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# W14a

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## STAFF REPORT: APPEAL – DE NOVO

**Appeal No.:** A-5-LGB-18-0071

**Applicant:** Martin & Deborah Hale

**Agents:** Ann Christoph, Landscape Architect

**Local Government:** City of Laguna Beach

**Local Decision:** Approval with Conditions

**Appellants:** Mark & Sharon Fudge

**Project Location:** 15 Camel Point Drive, Laguna Beach, Orange County  
(APN: 056-020-48)

**Project Description:** An approximately 25-ft. lateral extension to an existing 4- to 5-ft. high, 19-ft. long wall comprised of stacked broken concrete with no foundation (no change in maximum height), and drainage and landscaping improvements around the subject wall on an ocean-fronting, bluff property.

**Staff Recommendation:** Approval with conditions

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### SUMMARY OF STAFF RECOMMENDATION

The subject site is an approximately 15,400-square-foot ocean-fronting lot located on the bluff above two public beaches, Aliso Beach and West Street Beach.

On October 18, 2018, the City of Laguna Beach approved a local coastal development permit for a new 40-foot long, six-foot high retaining wall with five 24-inch diameter caissons (8- to 10-foot deep), drainage, and landscaping. This local coastal development

permit was subsequently appealed to the Commission on October 31, 2018. On December 12, 2018, the Commission found that a substantial issue exists with respect to the grounds on which Appeal No. A-5-LGB-18-0071 had been filed because the City-approved development was not supported by a bluff edge determination that had been reviewed by the City, and the City did not provide adequate legal or factual support for its finding that the proposed retaining wall was not a bluff protective device, inconsistent with the requirements of the certified Local Coastal Program (LCP) provisions that apply to development on an ocean-fronting bluff. After the Commission found substantial issue, the applicant revised the proposal by reducing the length and height of the wall and removing the foundation elements (including caissons).

The revised proposal is an approximately 25-foot lateral extension to an existing 4- to 5-foot high 19-foot long wall comprised of stacked broken concrete with no foundation (no change in maximum height), drainage, and landscaping improvements around the subject wall. The applicant is also proposing to backfill the cavity left by a fallen tree, but no excavation is proposed. 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 primary issues raised by the proposed development concern the project's consistency with the certified LCP bluff edge setbacks, non-conforming development on ocean-front coastal bluff faces, and hazards. Laguna Beach's certified LCP Land Use Element (LUE) Action 7.3.5 prohibits development on bluff faces, Action 10.2.7 requires a minimum 25-foot setback from the bluff edge for principal and major accessory structures that require a structural foundation, and LUE Action 10.2.8 requires a minimum 10-foot setback from the bluff edge for minor accessory structures. The Commission's staff geologist, Dr. Joseph Street, has reviewed the applicant's bluff edge determination, topographic survey, cross-sections, and proposed architectural plans, and has determined that the bluff edge is located more than 25 feet seaward of the proposed development. Consequently, the proposed development will satisfy the LCP's requirement that minor accessory structures be setback 10 feet from the bluff edge and will not be sited on the bluff face. Therefore, the project will still be consistent with Actions 7.3.5 and 10.2.8 of the certified LCP.

Commission staff recommends that, after a public hearing, the Commission **approve** this de novo permit with two special Conditions. **Special Condition 1** requires that the final revised plans be submitted for review and approval that depict the CCC Bluff edge and required setback lines. In addition, because landscaping improvements are proposed, the Commission imposes **Special Condition 2**, which requires the applicant to install only drought-tolerant and non-invasive plants, and water-conservative irrigation systems at the work site. The applicant is also proposing drainage. To ensure the proposed drainage is consistent with provisions of the certified LCP, **Special Condition 3** requires the submittal of final revised drainage plans.

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### **EXHIBITS**

[Exhibit 1 – Project Location](#)

[Exhibit 2 – Project Plan](#)

[Exhibit 3 – Dr. Street’s Memorandum](#)

[Exhibit 4 – Approximate Required Bluff Edge Setbacks](#)

## I. MOTION AND RESOLUTION

**Motion:** I move that the Commission **approve** Coastal Development Permit No. A-5-LGB-18-0071 pursuant to the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**Resolution:**

The Commission hereby approves Coastal Development Permit Application No. A-5-LGB-18-0071 and adopts the findings set forth below on grounds that the development, as conditioned, will be in conformity with the Certified Local Coastal Plan and the public access and recreation policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that will substantially lessen any significant adverse impacts of the development on the environment.

