

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
301 E. OCEAN BLVD., SUITE 300
LONG BEACH, CA 90802-4830
(562) 590-5071



W13b

A-5-LGB-20-0015 (Contursi)

July 8, 2020

EXHIBITS

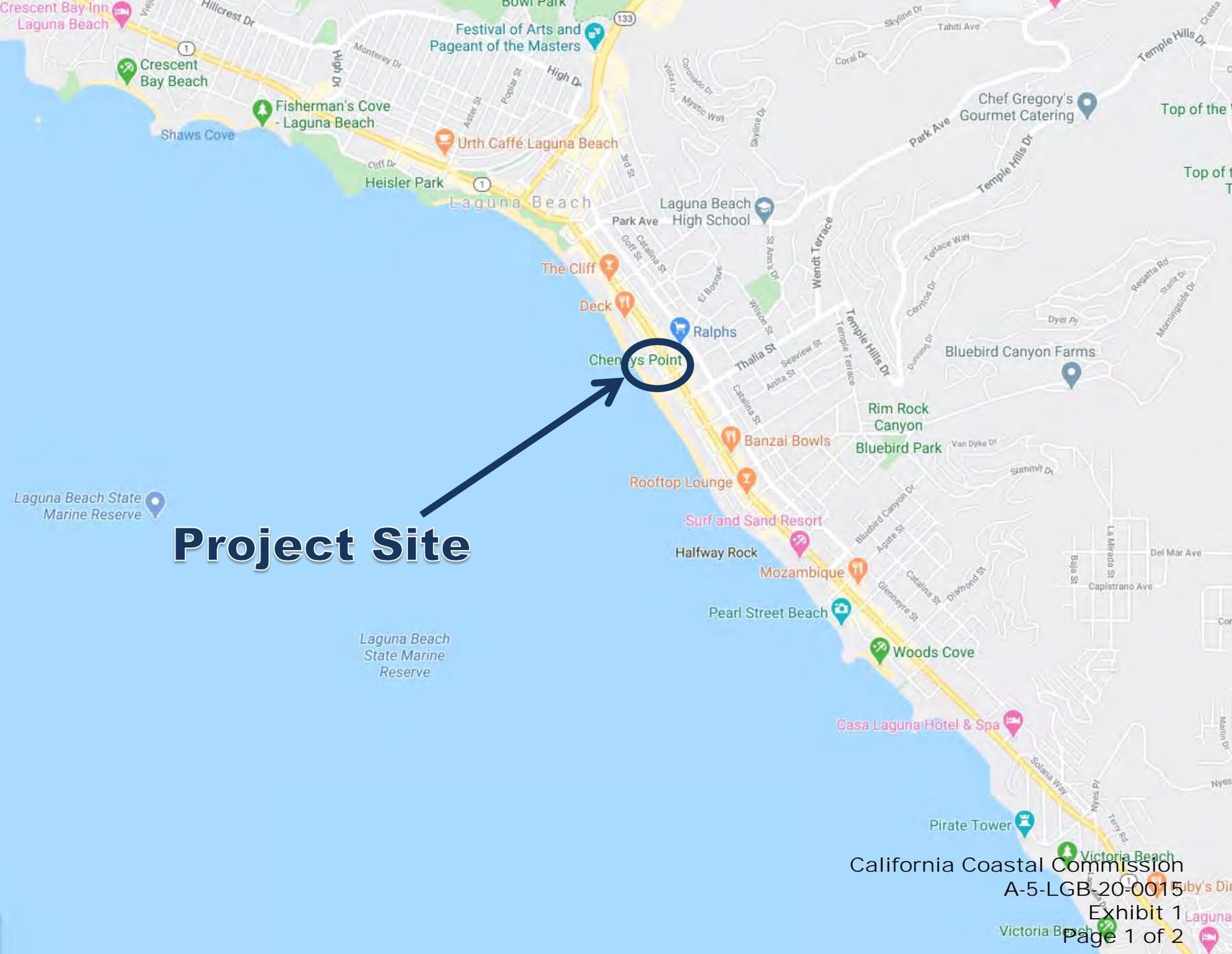
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Project Site

