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# Th11a

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

**Appeal No.:** A-5-LGB-18-0056

**Applicant:** Nolan Miura

**Agents:** Morris Skenderian; Steven H. Kaufmann

**Local Government:** City of Laguna Beach

**Local Decision:** Approval with Conditions

**Appellants:** Mark & Sharon Fudge

**Project Location:** 8 Rockledge Road, Laguna Beach, Orange County  
(APN: 656-151-08)

**Project Description:** Appeal of City of Laguna Beach Local Coastal Development Permit No. 18-1096 for minor alterations/renovations and net addition (no net increase in habitable space) to an approximately 4,817-sq. ft., 29.7-ft. high single-family residence with two garages (approx. 211 sq. ft. and 300 sq. ft.) and approximately 255 sq. ft. of deck area on an ocean-fronting, blufftop property. The project includes a 78-sq. ft. addition to one garage, a 102.4-sq. ft. net addition of deck area, additional hardscape and landscape improvements, a new 7-ft. by 6.5-ft. outdoor spa, and the removal of an unpermitted 14.2-ft. by 6.8-ft. pool. The applicant has modified the proposed project to also include: (1) the removal of other unpermitted accessory structures such a keystone wall, seaside curb and patio expansion, all of which are nonconforming to the appropriate bluff edge setbacks, (2) the restoration of the natural grades, and (3) revegetation of the bluff in the removal areas.

**Staff Recommendation:** Determine that a substantial issue exists, and approve the de novo permit application with conditions.

**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. 18-1096 authorized alterations to a single-family residence and associated amenities located at 8 Rockledge Road in Laguna Beach. The work that was approved beyond the main structure included alterations to a garage and deck, the addition of an outdoor spa, additional hardscape and landscape improvements, and the removal of an unpermitted pool. The net effect of all of the work would result in the enlargement of the main structure but without any increase in habitable space. The subject site is a 10,828 sq. ft. ocean-fronting lot located on the blufftop.

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which appeal number A-5-LGB-18-0056 has been filed for the following reasons: the City’s conclusion that the development is consistent with the provisions of the LCP regarding development on nonconforming structures and new development on an ocean-fronting blufftop or bluff face was not adequately supported by documents in the record file or the City’s findings as stated in Local CDP No. 18-1096.

The primary issue raised is the locally approved CDP’s consistency with LCP policies regarding development on an oceanfront and oceanfront bluff site. The proposed net addition of habitable space (no net increase) and proposed 78-square-foot addition to the garage will be setback at least approximately 68 feet from the bluff edge, and would conform to the minimum 25-foot oceanfront and oceanfront bluff edge setback for principle structures according to the City of Laguna Beach certified Local Coastal Program (LCP). The applicant is not proposing any work to an existing wall and patio that were constructed prior to the effective date of the Coastal Act (1977) and minimally encroach into the minimum 10-foot bluff edge setback established for accessory structures that do not require a structural foundation. However, all newly proposed accessory structures (e.g. landscape stone veneer wall, fence railing, stairway, deck additions) will conform to the minimum 10-foot bluff edge setback pursuant to the policies of the certified LCP. Additionally, the proposed development does not, at this time, appear to meet the definition of a major remodel, so as to trigger the requirement that pre-existing nonconforming oceanfront or oceanfront bluff structures be brought into conformity with the LCP set forth in Action 7.3.10 of the certified LUP. In any case, the applicant has modified the proposal to include the removal of an unpermitted expansion of the seaside keystone wall, curb, and patio that are also nonconforming to the appropriate bluff setbacks, and restoration of the bluff face.

Commission staff also recommends that, after a public hearing, the Commission **approve the de novo permit** with special conditions.

Staff recommends approval of the de novo permit with **10 special conditions** that require the applicant to: **1)** submit final revised plans to alter the proposal as indicated and to guide the work; **2)** conform to erosion control requirements and geotechnical recommendations; **3)** implement construction best management practices; **4)** conform to landscape recommendations; **5)** submit a construction staging plan; **6)** comply with the conditions imposed by the local government; **7)** waive any rights to construct a future bluff/shoreline protective device to protect the development authorized by this permit; **8)** assume the risks of development in a geologically hazardous area, waive any claim of damage or liability against the Commission, and indemnify the Commission against future claims; **9)** acknowledge that any future improvements to the structure authorized by this permit shall require a permit amendment or a new permit; and **10)** record a deed restriction against the property incorporating the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property.

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### EXHIBITS

Exhibit 1 – Project Location

Exhibit 2 – Site Survey and Project Plans

Exhibit 3 – Bluff Restoration Preliminary Plan

Exhibit 4 – Appeal

Exhibit 5 – City Resolution for local CDP No. 18.24 (Local CDP No. 18-1096, Design Review No. 18-1095)

Exhibit 6 – Memorandum, Dr. Joseph Street

## I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

**Motion:** I move that the Commission determine that Appeal No. A-5-LGB-18-0056 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. Following the staff recommendation on this motion will result in the Commission proceeding to conduct a de novo review of the application, and adoption of the following resolution and findings. Conversely, 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-18-0056** 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. APPELLANTS' CONTENTIONS

The Commission received a Notice of Final Local Action (NOFA) for City of Laguna Beach Local CDP No. 18-1096 on July 30, 2018. Local CDP No. 18-1096 approves the alterations of, and net addition to, a single-family residence on an ocean-fronting, blufftop property.

On August 13, 2018, an appeal was filed by Mr. Mark and Mrs. Sharon Fudge (**Exhibit 4**). The appellants contend that the City's approval does not comply with the City's certified LCP. More specifically, the appellants raise the following concerns with the City-approved development:

- 1) Bluff edge determination has not been made pursuant to the certified LCP and, therefore, all requirements relating to blufftop development have not been properly assessed (such as minimum required setbacks for development).
- 2) Future bluff retreat was not adequately considered.
- 3) The City failed to condition the permit to address water quality (i.e. drought-tolerant/native landscaping), hazards and future bluff protection, and the protection of public coastal access during construction (staging plan, etc.).
- 4) The project is cumulatively a major remodel and the City should have addressed non-conforming/unpermitted development. The City addressed the removal of an unpermitted pool, but did not address all other non-conforming/unpermitted development. In addition, the City did not consider bluff restoration and instead allowed non-conformities and unpermitted work to continue and/or be expanded.

## III. LOCAL GOVERNMENT ACTION

On July 27, 2018, the City of Laguna Beach Design Review Board held a public hearing for the coastal development permit application and other discretionary approval for alterations of, and net addition (no increase in habitable space) to, a single-family residence. The DRB conditionally approved Local Coastal Development Permit (CDP) No. 18-1096 and Design

Review 18-1095 (**Exhibit 4**).

The project description of Resolution No. 18.24 (**Exhibit 4**) approving Local CDP No. 18-1096 reads as follows:

“The Design Review Board granted approval to construct modifications to a prior approval including additions (no net increase)/alterations to a “K” rated historic structure, additions/alterations greater than 15 feet in height, elevated decks, elevator and skylight height, skylights, spa, four air conditioning condenser units, historic preservation incentive (setback flexibility), hardscaping, landscaping, construction in an environmentally sensitive area due to the oceanfront location. The project includes demolition of the unpermitted swimming pool in the blufftop setback. Conditions of approval include conditions that documentation of the existing height and spread of the *Metrosideros* tree including an arborist’s report be provided that reduces the crown by at least 10% with a biannual pruning and lacing plan be implemented after it is reduced; the existing *Pittosporum* to be maintained at eight feet and the *Podocarpus* be removed; the vegetation in the courtyard be no taller than the lower roof elevation at the (garage) sloped roof; that the roof of the garage be as submitted by the architect at this hearing so it is lowered by sixteen inches and has a sloping edge (shed); that the columns under the balcony match the columns that are inside the living room and that the balcony railing be glass and metal as shown in the architect’s drawing at this hearing; that there be a wall trellis in the courtyard over the French doors with climbing rose or similar plant material; and per the recommended conditions of approval included on page six of the staff report that they adhere to the updated mitigation plan monitoring program incorporating the archeology mitigation and they record the written agreement between the City and property owner listing the building on the City’s Historic Register.”