## II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittees or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittees to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Final Revised Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director two (2) full sized sets of final project plans that shall be revised to include the following:

- A. The revised CCC bluff edge line (November 2020) as depicted in [Exhibit 3](#) of the staff report dated November 19, 2020, and shall depict a 10-foot bluff edge setback for accessory development and 25-foot bluff edge setback line for principal structures measured landward from that CCC bluff edge line.

The applicant shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. **Landscaping – Drought Tolerant, Non-Invasive Plants.**

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, in a form and content acceptable to the Executive Director, two (2) full size sets of final revised landscaping plans, which shall include and be consistent with the following:

- i. Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf> and <http://ucanr.edu/sites/WUCOLS/files/183488.pdf>).
- ii. Use of reclaimed water for irrigation is encouraged. If using potable water for irrigation, only drip or microspray irrigation systems may be used. Other water conservation measures shall be considered, such as weather-based irrigation controllers.

- B. The permittees shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

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

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, in a form and content acceptable to the Executive Director,

two (2) sets of a final drainage plan prepared by an appropriately licensed professional that has been reviewed and approved by the City of Laguna Beach. The plan shall incorporate the following criteria:

- 1) Runoff from impervious surfaces and slopes on the work site shall be directed to dry wells, trench drains or vegetated/landscaped areas to the maximum extent practicable within the constraints of City requirements and geotechnical recommendations;
  - 2) Where City code prohibits on-site infiltration, runoff shall be collected and discharged via pipe or other non-erosive conveyance to the frontage street to the maximum extent practicable; no runoff shall be discharged via pipe or other conveyance down the coastal bluff. Runoff from impervious surfaces that cannot feasibly be directed to the street shall be discharged via pipe or other non-erosive conveyance to a designated outlet point to avoid ponding or erosion either on- or off- site;
  - 3) Runoff shall not be allowed to pond adjacent to structures or sheet flow directly over the coastal bluff to the beach below; and
  - 4) The functionality of the approved drainage and runoff control plan shall be maintained throughout the life of the development.
- B. The permittees shall undertake development in accordance with the approved plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

## **IV. FINDINGS AND DECLARATIONS**

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

The project site is a 15,400-square-foot oceanfront lot located at 15 Camel Point Drive, Laguna Beach, Orange County ([Exhibit 1](#)). The site is located above Aliso Beach and West Street Beach, two public beaches in Laguna Beach between the first public road (Coast Highway) and the sea. The site is currently developed with a primary residence on a coastal bluff. No work is proposed to the residence as part of the locally approved coastal development permit subject to this appeal.

The revised proposal is an approximately 25-foot lateral extension to an existing 4- to 5-foot high 19-foot long wall comprised of stacked broken concrete with no foundation (no change in maximum height), and drainage and landscaping improvements immediately around the subject wall. The applicant is proposing to backfill the cavity left by a fallen tree, but no excavation is proposed.

Single-family residences on oceanfront bluffs characterize the development pattern of the surrounding area. Public access from Coast Highway to the beach below the subject site is available via a public access stairway located approximately a quarter-of-a-mile north (upcoast) of the project site.

## B. STANDARD OF REVIEW

Section 30604(b) of the Coastal Act states:

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:

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).

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

The City's certified Local Coastal Program (LCP) and the Coastal Act require a coastal development permit for improvements located within 50 feet of the bluff edge. Section 25.07.008(i) of the certified IP states, in relevant part (**emphasis added**):

- i) Certain types of development, described as follows, are considered to be without risk of adverse environmental effect on coastal resources, including public access, and therefore do not require a coastal development permit unless indicated otherwise.
  - (A) Improvements to Single-Family Dwellings. Improvements to single-family dwellings and mobilehomes, including structures located on the same lot as the single-family dwelling that are normally associated with a single-family dwelling such as garages, swimming pools, fences, storage sheds and landscaping, are exempt unless classified as one of the following:
    - (1) Guest houses and self-contained accessory dwelling units;
    - (2) **Improvements to any structure where the structure or the improvement is located** on a beach, in a wetland or stream, seaward of the mean high tide line, **within fifty feet of a coastal bluff edge**, in an environmentally sensitive habitat area, and/or in an area designated as highly scenic in the certified Land Use Plan;

The City’s certified LCP Implementation Plan (IP), 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.”

The proposed project constitutes development and requires approval of a coastal development permit.

### **C. BACKGROUND**

On February 14, 2002, the City of Laguna Beach approved Local Coastal Development Permit (CDP) No. 01-069 for additions to a single-family residence, including decks, chimneys, and landscaping.