Chenoy's Point

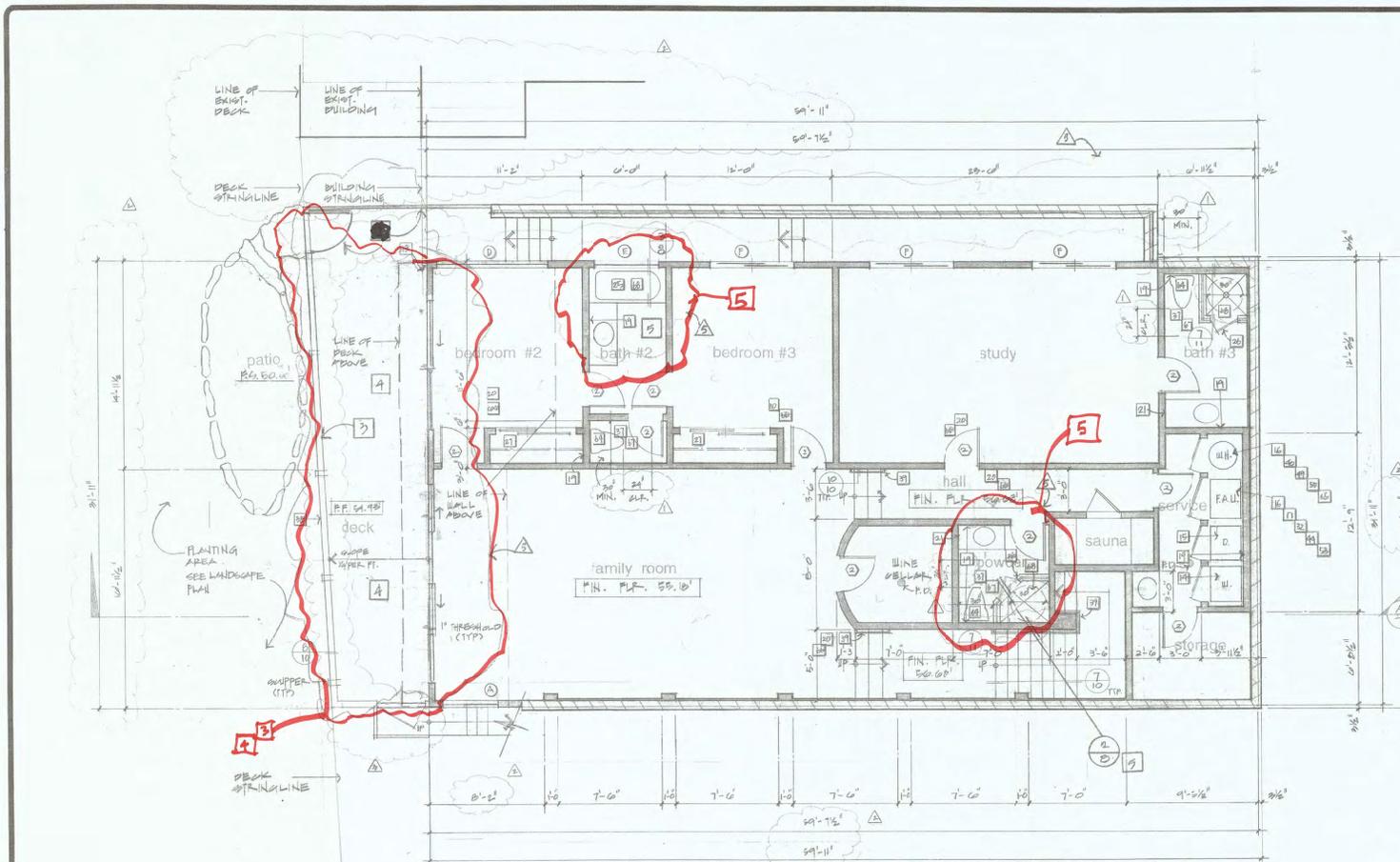


Coast Highway

Thalia Street

Unpermitted stairs

Project Site



lower level floor plan

LUMBER AREA: 197.07 ±
 DECK AREA: 150.50 ±
 BTO AREA: 418.00 ±

scope of work :

- 1 existing doors to be replaced in kind
- 3 existing glass railing to be replaced in kind, 42" in height to meet current code.
- 4 supporting 20% ± damaged structural joists at main level deck to be replaced in kind, ceiling, gyp brd., stucco and plwd. at deck area. deck to be re-tiled in kind as well.
- 5 existing bath #2 and powder rm. at lower level to be re-iled.