The Design Review Board adopted a Mitigated Negative Declaration prepared in accordance with the California Environmental Quality Act (CEQA) guidelines, and imposed additional mitigation measures to ensure the protection of tribal resources that may be inadvertently discovered on the site.

On July 30, 2018, the Coastal Commission’s South Coast District Office received a valid Notice of Final Action (NOFA) for Local CDP No. 18-1096. The Commission issued a Notification of Appeal Period on August 1, 2018. On August 13, 2018, Mark and Sharon Fudge filed the appeal during the ten (10) working day appeal period (**Exhibit 3**). No other appeals were received. The City and applicant were notified of the appeal by Commission staff in a letter dated August 15, 2018.

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

After certification of LCPs, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on CDPs. Development approved by cities or counties may be appealed if it is 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):

- (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 review 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). 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 portion of the public hearing on the merits of the project. A de novo review of the merits of the project uses the certified LCP as the standard of review. (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. (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 3 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 applicant, 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 and Mrs. Sharon 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 immediately follow, 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 as additions (no net increase)/alterations to an approximately 4,817-sq. ft., 29.7-ft. high single-family residence with a "K" historic rating and two garages (approx. 211 sq. ft. and 300 sq. ft.) and approximately 255 sq. ft. of deck area on an ocean-fronting, bluff property. The project includes an approximately 78-sq. ft. addition of garage space, 102.4-sq. ft. net addition of deck area, hardscape and landscape improvements, and new 7-ft. by 6.5-ft. outdoor spa (**Exhibit 2**). The proposal also includes the removal of an unpermitted 14.2-ft. by 6.8-ft. pool that is nonconforming to the appropriate bluff edge setbacks (**Exhibit 2**).

The project site is an irregularly shaped, 10,828-square-foot, ocean-fronting, blufftop lot located at 8 Rockledge Road in Laguna Beach (**Exhibit 1**). The site is located above Rockledge Beach, and is between the first public road parallel to the sea (South Coast Highway) and the sea. It is in an area where development approved by the City of Laguna Beach pursuant to its certified LCP is appealable to the Coastal Commission. Single-



family residences on ocean-fronting bluffs characterize the surrounding area. Public access from South Coast Highway to the beach is available via a public access stairway located approximately 1000 feet downcoast of the project site.

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

The City of Laguna Beach Local Coastal Program (LCP) was certified on January 13, 1993. The City's LCP is comprised of a Land Use Plan (LUP) and an Implementation Plan (IP). The City's Land Use Plan is comprised of a variety of planning documents including the Land Use Element (LUE), Open Space/Conservation Element, Technical Appendix, and Fuel Modification Guidelines (of the Safety General Element of the City's General Plan as adopted by Resolution 89.104). The Implementation Plan (IP) of the City of Laguna Beach certified Local Coastal Program (LCP) is comprised of over 10 documents, including Title 25, the City's Zoning Code. The Coastal Land Use Element of the LCP was updated and replaced in its entirety via LCPA 1-10 in 2012. The Open Space/Conservation Element and Title 25 have been amended a number of times since original certification. Laguna Beach has a certified Local Coastal Program (LCP), but there are four areas of deferred certification in the City: Irvine Cove, Blue Lagoon, Hobo Canyon, and Three Arch Bay. The project site is located within the City of Laguna Beach's certified jurisdiction and is subject to the policies of the certified LCP.

#### **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. Section 13115(c) of the Commission regulations provides that the Commission may consider the following five factors when determining if a local action raises a significant issue:

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 certified LCP;
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.

The Commission may, but need not, assign a particular weight to a factor. 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 LCP. The appellants raise 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.

#### **Appellants' Argument No. 1: Bluff face/edge and Bluff Development Constraints; Oceanfront and Oceanfront Bluff setback requirements.**

The appellants assert that a bluff edge determination has not been made pursuant to the Land Use Plan definition. They assert that 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 with the required bluff edge setbacks.

The certified Land Use Plan (LUP) establishes 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 (e.g. pools, caisson-supported retaining walls), 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 for 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 setback**.

The appellants assert that the applicant's geologist did not rely on the certified Land Use Element definition of "ocean front bluff edge or coastal bluff edge" and, consequently, there is a potential that the City-approved development does not meet the LCP-required setbacks for new development on oceanfront bluffs, among other site constraints and requirements that may apply.

In a response letter to the City of Laguna Beach dated May 8, 2018, the applicant's geotechnical consultant concluded that the approximate location of the applicant's top of the bluff (or bluff edge) is based on the technical grade-break formula provided in the City's certified LCP and is **not** based on the LUE coastal bluff edge definition that is consistent with the Coastal Commission's definition of "bluff edge" provided in Title 14 of the California Code of Regulations, Section 13577(h)<sup>1</sup>, because the LUE definition is "non-

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<sup>1</sup> The Coastal Commission's Regulations, Section 13577(h)(2), defines "bluff line or edge" as:... the upper termination of a bluff, cliff, or seacliff. In cases where the top edge of the cliff is rounded away from the face

formulaic and subject to debate on properties with pre-Coastal Act bluff-area grading.”

The “grade-break formula” based definition of the certified LCP to which the applicant’s geologist is referring may be based on the definition of an oceanfront bluff provided in Section 25.50.004 of the Implementation Plan (IP). Section 25.50.004 of the certified IP defines the ‘oceanfront bluff’ as:

...an oceanfront landform having a slope of forty-five degrees or greater from horizontal whose top is ten or more feet above mean sea level.

- (i) In cases where an oceanfront bluff possesses an irregular or multiple slope condition, the setback will be taken from the most inland forty-five degree or greater slope.
- (ii) In cases where the landform constitutes an oceanfront bluff whose slope is less than forty-five degrees, a determination as to whether or not the specific landform is subject to this provision shall be made by the director of community development.

While the Land Use Element of the certified Land Use Plan (LUP) of the 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. [LUP Appendix pp. A-12, #101]

In recent years, applicants and agents pursuing permits for bluff top development have interpreted the IP section above as a way to determine the bluff edge. There are two references for oceanfront bluffs provided in the certified LCP, one in the IP and the LUP and the two should be read in tandem and should be harmonized if at all possible. In cases of conflict or inconsistencies, the updated LUE/LUP definition of ‘bluff edge’ should prevail. The Commission has required that in past decisions on permits and appeals in Laguna Beach. The IP definition does not comment on how to determine the location of the bluff edge, but instead references a setback that is only applicable to certain scenarios (in cases of an irregular or multiple slope condition) and was not intended to replace the LUE’s definition of bluff edge. Because the applicant’s geologist relied solely on the IP

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of the cliff as a result of erosional processes related to the presence of the steep cliff face, the bluff line or edge shall be defined as that point nearest the cliff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff. In a case where there is a steplike feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the cliff edge.

section to determine the location of the bluff edge, the location of the bluff edge identified may not be accurate. Therefore, based on the information available in the City's record, there is no rationale or other information in the City's record detailing the bluff edge's consistency with the certified LCP, particularly with the LUE's definition of bluff edge. The information provided to Commission staff is not sufficient to adequately determine the bluff edge of the development site.

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'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.

**Appellants' Argument No. 2: Hazards – Erosion and Setback requirements.**

The appellants assert that LUE Action 10.2.6 requires that future bluff retreat be taken into consideration when determining blufftop setbacks. Based on predicted bluff retreat, the appellants assert that an additional setback from the bluff top edge commensurate to the predicted long-term bluff retreat may be necessary, adding to the minimum 25-foot and 10-foot setbacks required by Action 10.2.7 and 10.2.8 of the certified LCP (cited above).

Setting development back from the edge of the bluff can substantially decrease risk to life and property, because the farther from the bluff edge development is located, the less likely it will become jeopardized by erosion, landslides, and similar hazards. Likewise, setbacks decrease the likelihood of property destruction caused by geologic instability. Therefore, Actions 10.2.7 and 10.2.8 of the certified LCP require a minimum 25-foot and 10-foot setback from the oceanfront bluff edge for new development to assure geologic stability. These bluff edge setbacks are the **minimum** required and provide a starting point to determine the appropriate distance from the bluff edge to assure stability after having taken into consideration slope stability and bluff retreat.