On March 4, 2004, the City approved Local CDP No. 04-048 authorizing modifications to the landscaping, hardscaping, and changes to windows and chimneys.

On September 22, 2011, the City approved Local CDP No. 11-29 authorizing landscape and hardscape improvements.

On May 22, 2018, the City of Laguna Beach Design Review Board (DRB) held a public hearing for the coastal development permit application and other discretionary approvals for the proposed project. Public testimony related to issues concerning view corridors, CEQA compliance, bluff setbacks, and grading permit requirements. The DRB continued the item for a second public hearing.

On September 13, 2018, the City of Laguna Beach DRB held a second public hearing on the proposed project. Changes to the landscape on the property were discussed. The neighbors of the adjacent property at 17 Camel Point Drive expressed concerns regarding view blockage as a result of landscaping improvements/structures proposed by the applicants, as well as concerns regarding maintenance of trees on the applicants’ property. The DRB approved the Local CDP No. 18-0130 and Design Review No. 18-0129 with the conditions that the potted plants on the deck not exceed the height of the deck railing, and that landscape be maintained and be pruned semi-annually to maintain the height and width as provided on the approved landscape plan, and that volunteers (seeds that drop and plant on their own) of the acacia plants be regularly removed.

The project description of DRB Resolution CDP 18.33 approving Local CDP No. 18-0130



reads as follows: “The Design Review Board granted Design Review 18-0129 and Coastal Development Permit 18-0130 subject to conditions for modifications to a prior approval including a new retaining wall, drainage and landscaping.”

The City imposed three conditions of approval, which included: 1) potted plants on the deck that protrude southerly not exceed the height of the deck railing; 2) landscape be maintained and semi-annually to maintain the height and width as provided on the approved landscape plan; and 3) volunteers that come from the Acacia plant be regularly eliminated.

The DRB also adopted a CEQA Categorical Exemption for the development. The Coastal Commission’s South Coast District Office received the City’s Notice of Final Action on October 18, 2018. On October 31, 2018 the appeal was filed by Mark and Sharon Fudge during the ten (10) working day appeal period. No other appeals were received. The City and applicant were notified of the appeal by Commission staff in a letter dated November 6, 2018.

Because the Commission found that a substantial issue existed based on the grounds on which the appeal was filed in 2018, the local government action is stayed and the Commission is required to conduct a de novo review on the merits of the project subject to this application (No. A-5-LGB-18-0071).

#### **D. HAZARDS**

Laguna Beach Land Use Element:

Policy 7.3 states:

Design and site new development to protect natural and environmental sensitive resources, such as areas of unique scenic quality, public views, and visual compatibility with surrounding uses and to minimize natural landform alterations.

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

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

Action 7.3.4 states: Require new development to assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic stability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Action 7.3.5 states: Prohibit development on oceanfront bluff faces, except public improvements providing public access, protecting coastal resources, or providing for public safety. Permit such improvements only when no feasible alternative exists and when designed and constructed to minimize landform alteration of the oceanfront bluff face, to not contribute to further erosion of the oceanfront bluff face and to be visually compatible with the surrounding area to the maximum

extent feasible.

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

Policy 10.2 states:

Design and site new development to protect natural and environmentally sensitive resources such as areas of unique scenic quality, public views, and visual compatibility with surrounding uses and to minimize landform alterations. (Same as Policy 7.3)

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

Action 10.2.6 states: Require all new development located on an oceanfront bluff top to be setback from the oceanfront bluff edge a sufficient distance to ensure stability, ensure that it will not be endangered by erosion, and to avoid the need for protective devices during the economic life of the structure (75 years). Such setbacks must take into consideration expected long-term bluff retreat over the next 75 years, as well as slope stability. The predicted bluff retreat shall be evaluated considering not only historical bluff retreat data, but also acceleration of bluff retreat made possible by continued and accelerated sea level rise, future increase in storm or El Nino events, and any known site-specific conditions. To assure stability, the development must maintain a minimum factor of safety against landsliding of 1.5 (static) or 1.2 (pseudostatic,  $k=0.15$  or determined through analysis by the geotechnical engineer) for the economic life of the structure.

Action 10.2.7 states: Require all new development located on oceanfront bluffs to be sited in accordance with the stringline but not less than 25 feet from the bluff edge. This requirement shall apply to the principal structure and major accessory structures such as guesthouses and pools that require a structural foundation. The setback shall be increased where necessary to ensure geologic safety and stability of the development.