- FLOOR PLAN NOTES
- 10 10' x 21' DOUBLE SINK WITH GARAGE DISPOSAL.
 - 11 BUILT-IN DISHWASHER (VERIFY DIMENSIONS WITH MANUFACTURER'S SPECIFICATIONS)
 - 12 BUILT-IN TRASH COMPACTOR (VERIFY DIMENSIONS WITH MANUFACTURER'S SPECIFICATIONS)
 - 13 3" CLEAR REFRIGERATOR SPACE AND ROUGH PLUMBING FOR ICE MAKER
 - 14 PROVIDE HOT AND COLD WATER, WASTE FOR WASHER
 - 15 PROVIDE 6" DIAMETER DRYER VENT TO OUTSIDE AIR
 - 16 PROVIDE 1" HIGH WOOD FRAMED PLATFORM AT WATER HEATER AND/OR P.U.
 - 17 FORCED AIR UNIT (F.A.U.): PROVIDE COMBUSTION AIR PER ENERGY CALCULATIONS. CONDENSATE LINE TO APPROVED DRAIN PIPE
 - 18 RETURN AIR GRILL FOR P.A.U.
 - 19 6" PLUMBING WALL (SEE CARPENTRY DIVISION OF GENERAL NOTES FOR NOTCHING AND BORING OF STUDS)
 - 20 SMOKE DETECTOR AS PER U.B.C. REQUIREMENTS
 - 21 RECESSED MEDICINE CABINET BY BUILDER
 - 22 PROVIDE DEAD BOLT AT TOP OF INACTIVE DOOR (INTERIOR)
 - 23 FIREPLACE BY OWNER MODEL I.C.B.O. # OR EQUAL
 - 24 20" MINIMUM FIREPLACE HEARTH
 - 25 30" X 60" CAST IRON TUB/SHOWER WITH CERAMIC TILE WAINSCOT TO 7" ABOVE FINISH FLOOR. PROVIDE COATS PORTLAND CEMENT PLASTER AND SELF ADHESIVE TO WALLS (3 WALLS)
 - 26 SHATTER-RESISTANT ENCLOSURE. LAMINATED FULLY TEMPERED OR WIRE GLASS
 - 27 PROVIDE 1 SHELF AND 1 POLE
 - 28 PROVIDE 1 SHELF AND 2 POLES
 - 29 PROVIDE 2 SHELVES AND 1 POLE
 - 30 PROVIDE 5/8" TYPE "X" DRYWALL AT EXPOSED ISABLE WALLS UNDER STAIRS AT BOTTOM OF STAIR STRINGERS AND ADJACENT WALLS
 - 31 GARAGE WALLS, CEILING FROM FLOOR TO ROOF SHALL BE PROTECTED WITH 5/8" TYPE "X" DRYWALL OR APPROVED EQUAL
 - 32 SUPPLY AIR DUCT CHASE PROVIDE NECESSARY DRAFT STOP
 - 33 PROVIDE SELF-CLOSING DOOR DEVICE
 - 34 2 X 6 BESAWN JAMBS TYPICAL
 - 35 WIRE FOR AUTOMATIC GARAGE DOOR OPERATOR, SEE MANUFACTURER'S SPECIFICATIONS
 - 36 VENT TO OUTSIDE AIR
 - 37 EXHAUST FAN TO PROVIDE A MINIMUM OF 3 AIR CHANGES PER HOUR
 - 38 GUARDRAILS: 36" HIGH
 - 39 HANDRAIL: 34" - 38" HIGH
 - 40 PROVIDE 3/4" DIA. PLUMBING LINES EXTENDING FROM THE WATER HEATER TO THE MOST ADVERSE LOCATION ON THE ROOF FOR FUTURE INSTALLATION OF GAS PANELS. THE PLUMBING LINES SHALL BE CAPED AT EACH END AND BE FLASHED WHERE THEY PENETRATE THE ROOF. PROVIDE 110 VOLT ELECTRIC DUXILE OUTLET WITHIN 6 FEET OF WATER HEATER LOCATION
 - 41 BUILDING TO BE PREWIRED FOR CABLE TV. (CITY POLICY)
 - 42 ELECTRICAL SYSTEM GROUND TO BE APPROVED PER NEC ART. 250-81
 - 43 ROSE BIBBS AND LAWN SPRINKLERS SHALL HAVE APPROVED BACKFLOW PREVENTION DEVICES
 - 44 GAS VENTS AND NONCOMBUSTIBLE PIPING PASSING THROUGH THREE FLOORS OR LESS SHALL BE EFFECTIVELY DRAFT STOPPED AT EACH FLOOR OR CEILING
 - 45 ELECTRIC SERVICE PANEL LOCATION 100 AMPS
 - 46 GAS METER LOCATION