Before determining the minimum bluff edge setback requirements provided by the certified LCP, it is the responsibility of the local government to consider the site's slope stability and predicted long-term retreat to determine whether the minimum requirement is sufficient. In certain locations, the LCP's minimum 25-foot and 10-foot required bluff setbacks alone may be sufficient to assure stability, especially on coastal bluffs underlain by bedrock that is relatively resistant to erosion; in others, a greater setback may be necessary due to geologic conditions, such as coastal bluff comprised of highly erosive composites.

Action 10.2.5 of the LUE of the certified LUP 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 of the LUE of the certified LUP 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. (**emphasis added**)

Action 10.2.5 of the certified LUP requires, on bluff sites, that applications include a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and a determination whether the development will be safe from geologic hazard for its economic life. Action 10.2.6 requires that new development be sited a sufficient distance from the oceanfront bluff edge to ensure stability after taking into account both long-term bluff retreat and slope stability. Action 10.2.6 specifies that the analysis concerning geologic stability be guided by the industry-accepted standards for slopes (codified in many local grading ordinances), which require that a particular minimum “Factor of Safety” against landslides be attained. Pursuant to Action 10.2.6 of the LCP, development must maintain a minimum factor of safety (FoS) of 1.5 (for static conditions) or 1.2 (for pseudostatic conditions) against landslides to assure geologic stability.

A geotechnical investigation report was prepared for the proposed development by Geofirm, dated March 28, 2018, and supplemented on May 8, 2018. It is included in the City record. This geologic report presents results and preliminary recommendations regarding the proposed development. The slope stability analysis indicates that all generated factor of safety values exceed the minimum 1.5 (for global static conditions) and 1.1 (for global seismic conditions) required, and that the project site is grossly stable.

The subject site is located on San Onofre Breccia, which is a highly stable geologic formation. Based on the geotechnical reports, it appears that the applicant’s technical consultants did consider long-term (75-year) bluff retreat and concluded that a setback of 0 to 2 feet would be sufficient for the protection of the house, which is less than the minimum (10- to 25-foot) setback requirements, and concluded that the proposed development is geotechnically feasible. Therefore, the minimum setback requirements may be adequate to address both slope stability and blufftop erosion over the next 75 years.

Regarding shoreline related hazards at the base of the bluff, a Coastal Hazard Analysis (sea level rise, wave runup and sea cliff/shoreline erosion analysis) was also prepared by GeoSoils, Inc. dated November 28, 2016. This analysis identifies potential hazards from shoreline and sea cliff erosion and wave runup. The analysis concludes that the rate of bluff retreat is sufficiently low and that the new residence is reasonably safe from sea level rise related hazards (e.g. wave runup, retreat of the seacliff, and flooding).

Therefore, in this case, the minimum setback requirements may be adequate to address both slope stability and erosion over the next 75 years. Therefore, this contention does not raise a substantial issue.

However, as previously stated, the location of the minimum 25-foot and 10-foot setback areas are ultimately dependent on the approximate location of the bluff edge consistent with the definition provided for in the certified LCP and the Coastal Act.

In addition, although not raised by the appellants, it should be noted that the applicant's coastal hazards analysis is only based on the sea level rise projections provided in the Coastal Commission's 2015 Sea-Level Rise Policy Guidance document and should have been supplemented in consideration of the updated projections on rising sea levels provided for in the 2017 Rising Seas report and the 2018 OPC Guidance. Therefore, it is unclear whether the conclusions made in the Coastal Hazard Analysis report regarding hazards such as shoreline and sea cliff erosion due to updated sea level rise predictions still remain true.

**Appellants' Argument No. 3: Project Not Conditioned to Ensure Consistency with Certified LCP.**

The appellants also contend 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 appellants assert that the City did not properly condition the permit to address future bluff protection, water quality, 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 requires the City to 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. The City-approved project includes a 287.4-square foot addition of habitable space, along with a simultaneous demolition and/or removal of 287.4 square feet of habitable space in different locations throughout the residence resulting in no net increase of habitable space. Although the City-approved addition

would result in a zero-square-foot net change, the local CDP nevertheless authorizes new habitable space in locations where it did not previously exist, as well as authorizes a 78-square-foot addition to one of the garages. Therefore, LUE Policy 7.3.9 applies to the project, but the City did not impose a special condition requiring a waiver of bluff protective devices for the protection of any new development, which is required by LUP Policy 7.3.9.

Regarding water quality (e.g. runoff) and landscaping, the certified LCP Open Space/ Conservation Element (OS/C Element) includes policies that require best management practices be implemented with development; that minimization of volume and velocity of site runoff be considered and implemented to prevent or minimize erosion; that minimization of the introduction of pollutants be considered; the natural character of the coastal bluff landscape be preserved and enhanced to the maximum extent possible to minimize erosion and impacts on water resources; and that minimization of construction impacts be considered. The City's certified LCP contains 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 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.

Policy 7-K of the OS/C Element of the certified LUP 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 8-N of the OS/C Element of the certified LUP states:

Encourage the preservation of existing drought-resistant, native vegetation and encourage the use of such vegetation in landscape plans.

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.

The City did not impose special conditions to ensure that water quality resources are protected, landscaping requirements are met to minimize erosion, nor to 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 as approved by the City may not conform to the LCP or the public access policies of the Coastal Act, and thus, this aspect of the appeal does raise a substantial issue regarding conformity of the development with those standards.

**Appellants' Argument No. 4: Major remodel and Unpermitted/Non-conforming Development.**

The appellants assert that the City-approved project is a major remodel based on a cumulative analysis of past improvements and renovations to the single-family residence at the project site. Based on this assertion, the appellants argue the City should have accordingly addressed any non-conforming/unpermitted development that exist onsite. The appellants assert that although the City adequately addressed the removal of an unpermitted pool, it did not address other alleged non-conforming/unpermitted development and bluff restoration.

The significance of the distinction between minor renovations and a major remodel is that existing non-conformities, such as existing development within the setback area or on the bluff face, may be retained as legal non-conforming development only if the proposed development does not constitute a major remodel. According to LCP policies, a major remodel is substantial new development, and as such, any existing non-conformities cannot be permitted to remain and any unpermitted development that may exist onsite must be addressed.

The certified LCP defines a “Major Remodel” as:

Alteration of or an addition to an existing building or structure that increases the square footage of the existing building or structure by 50% or more; or demolition, removal, replacement and/or reconstruction of 50% or more of the existing structure...[LUP Appendix pp. A-10-11, #89]

The certified Laguna Beach Municipal Code 25.10.008 of the Implementation Plan (IP) states, in relevant part:

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

The project site is developed with a 4,817-square-foot multi-story Spanish Colonial Revival style single-family residence. The original residence was constructed circa 1930, prior to the effective date of the Coastal Act (1977). By 1995, the residence measured 2,721 square feet. . On September 28, 1995, the City approved a coastal development permit for a 2,051-square-foot addition to the 2,721-square-foot residence, reconstruction of the detached garage, and 111 square feet of additional deck space, resulting in a 4,772-square-foot single-family residence with 860-square-foot non habitable space (i.e. decks and garage space). In 1995, the City’s certified LCP did not have a definition for major remodel. The City did not characterize the 1995 addition as a major remodel and did not require the removal of any non-conformities that existed onsite. In addition, the Coastal Commission did not appeal the City’s 1995 local coastal development permit. Non-conformities that existed at the project site during the local review and approval of the 1995 major remodel were addressed consistent with the LCP policies that were the standard of review at that point in time. Therefore, these nonconformities were allowed to remain and are not before the Commission.

Since 1995, the LCP has been amended to include the definitions for major remodel cited above. In addition, Action 7.3.10 of the LUP requires that existing non-conformities be removed when a project constituted new development. 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.

Today, the City-approved project subject to this appeal includes an addition of less than a 50 percent (50%) of original gross floor area of habitable space to the current residence. The net effect of all of the work would result in the enlargement of the main structure but without any increase in habitable space. Additionally, based on the project plans in the City's record, it appears that less than 50 percent (50%) of the exterior walls, floors, and the roof are proposed for renovations (including demolition, removal, replacement, and/or reconstruction) when considered individually or cumulatively. Based on this information, the City did not characterize the locally-approved development as a major remodel.