Action 10.2.8 states: On oceanfront bluffs, require new minor accessory structures such as decks, patios and walkways that do not require structural foundations to be sited in accordance with stringline but not less than 10 feet from the bluff edge. Require accessory structures to be removed or relocated landward when

threatened by erosion, geologic instability or other coastal hazards.

Open Space/Conservation Element Policies:

Policy 7-K states:

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

Policy 10-C states:

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

Policy 10-E states:

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

A wall extension and vegetation are proposed on an ocean-fronting bluff lot. The Commission has consistently found that development on a bluff site that is adjacent to the sea, like the project site, is inherently subject to hazards from erosional forces imposed against the bluff material from wave energy, wind, and rain. Some of these hazards will be affected by expected sea level rise. The hazards policies of the LCP require, among other things, that all new development be (per the policies cited above): adequately evaluated to ascertain potential negative impacts on natural resources and on existing adjacent development; designed and sited to avoid hazardous areas and minimize risks to life and property from coastal and other hazards; and assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices on a bluff face that would substantially alter natural landforms along bluffs and cliffs. In addition, the LCP policies cited above require that new development be sited consistent with the stringline but at least 25 feet from the bluff edge; and that new minor accessory structures be sited at least 10 feet from the bluff edge.

As discussed in greater detail below, the project complies with the LCP hazards policies (particularly Policy 7.3 and 10.2, and Actions 7.3.5 and 10.2.8 of the Laguna Beach Land Use Element (LUE) of the Land Use Plan (LUP)) because the proposed development is consistent with the LCP's minimum bluff edge setback requirements.

#### BLUFF SETBACKS

Policies 7.3 and 10.2 and Actions 7.3.3, 7.3.5, 10.2.6, and 10.2.8 of the Laguna Beach Land Use Element (LUE) of the Land Use Plan (LUP) (cited above) require that new development minimize the alteration of natural landforms and not contribute to geologic instability. Setting development back from the edge of the bluff can substantially decrease risk to life, because the farther from the bluff edge development is located, the less likely it is that that development will become jeopardized by erosion, landslides, and similar hazards. Likewise, setbacks decrease the likelihood of destruction of a structure caused by geologic instability. The added weight of development, irrigation, and human activity closer to the bluff edge all could increase the rate of erosion and bluff retreat.

In addition, Policy 7-A of the certified Land Use Plan requires that the quality of public views from the hillsides and along the city's shoreline be preserved to the maximum extent feasible. Setting development farther back from the edge of the coastal bluff decreases the project's visibility from the beach below, which the public may access below the mean high tide line. For these reasons, the Commission typically imposes a bluff edge (or top of the bluff) setback as a condition of approval for development on bluff sites.

The project is consistent with LCP hazards policies regarding bluff edge setbacks and development on bluff faces, which is discussed in detail below. LUE Action 10.2.8 requires a 10-foot setback for minor accessory structures (e.g. landscaping, 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.

In this case, the applicant relied on the bluff edge definition provided by California Code of Regulations, Title 14, Section 13577(h)(2), which mirrors the LUE's definition.

The applicant's site plans identify the bluff top, or bluff edge, at elevations between +52-62 feet above mean sea level (MSL) where the San Onofre Breccia bedrock comes into with the overlying upper bluff material along the southern bluff slope.

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. Commission staff Geologist, Dr. Joseph Street, has reviewed the applicants' bluff edge determination, topographic survey, cross-sections, slope stability analysis and proposed project plans and has determined that the applicants' bluff edge determination is not consistent with the definition of the bluff edge in the certified LUE.

In a memorandum dated November 16, 2020 ([Exhibit 3](#)), Dr. Street states that the applicant's consultant applied a reasonable approach in approximating the location of the bluff edge but the natural upper bluff paralic deposits that occur immediately above the bedrock and the significant slope (~2:1 h:v) of the upper bluff materials were not taken into account. Dr. Street further states:

“The LUE definition of an Oceanfront/Coastal Bluff expressly includes the entire slope between the marine terrace or upland area and the sea, not just the steeper sea cliff, which in Laguna Beach typically corresponds to the lower bluff bedrock. Under this definition, the “entire bluff slope” could be construed as extending at least as far as the edge of the southern patio, to an elevation of about +84 feet MSL. However, the LUE Coastal Bluff Edge definition additionally indicates that the placement of artificial fill does not influence the position of the bluff edge; thus, the artificial fill comprising the upper portions of the southern slope likely buries or obscures the original bluff edge, and should not be considered in the bluff edge determination. With these considerations in mind, in my opinion the LUE bluff edge can be best approximated as the contact between the paralic (marine terrace) deposits, comprising the uppermost natural bluff materials at the site, and the overlying artificial fill. On the southern bluff slope, this contact occurs at an elevation of approximately +65 feet MSL; this elevation contour can be considered the LUE bluff edge for purposes of evaluating the proposed project...”