 - 47 A SMOKE DETECTOR SHALL BE INSTALLED IN THE BASEMENT OF DWELLING UNITS HAVING A STAIRWAY WITH OPENING FROM THE BASEMENT INTO THE DWELLING. EACH DETECTOR SHALL BE CONNECTED TO A SOUNDING DEVICE OR OTHER DETECTOR TO PROVIDE AN ALARM WHICH WILL BE AUDIBLE IN THE SLEEPING AREA. SECTION 1210
 - 48 COMBUSTION AIR TO BE LOCATED IN CEILING TO EXTERIOR FOR UPPER AND ON WALL FOR LOWER 19" - 0" COMPLIANCE
 - 49 PROVIDE SOURCE FOR COMBUSTION AIR TO EXTERIOR. BURNING WATER HEATER, IF WALL OPENING IN AN ENCLOSURE ARE USED, AT LEAST ONE HALF OF THE REQUIRED OPENING AREA SHALL EXTEND INTO THE UPPER TWELVE INCHES OF THE ENCLOSURE AND ONE HALF WITHIN THE LOWER TWELVE INCHES. UPC, SECTION 1307
 - 50 WATER HEATER TAP VALVE WITH LINE TO EXTERIOR
 - 51 PUMP EXHORT UNIT
 - 52 30" X 40" CRAWL ACCESS
 - 53 BISH CLARENCE NOTE THAT PER TO THE COMMENCEMENT OF ANY CONSTRUCTION ALL APPLICABLE PROVISIONS PERTAINING TO THE CLEARANCE CONTAINED IN THE UNIFORM CODE SHALL BE FULLY COMPLIED WITH TO THE SATISFACTION OF THE FIRE DEPARTMENT OF THE CITY
 - 54 LINES FOR FUTURE SOLAR SHALL BE INSTALLED WHEN IN UNCONDITIONED SPACE. TITLE 24
 - 55 NOTE EXTERIOR DOORS AND WINDOWS INCLUDING GARAGE DOORS, SHALL COMPLY WITH THE BUILDING DEPARTMENT CODES ADOPTED BY THE CITY. SECURITY DOORS AND WINDOWS ON BUILDING ELEMENTS WITH AN "S" MARK.
 - 56 NOTE BACKWATER VALVE TO SEWER MAINS SERVING PICTURES BELOW ELEVATIONS OF GRADE AT EXTERIOR. WHERE SEWER LEAVES PROPERTY AT STREET, 16" W/45° BACKWATER VALVE ON BRANCHES OF MAIN LINE SERVED BY EXHORT PUMP. (TO BE INSTALLED BY OWNER) PICTURE IS BELOW THE SEWER MAINLINE SHALL COMPLY WITH TITLE 24 AND 1991 USC, UMC, AND UPC, AND 1991 NEC.
 - 58 FAU CLOSET OR ALCOVE MUST BE 12 INCHES WIDER THAN THE FIREPLACE OR PURCHASE BEING INSTALLED. UBC SECTION 704
 - 59 ELECTRICAL OUTLETS SHALL BE INSTALLED IN ACCORDANCE WITH NEC ARTICLE 210-52
 - 60 LIGHTING OUTLETS CONTROLLED IN A WALL SWITCH SHALL BE PROVIDED IN ACCORDANCE WITH NEC ARTICLE 210-70
 - 61 LIGHT FIXTURES INSTALLED IN CLOTHES CLOSETS SHALL COMPLY WITH NEC ARTICLE 410-8
 - 62 CONVENIENCE OUTLETS IN BATHROOMS, KITCHEN COUNTER TOPS) WITHIN 6 FEET OF THE KITCHEN SINK, OUTDOORS AND ENGARAGES AND BASEMENTS (OTHER THAN FOR LAUNDRY AND SHED-AR EQUIPMENT) SHALL BE GFI PROTECTED. NEC ART. 210-8
 - 63 WATER SUPPLY TO BE 1" DIAMETER MIN. PER UPC, SECTION 109.00
 - 64 WATER CLOSET SHALL BE LOW FLUSH TYPE 1.6 GALLONS PER FLUSH
 - 65 WATER HEATER SHALL BE SEISMICALLY BRACED TO RESIST SEISMIC FORCES
 - 66 SLOPE DETECTOR TO BE PERMANENTLY SHIPLED W/ BATTERY BACK-UP AND IT SHALL SOUND AN ALARM AUDIBLE IN ALL SLEEPING AREAS OF THE LIGHT
 - 67 THE DISCHARGE POINT FOR EXHAUST AIR SHALL BE AT LEAST 2' FROM ANY OPENING INTO THE BLDG.
 - 68 MIN. 6'-0" NON-ABSORBENT SURFACE AT SHOWER AND TUB AREA.