However, foundation plans were not provided to the City and, thus, the entire scope and extent of the proposed remodel to the existing residence is unclear. The City, therefore, failed to consider the amount of foundation work proposed, new or existing. Because a foundation is an essential structural component of any structure, demolitions and improvements to a foundation should be considered when determining whether or not a remodel/reconstruction of an existing structure is considered major or not. The City, therefore, did not have an adequate degree of factual support for its decision that the development is consistent with the LCP's characterization of minor renovations. Consequently, there is a potential that the locally-approved development is in fact a major remodel/reconstruction of an existing structure per applicable LCP policies. For the foregoing reasons, the Commission finds that a substantial issue exists with respect to the grounds on which the appeal was filed pursuant to section 30603 of the Coastal Act as to this specific issue.

**SUBSTANTIAL ISSUE FACTORS:**

The Commission typically applies five factors in making a determination whether an appeal raises a substantial issue pursuant to Section 30625(b)(2).

**1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP.**

The City did not substantially support its approval of the project as being consistent with all of the applicable policies of the certified LCP and the public access and recreation provisions of the Coastal Act (specifically the bluff top/face/hazards policies). In addition, the City did not condition the project to ensure consistency with policies regarding protection of water quality policies, landscaping, and public access. Finally, without foundation plans, the actual scope of the proposed project is unclear, which necessarily means that evaluation of the project's consistency with the LCP policies cannot fully be made at this time. Therefore, there is a low degree of factual and legal support for the local government's decision that the project, as conditioned, is consistent with the LCP, and this factor supports a substantial issue finding.

**2. The extent and scope of the development as approved or denied by the local government.**

The City granted a Local CDP for zero net addition and renovations to a single-family residence on the subject site located on an ocean-fronting blufftop property. The record does not contain an adequate analysis of the foundation elements of the proposed

development and its potential cumulative effects on similar development in Laguna Beach bluff areas. Therefore, it is not possible at this time to determine the extent and scope of the project, and 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 precedent 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 extent and scope of the proposed development, allowing the City's local CDP approval to stand would result in adverse precedent regarding application of the LCP's various resource protection policies. 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. 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 **approve** Coastal Development Permit No. A-5-LGB-18-0056 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-18-0056 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.

## VII. 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.

## VIII. 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 architectural plans, foundation plans, grading plans that shall be revised to include the following:
  - A. The revised CCC bluff edge line (Feb. 2020) as depicted in **Exhibit 6, page 6** of the staff report dated February 28, 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.
  - B. Plans and written description of methods for removal from the bluff edge setback areas of all unpermitted landscaping structures/improvements (including but not limited to keystone walls, curb, patios, non-native landscaping, etc.). A revegetation plan (landscape plan) for the area of the removed unpermitted development shall be submitted for the review and approval of the Executive Director. The permittees shall remove the unpermitted non-conforming hardscape and landscaping and implement the erosion control and revegetation landscape plan (consistent with the requirements of **Special Condition 4(a)(i)**, in accordance with the approved final plans, concurrently, prior to, or immediately following (within 15 days of) the renovations to the single-family residence.
  - C. All new principal structures and major accessory structures that require structural foundation shall be sited in accordance with the 25-foot setback from the bluff edge, and all minor accessory structures and landscape shall be sited in accordance with the 10-foot setback from the revised CCC bluff edge line (Feb 2020).

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

2. **Conformance with Geotechnical Recommendations.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director's review and approval, along with two (2) sets of final plans, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans to be submitted pursuant to **Special Condition 1** including foundation and grading/drainage plans and certified that each of those final plans are consistent with the recommendations contained in the Preliminary Geotechnical Investigation prepared by Geofirm dated February 11, 2016, (supplemented March 23, 2016 and August 1, 2018), with the exception of any recommendations to install caissons.

The applicant shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission-

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

3. **Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.** The applicant shall comply with the following construction-related requirements:
- a. No demolition or construction materials, debris, equipment or waste shall be placed or stored in any location where it may enter or impact sensitive habitat areas, streams, wetlands, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
  - b. The permittees shall employ Best Management Practices (BMPs) to ensure that erosion is minimized and the sea is protected from sedimentation.
  - c. Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
  - d. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
  - e. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
  - f. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
  - g. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
  - h. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
  - i. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
  - j. The discharge of any hazardous materials into any receiving waters shall be prohibited.
  - k. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
  - l. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity
  - m. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

4. **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. **Areas seaward of 10-foot CCC bluff edge setback line:** A revegetation/landscape plan shall be submitted for the review and approval of the Executive Director.
    - a. A plant list documenting that the hydroseed mix to be used at the site shall only consist of WUCOLS Low and Very Low water use plants that are **native** to coastal Orange County and appropriate for coastal bluffs. 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 planted or allowed to naturalize or persist on the site. The proposed revegetation, with the approved hydroseed mix.
    - b. No permanent irrigation is permitted.
  - ii. **Areas landward of 10-foot bluff edge setback line.**
    - a. 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>).
    - b. 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.



5. **Construction Staging Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the written review and approval of the Executive Director, two copies of a construction staging plan. The construction staging plan shall incorporate the following:
  - A. The plan shall specify where construction equipment is proposed to be stored during construction in order to maintain slope stability, control erosion, and maintain public access along South Coast Highway.
    - 1) All construction equipment to be stored overnight shall be stored on-site, outside the street travelway.
    - 2) Placement of the on-site dumpster shall incorporate use of a flagman to direct traffic during placement.
    - 3) No staging shall occur on the beach below the project site.
  - B. The plan shall also identify a disposal site outside of the Coastal Zone for waste materials and recyclable materials.
6. **Conditions Imposed By Local Government.** This action has no effect on conditions imposed by the City of Laguna Beach pursuant to an authority other than the Coastal Act, except as provided in the last sentence of this condition. The permittees are responsible for compliance with all terms and conditions of this coastal development permit in addition to any other requirements imposed by other local government permit conditions pursuant to the local government's non-Coastal Act authority. In the event of conflicts between terms and conditions imposed by the local government and those of this coastal development permit, the terms and conditions of this coastal development permit shall prevail.
7. **No Future Bluff/Shoreline Protective Device.**
  - A. By acceptance of this permit, the permittees agree, on behalf of themselves and all successors and assigns, that as new development, the project is not entitled to bluff/shoreline protection, and to waive any rights to construct a bluff/shoreline protective device to protect the development approved pursuant to Coastal Development Permit No. A-5-LGB-18-0056 (and any future improvements) that may exist under applicable law, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, sea level rise, or other natural hazards in the future.
  - B. By acceptance of this permit, the permittees further agree, on behalf of itself and all successors and assigns that the permittees shall remove the development authorized by this permit, including principal residence and associated hardscape and accessory structures/improvements if: (a) any government agency has ordered that the structures are not to be occupied due to coastal hazards, or if any public agency requires the structures to be removed; (b) essential services to the site can no longer feasibly be maintained (e.g., utilities, roads); (c) removal is required by the certified LC; (d) the development becomes located on public trust lands due to a shifting public trust boundary as a result of sea level rise, or (e) the development would require a shoreline protective device to prevent a-d above. In the event that portions of the development fall to the beach before they are removed, the permittees shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved

disposal site. Such removal shall require a coastal development permit. In addition, in the event that portions of the development fall to the beach before they are removed, the permittees shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site.

8. **Assumption of Risk, Waiver of Liability, and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from bluff and slope instability, sea level rise, erosion, landslides and wave uprush or other tidal induced erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
9. **Future Improvements.** This permit is only for the development described in Coastal Development Permit A-5-LGB-18-0056. Pursuant to Title 14 of the California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to this development governed by the Coastal Development Permit A-5-LGB-18-0056. Accordingly, any future improvements to the structures authorized by this permit, including but not limited to, repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 of the California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit A-5-LGB-18-0056 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
10. **Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

## **IX. FINDINGS AND DECLARATIONS – DE NOVO**

Note: The Findings and Declarations in the Substantial Issue section of this staff report are hereby adopted by reference into the Findings and Declarations for the De Novo Permit.

### **A. PROJECT DESCRIPTION**

The applicant is proposing alterations/renovations and zero net addition of habitable space (no increase) to an approximately 4,817-square-foot, 29.7-foot high single-family residence with two garages (approx. 211 square feet and 300 square feet) and approximately 255 square feet of deck area on an ocean-fronting, bluff property. More specifically, the applicant is proposing a 287.4-square-foot addition of habitable space and the simultaneous demolition and/or removal of 287.4 square feet of habitable space in different locations throughout the residence, which would result in no net addition of habitable space. The project includes an approximately 78-square-foot addition of garage space, 102.4-square-foot net addition of deck area, hardscape and landscape improvements, and new 7-ft. by 6.5-ft. outdoor spa (**Exhibit 2**). The proposal also includes the removal of an unpermitted 14.2-ft. by 6.8-ft. pool that is nonconforming to the appropriate bluff edge setbacks (**Exhibit 2**).