Therefore, Dr. Street has determined that based on the LUE definition, the bluff edge line occurs at elevations of approximately +65 feet above MSL. Seaward of this bluff edge line constitutes the bluff face.

The CCC bluff edge is more than 25 feet, but less than 50 feet, seaward of the proposed wall extension and vegetation ([Exhibit 4](#)). Therefore, the proposed development will conform to the required 10-foot bluff edge setback for minor accessory structures and can be found consistent with the certified LCP. In order to ensure that all development authorized pursuant to this permit complies with the setback requirements of the LCP, and because the plans have been revised since the City-approved development was appealed, the Commission imposes **Special Condition 1** requiring that the final revised plans be submitted for review and approval of the Executive Director. The final plans shall depict a 10-foot bluff edge setback for accessory development and 25-foot bluff edge setback line for principal structures measured landward from that CCC bluff edge line.

GEOLOGIC STABILITY

The geotechnical consultant's 2017 slope stability analysis concludes that the computed factors of safety exceeded and are in accordance with the required minimum FOS of 1.5 for slope stability under static condition and 1.2 under seismic condition. Action 10.2.6 specifies that the analysis concerning geologic stability be guided by the industry-accepted standards for slopes (codified in many local grading ordinances), which require that a particular minimum "Factor of Safety" against landslides be attained. Therefore, according to the applicant's 2017 slope stability analysis (not accounting for sea level rise), the project site is reasonably safe for the proposed development.

However, in his memo, Dr. Street states that in recent years the subject slope has reportedly experienced surficial erosion, including the loss of a mature cypress tree but the proposed stacked block wall extension will not significantly affect the gross stability of the site and may help control the erosion of surficial soils and fill material.

In addition, to enhance slope stability, the applicants' geotechnical consultant suggests that the applicants plant deep-rooted vegetation along the slope that require little watering, such as plants that are native to Southern California bluffs to enhance the stability of the slope and implement adequate drainage measures.

The applicant is proposing new native landscaping, and some non-native landscaping that is non-invasive and drought-tolerant around the subject wall and proposed wall extension, which will meet the minimum setback requirements and will help enhance slope stability of the work site. Drought-tolerant plants require less water than other types of vegetation, thereby minimizing the amount of water introduced into the bluff top. Drought resistant plantings and minimal irrigation encourage root penetration, which increases bluff stability. Therefore, as proposed, the proposed project complies with the hazards policies of the LCP.

LUE 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.**

At this time, the applicant is not proposing any shoreline/bluff protective devices to protect any accessory structures, which is consistent with Policy 7.3.13.

CONCLUSION

Because the proposed project meet the LCP's minimum bluff edge setback requirements for accessory structures (Action 10.2.8) and do not encroach into the coastal bluff face (Action 7.3.5), the development, as conditioned, is consistent with the certified LCP.

## **E. VISUAL RESOURCES**

Laguna Beach Land Use Element:

Policy 2.10 states:

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

Open Space/Conservation Element:

Policy 7-A states:

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

Policy 7-K states:

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

LCP Policies 2.10, 7-A, and 7-K of the certified LCP require that the scenic and visual qualities of coastal areas be considered and protected as a resource of public importance. The project site is located between the first public road (Coast Highway) and the sea. However, the project area where the proposed wall extension and landscaping would be sited is more specifically located seaward of Camel Point, which is a private road and is not visible from Coast Highway. In addition, the project area is not visible from the public beach below. Looking up from the public beach below, views of project area are blocked by existing vegetation on the bluff face.

Furthermore, the proposed development will meet the minimum required bluff edge setback. Therefore, the proposed project will preserve the natural character of the coastal bluff to the maximum extent possible and can be found consistent with the visual resource preservation policies of the certified LCP.

## **F. BIOLOGICAL RESOURCES**

Regarding the protection of natural resources, the City's certified LCP includes the following policies:

Land Use Element:

Policy 7.3 states:

Design and site new development to protect natural and environmental sensitive resources, such as areas of unique scenic quality, public views, and visual compatibility with surrounding uses and to minimize natural landform alterations.

Policy 7.7 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.)