REVISIONS	BY
△ JUN. 2019	AS
△ OCT. 1916	AS
△ NOV. 1910	AS
△ MAR. 1917	GH
△ JUN 2019	H.S.

lower level floor plan

COMMENTS: REVISIONS
 BOE SOUTH OF EAST HIGHLAND
 LINDA BEACH, CA

HUNDO SOLID
 S company
 design studio
 410 Broadway, San Francisco, CA 94111
 415.777.1111

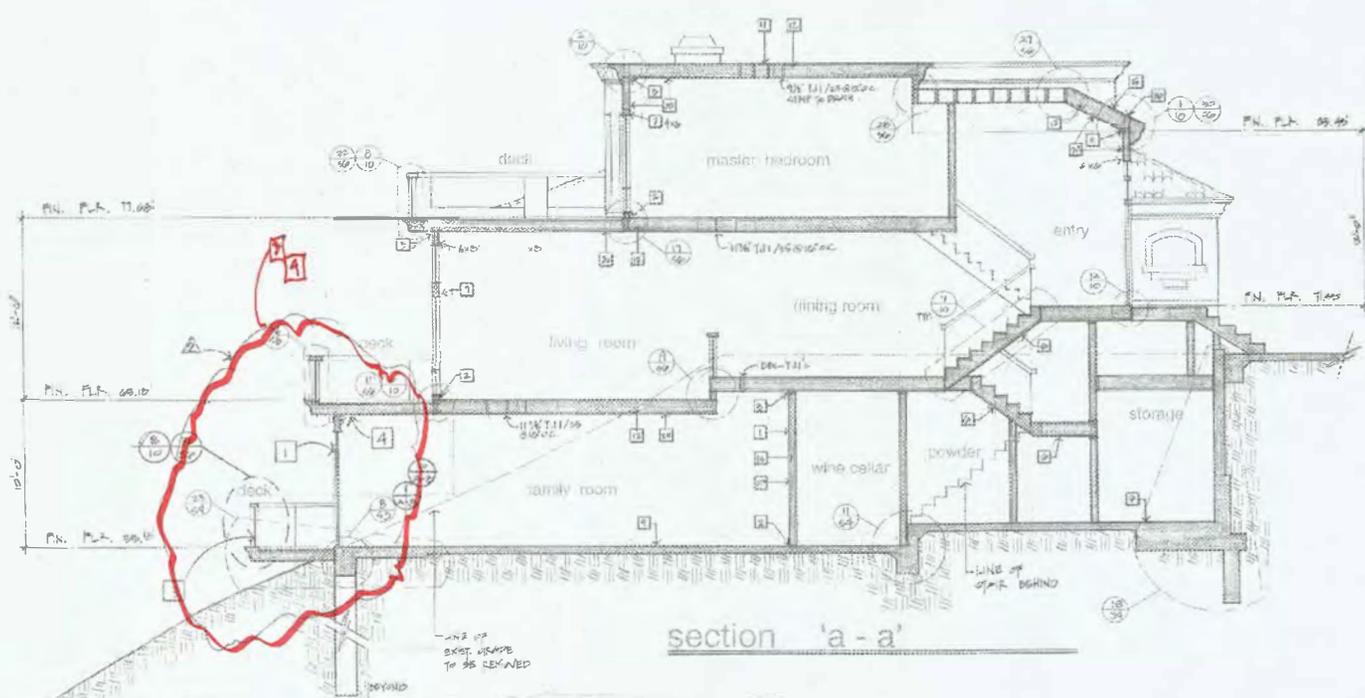
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CHECKED	
DATE	
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SHEET	2