As part of the original City-approved project, prior to the filing of the subject appeal, the applicant requested to keep unpermitted landscaping structures (keystone wall, curb, and a patio expansion), which are nonconforming to the bluff edge setbacks, inconsistent with the requirements of the certified LCP. However, since the filing of the appeal of local CDP No. 18-1096 on July 30, 2018, the applicant has modified their proposal to include the removal of all non-conforming unpermitted accessory structures/improvements encroaching into the applicable bluff edge setbacks, restoration of the natural grades, and revegetation of the bluff in the removal areas.

The project site is an irregular-shaped 10,828-square-foot ocean-fronting, blufftop lot located at 8 Rockledge Road in Laguna Beach (**Exhibit 1**). The site is located above Rockledge Beach, and is between the first public road (South Coast Highway) and the sea. It is in an area where development approved by the City of Laguna Beach pursuant to its certified LCP is appealable to the Coastal Commission. Single-family residences on ocean-fronting bluffs characterize the surrounding area. Public access from South Coast Highway to the beach is available via a public access stairway located approximately 1000 feet downcoast of the project site.

### **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).

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.

### **C. HAZARDS**

Laguna Beach Land Use Element:

Policy 7.3 states:

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

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

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

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

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

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

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

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

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

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

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

Policy 10.2 states:

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

Action 10.2.5 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.

Although no net increase of habitable space is proposed, and based on the project plans, the proposed project does not appear to meet the threshold of a “major remodel,” the applicant is nevertheless proposing 287.4 square feet of “new” habitable space and a 78-square foot addition to one of the two garages. The proposed project will occur on an ocean-fronting, bluff-top lot. The Commission has consistently found that development on a bluff site that is adjacent to the sea, like the project site, is inherently subject to hazards from erosional forces imposed against the bluff material from wave energy, wind and rain. The hazards policies of the LCP require, among other things, that all new development be (per the policies cited above): adequately evaluated to ascertain potential negative impacts on natural resources and on existing adjacent development; designed and sited to avoid hazardous areas and minimize risks to life and property from coastal and other hazards; and assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. In addition, the LCP policies cited above require: on bluff sites, that applications include a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contain statements that the project site is suitable for the proposed development and that the development will be safe from geologic hazards for its economic life.

### **Sea Level Rise**

Many of the coastal hazards issues described above will be affected by expected sea level rise. Sea level has been rising for many years. Several different approaches have been used to analyze the global tide gauge records in order to assess the spatial and temporal variations, and these efforts have yielded sea level rise rates ranging from about 1.2 mm/year to 1.7 mm/year (about 0.5 to 0.7 inches/decade) for the 20th century, but since 1990 the rate has more than doubled, and the rate of sea level rise continues to accelerate. Since the advent of satellite altimetry in 1993, measurements of absolute sea level from space indicate an average global rate of sea level rise of 3.4 mm/year or 1.3 inches/decade – more than twice the average rate over the 20th century and greater than any time over the past one thousand years.<sup>2</sup> Recent observations of sea level along parts of the California coast have shown some anomalous trends; however, the best available

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<sup>2</sup> <http://www.opc.ca.gov/webmaster/ftp/pdf/docs/rising-seas-in-california-an-update-on-sea-level-rise-science.pdf>

science demonstrates that the climate is warming, and such warming is expected to cause sea levels to rise at an accelerating rate throughout this century.

The State of California has undertaken significant research to understand how much sea level rise to expect over this century and to anticipate the likely impacts of such sea level rise. In April 2017, a working group of the Ocean Protection Council's (OPC) Science Advisory Team released Rising Seas in California: An Update on Sea-Level Rise Science.<sup>3</sup> This report synthesizes recent evolving research on sea level rise science, notably including a discussion of probabilistic sea level rise projections as well as the potential for rapid ice loss leading to extreme sea level rise. This science synthesis was integrated into the OPC's State of California Sea-Level Rise Guidance 2018 Update.<sup>4</sup> This Guidance document provides high-level, statewide recommendations for state agencies and other stakeholders to follow when analyzing sea level rise. Notably, it provides a set of projections that OPC recommends using when assessing potential sea level rise vulnerabilities for various projects. Taken together, the Rising Seas science report and updated State Guidance account for the current best available science on sea level rise for the State of California. The updated projections in the 2017 Rising Seas report and the 2018 OPC Guidance suggest sea levels could rise between 2.1 and 6.7 feet by 2100 at the Los Angeles tide gauge,<sup>5</sup> depending on future greenhouse gas emissions. The OPC Guidance recommends that development of only moderate adaptive capacity, including residential development, use the high end of this range, 6.7 feet, to inform decisions regarding development. The updated Rising Seas science report and OPC Guidance also include an extreme scenario (termed the "H++" scenario) of 9.9 feet of sea level rise by 2100 based on recent modelling efforts that look at possible sea level rise associated with rapid ice sheet loss. These projections and recommendations are incorporated into the 2018 update of the Coastal Commission Sea Level Rise Policy Guidance.<sup>6</sup>

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

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<sup>3</sup> Griggs, G, Árvai, J, Cayan, D, DeConto, R, Fox, J, Fricker, HA, Kopp, RE, Tebaldi, C, Whiteman, EA (California Ocean Protection Council Science Advisory Team Working Group). Rising Seas in California: An Update on Sea-Level Rise Science. California Ocean Science Trust, April 2017.

<sup>4</sup> OPC State of California Sea-Level Rise Guidance, 2018 Update:  
[http://www.opc.ca.gov/webmaster/ftp/pdf/agenda\\_items/20180314/Item3\\_Exhibit-A\\_OPC\\_SLR\\_Guidance-rd3.pdf](http://www.opc.ca.gov/webmaster/ftp/pdf/agenda_items/20180314/Item3_Exhibit-A_OPC_SLR_Guidance-rd3.pdf)

<sup>5</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.

<sup>6</sup> <https://www.coastal.ca.gov/climate/slrguidance.html>



### **APPLICATION TO THIS PROJECT**

A preliminary geotechnical investigation report was prepared for the proposed development by Geofirm dated March 29, 2018, which was supplemented on May 8, 2018 and January 9, 2019. One of the supplementing documents included a slope stability analysis. The geologic reports present results and recommendations regarding the proposed development at the subject site. Preparation of the reports included research of readily available geotechnical records for the site and environs, identification of the site's subsurface soil and bedrock conditions by observation and exploration, collection of soil and bedrock samples, geotechnical laboratory testing of selected soil and bedrock samples obtained from exploratory work for the project, engineering analyses of the data obtained from the exploration, establishing the location of the bluff edge, slope stability analysis, and an assessment of expected long term bluff retreat.

The applicant has also provided a coastal hazards analysis (sea level rise, wave runup and bluff/shoreline erosion analysis) prepared by GeoSoils, Inc. dated November 28, 2016, and supplemented on August 6, 2018.

### SETBACKS

Policy 7.3 and Actions 7.3.3, 7.3.5, 10.2.7, 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 land forms and not contribute to geologic instability. Setting development back from the edge of the bluff can substantially decrease risk to life and property, 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.

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.

The Commission staff's geologist, Dr. Joseph Street, has reviewed the applicant's geotechnical analyses, bluff edge determination, topographic survey, cross-sections, coastal hazard analyses and proposed architectural plans. In a memorandum dated February 27, 2020 (**Exhibit 6**), Dr. Street states that the applicant's consultant, Geofirm, locates the bluff edge seaward of the "step-like" feature created by the seaward patio and retaining wall and that he agrees that the bluff edge is located in the area seaward of the patio/walkway and keystone wall located along the seaside of the property. However, as described in greater detail in his memorandum, Dr. Streets further states that he has refined the position of the bluff edge line to resolve the inconsistencies in the submitted site plans and cross-sections to better reflect the bluff edge definition contained in the City's certified LUE.

