluff edge setbacks and be compatible with the surrounding development, landscaping, and topography. 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 July 25, 2017, the Laguna Beach Design Review Board adopted a Section 15301, Class Categorical Exemption pursuant to CEQA for the project.

The proposed project has been found to be inconsistent with the Chapter 3 policies of the Coastal Act and with the policies of the certified LCP. CEQA does not apply to private projects that public agencies deny or disapprove, Pub. Res. Code § 21080(b)(5). Accordingly, because the Commission is denying the proposed project, it is not required to adopt findings regarding mitigation measures or alternatives which would substantially lessen any significant adverse effect the project would have on the environment.



## **Appendix A – Relevant LCP Policies and Definitions**

### Land Use Element Glossary

*101. 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.*

*102. Oceanfront Bluff/Coastal Bluff -A bluff overlooking a beach or shoreline or that is subject to marine erosion. Many oceanfront bluffs consist of a gently sloping upper bluff and a steeper lower bluff or sea cliff. The term "oceanfront bluff" or "coastal bluff" refers to the entire slope between a marine terrace or upland area and the sea. The term "sea cliff" refers to the lower, near vertical portion of an oceanfront bluff.*

### Land Use Plan, Land Use Element Policies –

#### Policy 7.3

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

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

*Action 7.3.4 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 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 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 On oceanfront bluff sites, require applications where applicable, to identify and remove 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 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 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 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 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 7.4

*Ensure that development, including subdivisions, new building sites and remodels with building additions, is evaluated to ascertain potential negative impacts on natural resources. Proposed development shall emphasize impact avoidance over impact mitigation. Any mitigation required due to an unavoidable negative impact should be located on-site, where feasible. Any off-site mitigation should be located within the City’s boundaries close to the project, where feasible. (Similar to Policies 5.2 and 10.3)*

#### Policy 10.2

*Design and site new development to protect natural and environmentally sensitive resources such as areas of unique scenic quality, public views, and visual compatibility with*

*surrounding uses and to minimize landform alterations. (Same as Policy 7.3)*

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

*Action 10.2.5 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 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 Niño 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 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 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 1.5-A

*The shoreline environment should remain in a natural state unless existing, substantial improvements are in imminent danger from erosion, flooding or collapse. “Imminent Danger” is defined as a short-range threat from the immediate to a maximum range of three (3) to five*

*(5) years. A threat presented in the context of geologic time shall not constitute imminent danger.*

**Policy 10-C**

*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**

*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.*

**Section 25.07.012 Procedures:**

*Each coastal development permit application shall be processed in accordance with the following requirements.*

*(G) Findings. A coastal development permit application may be approved or conditionally approved only after the approving authority has reviewed the development project and made all the following findings:*

*(1) The project is in conformity with all the applicable provisions of the general plan, including the certified local coastal program and any applicable specific plans;*

*(2) Any development located between the sea and the first public road paralleling the sea is in conformity with the certified local coastal program and with the public access and public recreation policies of Chapter 3 of the Coastal Act;*

*(3) The proposed development will not have any significant adverse impacts within the meaning of the California Environmental Quality Act*

## **Appendix B – Substantive File Documents**

1. City of Laguna Beach certified Local Coastal Program
2. Appeal No. A-5-LGB-17-0049
3. *Coastal Hazard and Soils Engineering Analysis for Proposed Remodel, 31755 Coast Highway, Laguna Beach, Orange County, California* by GeoSoils Inc., dated February 23, 2016.
4. *Updated Coastal Hazard and Soils Engineering Analysis for Proposed Remodel, 31755 Coast Highway, Laguna Beach, Orange County, California* by GeoSoils Inc., dated July 22, 2019.
5. Appeal/CDP Application No. A-5-LGB-16-0098