REVISIONS	BY
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2	2/21/20
3	2/21/20
4	2/21/20
5	2/21/20
6	2/21/20
7	2/21/20

SECTION 'a-a'
 FRONT PORCH TERRACE
 505 SOUTH COMPTON AVENUE
 LAUREL DERRY, CA

HUGO
 SLOAN
 & COMPANY
 ARCHITECTS
 4100 SHERBORN AVENUE
 SUITE 200
 LAUREL DERRY, CA 94543

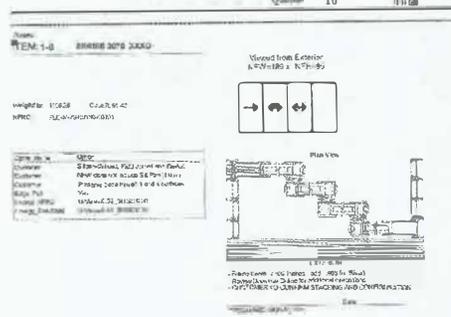
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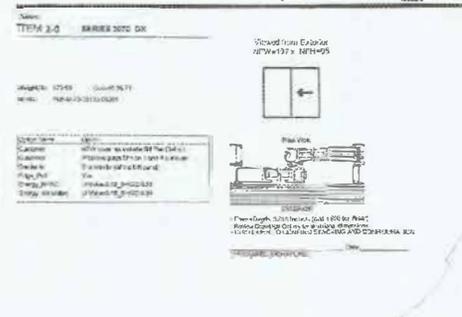
section 'a-a'

- WINDOW SYMBOLS**
- 1 1/4" x 6" DOUBLE GLAZED
 - 2 1/4" x 6" DOUBLE GLAZED
 - 3 1/4" x 6" DOUBLE GLAZED
 - 4 1/4" x 6" DOUBLE GLAZED
 - 5 1/4" x 6" DOUBLE GLAZED
 - 6 1/4" x 6" DOUBLE GLAZED
 - 7 1/4" x 6" DOUBLE GLAZED
 - 8 1/4" x 6" DOUBLE GLAZED
 - 9 1/4" x 6" DOUBLE GLAZED
 - 10 1/4" x 6" DOUBLE GLAZED
 - 11 1/4" x 6" DOUBLE GLAZED
 - 12 1/4" x 6" DOUBLE GLAZED
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 - 16 1/4" x 6" DOUBLE GLAZED
 - 17 1/4" x 6" DOUBLE GLAZED
 - 18 1/4" x 6" DOUBLE GLAZED
 - 19 1/4" x 6" DOUBLE GLAZED
 - 20 1/4" x 6" DOUBLE GLAZED

MEETWOOD CERTIFIED PROPOSAL
ONE STOP WINDOWS & DOORS (FOR
 PROPOSAL #10, DETAIL REPORT version 1
 (Please refer to the contract for details)



MEETWOOD CERTIFIED PROPOSAL
ONE STOP WINDOWS & DOORS (FOR
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- scope of work:**
- 1 existing doors to be replaced in kind
 - 2 existing glass railing to be replaced in kind, 42" in height to meet current code.
 - 3 supporting 20% ± damaged structural joists at main level deck to be replaced in kind, ceiling, gyp brd., stucco and plwd. at deck area. deck to be re-tiled in kind as well.
 - 4 existing bath #2 and powder rm. at lower level to be re-tiled.