Based on his analysis, Dr. Street estimates the bluff edge on the subject site as the +52-foot elevation contour, which typically falls within one foot of the edge of the seaward patio/walkway curb (**Exhibit 6**). The bluff edge is located only slightly inland of the bluff edge line identified by Geofirm.

Actions 10.2.7 and 10.2.8 of the LUE (cited above) require a minimum bluff edge setback of 25 feet from the edge of the coastal bluff for primary structures (i.e. single-family residence) and major accessory structure that require structural foundation, and a 10-foot setback for minor accessory structures (e.g. landscaping, decks and patios) that do not require structural foundations. In addition, Action 7.3.5 of the LUE prohibits development on oceanfront bluff faces (with a few exceptions for public improvements).

The single-family residence is primarily setback approximately 45 feet and the proposed additions totaling 287.4 square feet would be minimally setback approximately 68 feet from the +52-foot elevation contour. Therefore, the additions to the single-family residence will not encroach into the revised 25-foot setback line consistent with the LCP bluff edge setback requirements.

In addition, all newly proposed accessory structures (e.g. a landscape stone veneer wall, fence railing, stairway, and deck additions) will conform to the minimum 10-foot bluff edge setback pursuant to the policies of the certified LCP. In addition, the applicant is not proposing any work to an existing wall and patio that were constructed prior to the effective date of the Coastal Act (1977) that minimally encroach into the 10-foot bluff edge setback. See **Figure 1** below.

Figure 1 Portions of pre-Coastal Act patio and landscape wall encroaching into 10-foot bluff edge setback area are outlined in magenta.

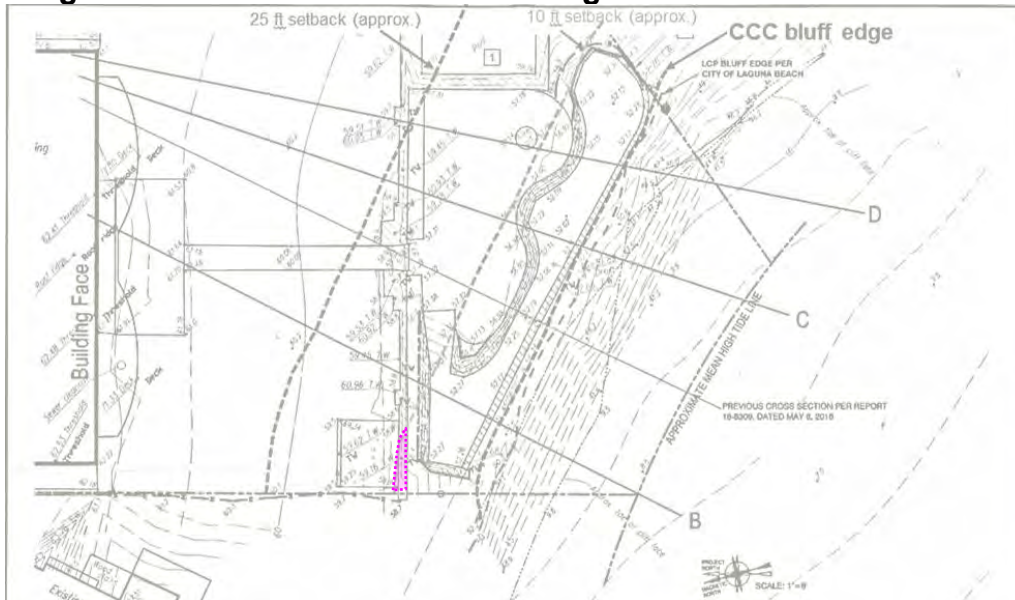


Photo Source: Geofirm

However, there are additional unpermitted landscaping structures/improvements (keystone walls, paved walkways, etc.) that are nonconforming and currently encroach into the bluff face and bluff edge setback areas. The applicant has modified the proposal to include the removal of all non-conforming **unpermitted** accessory structures/improvements encroaching into the oceanfront bluff setback areas, the restoration of the natural grades of the bluff in the removal areas, revegetation, and a request for approval of new accessory structures/ improvements that do conform with the bluff edge setback requirements (see **Exhibit 3**). Because of updates and revisions to the project plans during staff review since the filing of the appeal, the Commission is imposing **Special Condition 1**, which requires the submittal of final revised plans (including architectural, foundation, grading, and drainage and erosion plans) incorporating all changes to the removal of unpermitted structures/improvements that are nonconforming to bluff edge setback requirements, and the restoration of the bluff's natural grades. **Special Condition 1** also requires that the plans identify the location of the revised 2019 CCC bluff edge in relation to the proposed development, and shall depict the location of the CCC 25-foot and 10-foot bluff edge setback lines. In addition, **Special Condition 4** requires that the areas located seaward of the 10-foot bluff edge setback line be revegetated with native vegetation. Only as conditioned can the project be found to be in conformance with the hazards and bluff face development policies of the certified LCP cited above.

Proper grading, soil removal and/or implementation of standard construction best management practices (BMPs) is recommended for controlling runoff and erosion during removal of the non-conforming structures to prevent any significant destabilization of the globally-stable coastal bluff at the project site. Therefore, the Commission imposes **Special Condition 3**, which requires the applicant to implement construction best management practices.

### GEOLOGIC STABILITY

The subject site is located on San Onofre Breccia, which is a highly stable geologic formation. Therefore, the geotechnical analyses prepared by Geofirm state that the proposed development is geotechnically feasible. The report further states that the site is anticipated to remain grossly stable based on its historic performance, favorable geology, and stability and analyses performed to establish the “factor of safety” lines on the property. Action 10.2.6 of the certified LUP<sup>7</sup> requires that this analysis be guided by the industry-accepted standards for artificial slopes (codified in many local grading ordinances), which require that a particular minimum “factor of safety” against landsliding be attained. Pursuant to Action 10.2.6 of the LCP, development must maintain a minimum factor of safety against landsliding is 1.5 for static conditions or 1.2 for pseudostatic conditions to assure stability. In this case, the geotechnical consultant’s slope stability analysis indicates that the bluff at the subject site has factors of safety of 1.67 and 1.43 for gross stability and seismic stability.

The applicant’s geotechnical consultant concluded that the proposed new development would not be threatened or destroyed based on the expected bluff retreat (erosion) over the next 75 years, and concluded that a setback of 0 to 2 feet would be sufficient for the protection of the house from bluff retreat, which is less than the minimum (10- to 25-foot) setback requirements. Thus the setback from the revised CCC bluff edge line proposed for the new development is satisfactory and will minimize risk to life and property, consistent with hazards policies of the certified LCP.

In addition, the coastal hazards analyses prepared by GeoSoils Inc. indicate that the retreat of the cliff face in this location will be the same as it has historically been, even with the predicted rise in sea level (using the 0.5% probability SLR for the 75-year design life of the proposed development as recommended by the OPC’s 2018 update). The analyses conclude that the site is grossly stable and that the rate of erosion is sufficiently low; GeoSoils estimates basal bluff retreat on the order of 1 foot in 41 years (0.02 ft/yr). Therefore, the proposed project will be safe for at least the anticipated 75-year life of the development, even accounting for anticipated sea level rise. Because of the presence of erosion resistant bedrock on the southern ocean fronting coastal bluff, the applicant’s coastal engineer states that “it is reasonable to assume that little if any basal retreat of the bluff will occur for the next approximately >40 years and that after that the retreat will likely be less than one foot for the remaining 75-year life of the structure.”

In addition, the coastal bluff in this location is about +50 feet above the beach; therefore wave runup is not anticipated to reach the proposed development in the next 75 years, although wave runup may contribute to episodic collapse or erosion, albeit at a relatively slower rate because of the erosion resistant bedrock underlying the site.

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<sup>7</sup> Action 10.2.6 of the certified Laguna Beach Land Use Plan states, in relevant part: Require all new development located on an oceanfront bluff top to be setback from the oceanfront bluff edge a sufficient distance to ensure stability, ensure that it will not be endangered by erosion, and to avoid the need for protective devices during the economic life of the structure (75 years)...To assure stability, the development must maintain a minimum factor of safety against landsliding of 1.5 (static) or 1.2 (pseudostatic...) for the economic life of the structure.