Goal 10 states:

“Ensure that proposals for new development, subdivisions, and major remodels are sufficiently evaluated to protect public health and safety and natural resources.”

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 4-C 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 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 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 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 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.

The LCP policies 7.3, 7.7, 10.2, 4-C, 4-D, 4-G, 7-K, require that development, among other things, be designed and sited to protect natural resources and to minimize erosion problems and runoff.

The applicant is proposing landscape improvements, including planting of both native vegetation and non-native vegetation that is non-invasive and drought-tolerant and irrigation that will surround the proposed wall extension. **Special Condition 2** is



recommended, which requires that the applicant install only non-invasive and drought-tolerant vegetation and water-conservative irrigation systems. The proposed vegetation will be sited landward of the bluff edge and will satisfy the certified LCP's 10-foot setback requirement for minor accessory development. Vegetation will help prevent erosion and provide natural percolation of any site runoff. Such measures would ensure consistency with the biological resources policies of the LCP.

In addition, the applicant is proposing drainage at the work site. To ensure the proposed drainage is consistent with provisions of the certified LCP, **Special Condition 3** requires the submittal of final revised drainage plans.

Therefore, the project, as conditioned, can be found consistent with the biological resources policies of the certified LCP.

### **G. CULTURAL/ARCHEOLOGICAL RESOURCES**

Regarding protection of cultural resources, the City's certified LCP includes the following Open Space/Conservation Element policies:

Policy 12-A states:

Promote the conservation of land having archaeological and/or paleontological importance, for its value to scientific research and to better understand the cultural history of Laguna Beach and environs.

Policy 12-B states:

Develop a program which systematically inventories, records and preserves significant cultural resources in the community, in accordance with the guidelines in the City's Local Coastal Plan.

Policy 12-C states:

Development adjacent to a place, structure or feature found to be of historical significance shall be designed so that the uses permitted and the architectural design will protect the visual setting of the historical site.

Policy 12-D states:

Preserve cultural/scientific sites, including geologically unique formations having archeological significance.

Discussion in the LCP Open Space/Conservation Element, Topic 12 (Archaeology / Paleontology), acknowledges that issues relating to cultural and scientific resources focus on the need for proper mitigation measures, including preservation of archaeological sites. Policy 12-A promotes conservation of such sites. Policy 12-C requires that development adjacent to a historically significant site be sited and designed to protect the visual setting of the site. Policy 12-D requires preservation of cultural/scientific sites that have archaeological significance. The Commission has previously allowed development in areas identified by project archaeological consultants as too disturbed to contain significant archaeological materials, only to discover, too late, that significant resources were present after all, but lost due to development approved under the assurance that no resources

would be present. However, in this case, no foundation elements. In addition, the applicant is proposing to backfill the cavity left by a fallen tree, but no excavation is proposed.

Therefore, the proposed project is not anticipated to adversely impact cultural resources, and can be found consistent with the cultural resource protection policies of the certified LCP.

#### **H. 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, and the Coastal Technical Appendix. The Coastal Land Use Element of the LCP was updated and replaced in its entirety via LCPA 1-10 in 2012. The certified Implementation Plan of the LCP is comprised of a number of different documents, but the main document is the City's Title 25 Zoning Code. The Open Space/Conservation Element and Title 25 have been amended a number of times since original certification.

As discussed, the proposed project is consistent with the LCP's minimum bluff edge setback requirements and will preserve the natural character of the coastal bluff face to the maximum extent possible. Therefore, the proposed project, as conditioned, conforms to the provisions of the City of Laguna Beach Certified LCP.

#### **I. 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 June 13, 2019, the Laguna Beach Design Review Board adopted a Section 15303, Class 3(a) categorical exemption pursuant to CEQA, which allows the construction of a new residence in a residential zone.

The proposed construction project will be consistent with the LCP's minimum bluff edge setback requirements and will preserve the natural character of the coastal bluff to the maximum extent possible. There are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

## **APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

1. Certified City of Laguna Beach Land Coastal Program
2. City File Record for Local CDP No. 18-0130
3. Response to Zoning Plan Check Comments, Proposed Retaining Wall, 15 Camel Point, Laguna Beach, CA (Slope Stability Analysis) By Bagahi Engineering, Inc., Dated November 3, 2017.
4. Coastal Bluff Edge Evaluation, Proposed Repairs to Retaining Wall, 15 Camel Point Drive, Laguna Beach, Orange County, California 92651, Assessor's Parcel Number (APN) 056-020-48-00 by GeoSoils, Inc, dated March 31, 2020.