**CITY OF LAGUNA BEACH
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF MEMORANDUM**

HEARING DATE: January 9, 2020
TO: DESIGN REVIEW BOARD
CASE: Design Review 19-5449
Coastal Development Permit 19-5450
APPLICANT: Larry Nokes, Attorney
(949) 376-3500
lnokes@nokesquinn.com
LOCATION: Contursi Residence
865 (877) South Coast Highway
APN 644-024-03

**ENVIRONMENTAL
STATUS:**

In accordance with the California Environmental Quality Act (CEQA) Guidelines, the project is categorically exempt pursuant to Section 15301, Class 1(a) (Existing Facilities).

PREPARED BY: Nancy Csira, Zoning Administrator
(949) 497-0332
ncsira@lagunabeachcity.net

REQUESTED ACTION: Approval of Design Review 19-5449 and Coastal Development Permit 19-5450 to allow for improvements to a single-family dwelling in the R-3 (Residential High Density) zone on an oceanfront property. The scope of work includes replacing exterior windows/doors within existing openings with associated stucco repair and patching; repairing the oceanfront middle level deck in-kind (20% damaged deck/ceiling joists, misc. stucco patching, replace plywood deck, waterproof membrane, and tile deck surface in-kind); installing code compliant 42-inch high glass deck railings; and re-tiling bathroom #2 and the powder room. The applicant also requests after-the-fact design review and coastal development permit for a City issued building permit (RBP 16-1978) for replacement of existing sliding doors within the existing opening. Foundation work is not part of the request.

BACKGROUND: The subject site is located on the ocean side of South Coast Highway between St. Anns Drive and Thalia Street on a split zoned C-1 and R-3 parcel. The R-3 zoned portion of the property fronts the ocean and is improved with a single-family dwelling that was constructed in 1996. On April 4, 1996, the Design Review Board (DRB) granted approval of Design Review 96-006 and Variance 6289 subject to the conditions that the approval be for the building only without the patio and with no encroachment onto the slope area, a construction fence be placed at the top of the slope along the length of the property, a revised landscape and parking plan be submitted, samples of the color of the building, and roof color be submitted at the next hearing;

and that approval of the Coastal Development permit 96-03 be returned at the meeting of April 18, 1996. On April 18, 1996, the DRB granted approval of Coastal Development Permit 96-03 subject to the condition that all recommendations and conclusions of the Geotechnical Report of Stoney Miller dated November 2, 1989 be adhered to. The approval included the revised landscape plan and reconfirmed approval of Design Review 96-006 and Variance 6289 from the prior meeting.

The DRB approved a similar application on August 8, 2019. The application was appealed to the California Coastal Commission and then was subsequently withdrawn to eliminate the proposed fence and gate. The applicant is requesting repair and maintenance of the west facing doors and windows, and a portion of the mid-level deck. The minutes and staff report of August 8, 2019 are attached along with the

SITE CHARACTERISTICS: At the time the Design Review Board (DRB) approved a coastal development permit, variance, and design review for construction of the new single-family home, the slope to the beach did not qualify as a bluff because it was not a 45 percent slope. Pursuant to LBMC 25.50.004(4)(a) (ii), (b), and (c), the director of community development and the DRB considered the stringline as the oceanfront setback. According to the 1993 Coastal Commission certified Post-LCP Certification Permit and Appeal Jurisdiction map, the project site is located within the appealable area of the Coastal Zone.