The geotechnical consultant has found that the subject site is suitable for the proposed development, provided the recommendations contained in the geotechnical investigation prepared by the consultant are implemented in design and construction of the project. The applicant's geotechnical consultant indicated that the new additions could be constructed with a caisson-supported foundation. However, caisson-supported foundations are not necessary in this case. Adherence to the other recommendations contained in the geotechnical investigation is necessary to ensure that the proposed project assures stability and structural integrity, and neither creates nor contributes significantly to erosion, geologic instability, or destruction of the site or surrounding area. Therefore, **Special Condition 2** requires that the applicant conform to the geotechnical recommendations in the above-mentioned geotechnical investigation and supplemental material, as summarized above.

#### FUTURE SHORELINE PROTECTIVE DEVICES

Numerous LCP policies cited above require that new development not rely on existing or future bluff/shoreline protection devices to establish geologic stability or protection from coastal hazards and require that landform alteration be minimized. The certified LCP limits construction of protection devices because they can have a variety of negative impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach. In addition, the construction of a shoreline protective device to protect new development would conflict with Policies 7.3 and 10.2, and Actions 7.3.4 and 7.3.5 of the certified LUE that state that permitted development shall minimize the alteration of natural land forms.

Bluff/shoreline protective devices can result in a number of adverse effects on the dynamic shoreline system and the public's beach ownership interests. These protective devices can cause changes in the shoreline profile, particularly changes in the slope of the profile resulting from a reduced beach berm width. This may alter the usable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area in which the public can pass on public property, inconsistent with the public access policies of the Coastal Act.

Here, the applicant has submitted evidence demonstrating that the property is not currently threatened by coastal hazards and is unlikely to be in the future as a result of sea level rise. Accordingly, the applicant has not proposed a bluff/shoreline protective device to support the proposed development. Therefore, no bluff/shoreline protective devices are proposed as part of this application.

However, development on coastal bluffs is inherently hazardous and the applicant may decide at some point in the future to request shoreline protection for the proposed development. Accordingly, it is necessary for the applicant to acknowledge that the additions of new habitable space are not entitled to shoreline protection, and for the applicant to waive any rights to bluff/shoreline protection that might exist under applicable law. To ensure that the proposed project does not result in future adverse effects to coastal processes, the Commission imposes **Special Condition 9**, which requires the applicant to acknowledge the project is not entitled to shoreline protection, and therefore

the applicant waive any rights they may have to construct such a device under applicable law.

The Commission also requires that the applicant remove the development approved in this coastal development permit if any government agency has ordered that the development be removed due to hazards, or if the development requires a shoreline protective device at some point in the future. Such removal would require a coastal development permit.

#### ASSUMPTION OF RISK

The proposed development is located on a bluff-top oceanfront lot. It is the nature of bluffs, and especially ocean bluffs, to erode. Bluff failure can be episodic, and bluffs that seem stable now may not be so in the future. Even when a thorough professional geotechnical analysis of a site has concluded that a proposed development is expected to be safe from bluff retreat hazards for the life of the project, it has been the experience of the Commission that in some instances, unexpected bluff retreat episodes that threaten development during the life of a structure sometimes do occur. In the Commission's experience, geologists cannot predict with absolute certainty if or when bluff failure on a particular site may take place, and cannot predict if or when a residence or property may be come endangered.

Here, the applicant's technical consultants have indicated that the site is grossly stable, that the project will be safe for the life of the project, and that no shoreline or bluff protection devices that would substantially alter natural landforms along bluffs and cliffs are needed now or in the future. The conclusions of the applicant's technical consultants are critical to the Commission's ability to approve the project as consistent with the LCP policies regarding coastal hazards given its location on a coastal bluff, which is inherently subject to erosion, landslides, and bluff retreat that could threaten development.

However, as stated above, geologic conditions change over time and predictions based upon the geologic sciences are inexact. In addition, although adherence to the geotechnical consultant's recommendations will minimize the risk of damage from erosion, the risk is not eliminated entirely. Given that the applicant has chosen to implement the project despite potential risks from bluff and slope instability, sea level rise, erosion, landslides and wave uprush or other tidal induced erosion, the applicant must assume the risks. Therefore, the Commission imposes **Special Condition 8**, requiring the applicant to assume the risk of developing in a geologically hazardous area. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand the hazards. In addition, the condition ensures that future owners of the property will be informed of the risks and the Commission's immunity from liability.

#### LANDSCAPING

The installation of in-ground irrigation systems and landscaping that requires intensive watering are potential contributors to accelerated weakening of some geologic formations; increasing the lubrication along geologic contacts and increasing the possibility of failure,

landslides, and sloughing, which could necessitate protective devices. Use of non-native vegetation that is invasive can have an adverse impact on the existence of native vegetation. Drought-tolerant native plants require less water than other types of vegetation, thereby minimizing the amount of water introduced into the bluff top. Drought resistant plantings and minimal irrigation encourage root penetration which increases bluff stability. New landscaping is proposed as part of this project; therefore, **Special Condition 4** requires that the applicant accept that no invasive or facultative vegetation will be planted on the site and that water conservative irrigation systems for any new landscaping will be utilized.

#### CONCLUSION

Commission technical staff concur that a 25-foot setback from the CCC identified bluff edge will adequately address both slope stability and erosion and that the proposed development setback for the primary structure is adequate to minimize hazards from bluff erosion and instability over the next 75 years. The Commission finds that the proposed development, as conditioned, meets the minimum bluff setback requirements and is consistent with all the applicable policies of the certified LCP, which require that landform alteration be minimized, development not rely on shoreline or bluff protective devices, and geologic stability is assured.

#### **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 2.7 states:

Evaluate the impact of proposed development on hillsides and along ridgelines and require building design, location, and arrangement to avoid continuous and intrusive impacts on hillside view areas and skyline profiles.

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 development is located within an existing developed area and the proposed development is compatible with the character and scale of the surrounding area, which consists of two- to three-leveled single-family residences. In addition, as described in greater detail in the Hazards section above, all new improvements and additions will conform with the bluff edge setbacks. In addition, the proposed development will be landward of the existing line of development, in character with the existing line of development of the residence and the surrounding residences. However, the **existing** residence does not conform to the required side and rear yard setbacks. In addition, the applicant is not proposing any work to an existing wall and patio that were constructed prior to the effective date of the Coastal Act (1977) that minimally encroach into the 10-foot bluff edge setback.

The significance of the distinction between minor renovations and a major remodel is that existing non-conformities, such as existing development within setback areas, may be retained as legal non-conforming development only if the proposed development does not constitute a major remodel. A major remodel is substantial new development, and as such, any existing non-conformities cannot be permitted to remain and any unpermitted development that may exist onsite must be addressed.

The certified LCP defines a “Major Remodel” as:

Alteration of or an addition to an existing building or structure that increases the square footage of the existing building or structure by 50% or more; or demolition, removal, replacement and/or reconstruction of 50% or more of the existing structure...

The certified Laguna Beach Municipal Code 25.10.008 of the Implementation Plan (IP) states, in relevant part:

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

As previously discussed in the Section V.D (Substantial Issue Analysis) above, the project site is developed with a 4,817-square-foot multi-story Spanish Colonial Revival style single-family residence. The original residence was constructed circa 1930, prior to the effective date of the Coastal Act (1977). On September 28, 1995, the City approved a major addition that exceeded fifty percent of the original gross floor area of the single-family residence at that time, but did not require the removal of any non-conformities that existed onsite. Non-conformities that existed at the project site during the local review and approval of the 1995 major remodel were addressed consistent with the LCP policies that were the standard of review at that point in time. Therefore, these nonconformities were allowed to remain and are not before the Commission.

Today, the proposed project includes an addition of less than a 50 percent of original gross floor area of habitable space to the current 4,817-square-foot residence. In fact, the net effect of all of the work authorized by the City would result in zero increase in habitable space. Additionally, based on the applicant’s project plan, less than 50 percent of the exterior walls, floors, and the roof are proposed for renovations (including demolition,



removal, replacement, and/or reconstruction) when considered individually and cumulatively. Moreover, foundation work is limited to the proposed new addition areas according to the applicant's foundation plans. Based on this information, the proposed project does not appear to meet the definition of a major remodel. Therefore, the existing non-conformities, such as legal existing accessory structures minimally encroaching into the 10-foot bluff edge setback area, as well as the existing residence located within the side and rear yard setback, are not before the Commission at this time and may be retained as legal non-conforming developments in this case.

It should also be noted that Policy 2.2 (cited above) encourages the preservation of historically significant residences, and the existing residence has been designated by the City as a "K" rated historic structure, and has been listed on the City's Historic Register.

Therefore, the proposed development, as conditioned herein, is consistent with the applicable policies of the certified LCP for new development.

## **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.

Policies 2.10, 7-A, and 7-K of the certified LCP require that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. The project site is located between the first public road (South Coast Highway) and the sea. However, the project site is more specifically located seaward of Rockledge Road, which is a private road. In addition, views of and across the project site are obstructed by other residences located landward of the project site but seaward of South Coast Highway. Therefore, the proposed project is not anticipated to adversely impact public views of the coast from public vantage points.

In addition, the applicant is proposing to remove all unpermitted nonconforming accessory structures (such a keystone wall, seaside curb and patio expansion) encroaching into the oceanfront bluff and bluff edge setbacks. After the removal of the structures, the applicant intends to restore the natural grades of the bluff in the removal areas and subsequently revegetate these areas with native plant species. **Special Conditions 1 and 4** are imposed to memorialize these measures. Therefore, the proposed development, as conditioned, will help restore and enhance the coastal bluff's natural character at the subject site, which is visible from the public beach below.

Therefore, the Commission finds the project consistent with the visual resource protection policies of the certified LCP.

#### **F. Water Quality**

Regarding protection of water quality, the City's certified LCP includes the following policies:

##### Land Use Element:

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.)

##### Open Space/Conservation Element:

Policy 4-A 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 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 4-H 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.

Since the subject site is adjacent to the ocean, the proposed development has the potential to discharge polluted runoff from the project site into geologically sensitive coastal bluffs and into coastal waters. Therefore, the Commission imposes **Special Condition 3**, which requires the applicant to implement construction best management practices.

In addition, the applicant is proposing drought-tolerant, non-invasive landscaping outside of the bluff setback areas, and restoration of the natural grades of the bluff face located within the 10-foot bluff edge setback (see **Exhibit 3**), and subsequently revegetate these areas of the bluff face with native plant species. **Special Conditions 1 and 4** are imposed to memorialize these measures. Specifically, Special Condition 4 requires the installation of non-invasive, drought-tolerant vegetation and water-conservative irrigation systems. Special Condition 4 also requires that areas seaward of the 10-foot bluff edge setback be re-vegetated with drought-tolerant and non-invasive plants native to coastal Orange County and appropriate for coastal bluffs to help prevent erosion, restore the bluff and provide natural percolation of any site runoff. This condition also allows for non-native, non-invasive drought-tolerant vegetation to be planted but only within the development footprint landward of the 10-foot bluff edge setback.

The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the coastal bluff and marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, the use of non-invasive drought-tolerant vegetation and water conservative irrigation systems to reduce and treat the runoff discharged from the site, and for the use of post-construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms to LCP water quality protection policies that require protection of marine resources, reduction of pollutants and runoff from the proposed development, minimization of the volume and velocity of runoff, minimization of the introduction of pollutants into coastal waters, and minimization of erosion, sedimentation and other pollutants in runoff from construction-related activities.

### **G. Public Access**

The City's certified LCP includes the following public access policies:

Land Use Element:

Policy 4.3 states:

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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.

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.

The project site is located within the Rockledge neighborhood located between Moss Point and Victoria Beach. 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 Victoria Beach during low tide. Victoria Beach is accessed from the public stairway access located approximately 1000 feet southeast (downcoast) of the subject site. Limited public parking is available along some portions of Coast Highway in the project vicinity.

Construction projects can adversely impact public access by displacing otherwise available on-street, public parking spaces. During construction, measures should be implemented to ensure that temporary impacts to public access be minimized. Therefore, **Special Condition 5** requires that a final construction staging plan be submitted for Commission review and approval. All construction equipment to be stored overnight shall be stored on-site, outside the street travelway. Placement of the on-site dumpster shall incorporate use of a flagman to direct traffic during placement. No staging shall occur on the beach below the project site.

The proposed project is on an existing private residential lot. Therefore, no long-term, post-construction impacts are anticipated because the project would not create any changes to existing coastal access, which does not already exist onsite due to the existing residence. Moreover, the two onsite parking spaces satisfies the certified LCP's onsite parking requirements for a single-family residence.

As conditioned, the proposed development will not impact existing public parking available in the area, and the proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. The Commission finds the proposed project, as conditioned, is consistent with the LCP public access policies cited above and with the public access and recreation policies of the Coastal Act.

#### **H. Unpermitted Development**

Development has occurred on the subject site without the benefit of required coastal development permits, including but not limited to the installation of landscaping structures/improvements such as keystone walls and curb and patio expansion, grading, and non-native landscaping that encroach into the bluff setback areas. A coastal development permit has not been obtained which authorizes such major and minor ancillary structures/improvements. Any development activity conducted in the Coastal Zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act. The applicant is proposing to remove any unpermitted accessory structures/improvements (e.g. keystone wall, and patio expansion, non-native landscaping, etc.) that are non-conforming to their respective bluff edge setbacks pursuant to the provisions of the certified LCP, and to restore the natural grades and revegetate the areas of removal.

Issuance of the permit pursuant to the staff recommendation and compliance with all of the terms and conditions of this permit will result in resolution of the violation of the Coastal Act consisting of the installation of unpermitted landscaping structures/ improvements described above.

Although development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the policies of the certified LCP and the public access policies of the Coastal Act. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations, nor does it constitute an implication of implied statement of the Commission's position regarding the legality of any development undertaken on the site without a coastal development permit, or that all aspects of the violation have been fully resolved. In fact, approval of this permit is possible only with the conditions included

herein, such as **Special Condition 1**, which requires that the applicant remove the unpermitted non-conforming hardscape/ landscape and implement restoration and revegetation concurrently, prior to, or immediately following (within 15 days of) the renovations to the single-family residence to ensure the non-conforming unpermitted structures are removed and the area restored in a timely manner. The removal, bluff restoration, and revegetation must be consistent with the requirements of **Special Condition 4(a)(i)** and in accordance with the approved final plans. Failure to comply with these conditions would also constitute a violation of this permit, the certified LCP, and of the Coastal Act. Accordingly, the applicant remains subject to enforcement action just as it was prior to this permit approval for engaging in unpermitted development, unless and until staff's recommended conditions of approval included in this permit are satisfied.

### **I. Deed Restriction**

Laguna Beach Land Use Element:  
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 of the property as a deed restriction.

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition 10**, which requires that the property owners record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that any prospective future owner will receive notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

The Commission finds the proposed project, as conditioned, is consistent with Action 7.3.9 of the certified LCP public access policies cited above.

### **J. 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 in this staff report, the proposed project, as conditioned, conforms to the provisions of the City of Laguna Beach Certified LCP.

**K. 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 12, 2018, the Laguna Beach Design Review Board adopted a Section 15304, Class 4(b) CEQA Categorical Exemption for landscaping, and adopted a Mitigated Negative Declaration for the proposed word to the residence and accessory structures.

In addition, the proposed project has been conditioned to be found consistent with the certified LCP. As conditioned to minimize risks associated with natural hazards, and avoid adverse impacts to water quality and natural resources, 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. Preliminary Geotechnical Investigation, Proposed Residence Remodel by Geofirm, dated March 29, 2018.
2. Response to City of Laguna Beach Geotechnical Report Review Checklist by Geofirm, dated May 8, 2018.
3. Supplemental Geotechnical Investigation of Bluff Slope Stability, Proposed Residence Remodel by Geofirm, dated May 8, 2018.
4. Coastal Hazard Analysis for Remodel of Single Family Residence, 8 Rockledge Road, Laguna Beach, Orange County, California by GeoSoils Inc., dated November 28, 2016.
5. Updated Coastal Hazard Analysis for Remodel of Single Family Residence, 8 Rockledge Road, Laguna Beach, Orange County, California by GeoSoils Inc., dated August 6, 2018.
6. Updated Coastal Hazard Analysis for Remodel of Single Family Residence, 8 Rockledge Road, Laguna Beach, Orange County, California by GeoSoils Inc., dated January 4, 2019.