PROPOSED PROJECT: The proposed project involves replacing exterior windows/doors within existing openings with associated stucco repair and patching; repairing the oceanfront middle level deck in-kind (20% damaged deck/ceiling joists, misc. stucco patching, replace plywood deck, waterproof membrane, and tile deck surface in-kind); installing code compliant 42-inch high glass deck railings; and re-tiling bathroom #2 and powder room. The applicant also requests an after-the-fact design review and coastal development permit for a City issued building permit (RBP 16-1978) for replacement of existing sliding doors within the existing opening in 2016. Foundation work is not part of the request. The proposed project is not considered a major remodel because the work is repair and replacement of elements of the permitted home where water intrusion has damaged the west facing exterior doors, windows, and portions of the decks. The California Coastal Commission certified Land Use 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. As such, the project is not a major remodel.

STAFF ANALYSIS: Pursuant to LBMC Section 25.07.008(A)(2), a Coastal Development Permit (CDP) is required because the scope of work is within 50 feet of a coastal bluff edge as currently defined by the City Land Use Element. The ocean front setback for the original home constructed in 1996 was determined to be the deck and building stringlines. At that time, a bluff was identified when the slope from the pad to the beach was 45 degrees or steeper. Pursuant to the recent Land Use Element (LUE) definition, the home is built within the bluff. The proposed project is considered repair and replacement of the existing home with no expansion other than the increase in railing height from 36 inches to 42 inches. Pursuant to LBMC Section 25.07, the proposed project requires a CDP to ensure compliance with the certified Local Coastal Program. The following criteria shall be incorporated into the review of all applications for coastal development permits:

(1) The proposed development will not encroach upon any existing physical accessway legally utilized by the public or any proposed public accessway identified in the adopted local coastal program land use plan;

The City's General Plan and Local Coastal Plan Map identifies a primary arterial highway (South Coast Highway) to the northeast and a public beach to the southwest. The closest public accessway to the beach is located 100 feet to the south of the project site at the Thalia Street end. The proposed development will be limited to its site boundaries and will not encroach upon any existing physical accessways. Therefore, this criterion can be made.

(2) The proposed development will not adversely affect marine resources, environmentally sensitive areas, or archaeological or paleontological resources;

The proposed repair and replacement improvements do not require any foundation work. As such, there is no potential effect on marine resources, environmentally sensitive area or archaeological or paleontological resources. This criterion can be made.

(3) The proposed development will not adversely affect recreational or visitor-serving facilities or coastal scenic resources;

There are no recreational or visitor serving facilities within the project site. Therefore, this criterion can be made.

(4) The proposed development will be sited and designed to prevent adverse impacts to environmentally sensitive habitats and scenic resources located in adjacent parks and recreation areas, and will provide adequate buffer areas to protect such resources;

The project site is not considered an Environmentally Sensitive Habitat as defined by the Coastal Act. While the project site is located adjacent to Thalia Street beach, the proposed project is limited to repair and/or replacement of permitted elements from when the home was constructed in 1996 and no foundation work is proposed. Therefore, the project will not have an adverse impact.

(5) The proposed development will minimize the alterations of natural landforms and will not result in undue risks from geological and erosional forces and/or flood and fire hazards;

The lot was developed in 1996. The proposed scope of work does not include any foundation work and will not create undue risks from geological, erosional, flood or fire hazards, nor impact the coastal bluff. Thus, impacts to any natural landforms are not anticipated for the life of the structure.

(6) The proposed development will be visually compatible with the character of surrounding areas, and where feasible, will restore and enhance visual quality in visually degraded areas;

This criterion can be made as the proposed work is within the existing permitted structure and no foundation work or grading is proposed.

(7) The proposed development will not have any adverse impacts on any known archaeological or paleontological resource;

There are no known resources on the site. The proposed site was graded when the lot was originally developed in 1996, and the proposed improvements are located within the existing structural footprint. Since no foundation work or grading is proposed, there will not be any adverse impacts on any known or unknown archaeological or paleontological resources.

(8) The proposed development will be provided with adequate utilities, access roads, drainage, and other necessary facilities; and

The existing site is developed with a single-family residence with existing connections to necessary utilities, drainage, and other facilities. The proposed repair and replacement project do not intensify the use of the property and the City has determined that adequate utilities and infrastructure exist. Therefore, this criterion can be made.

(9) Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.

As previously discussed in criterion no. 8 above, the site is developed with a single-family residence and public services are already available. Therefore, this criterion can be made.

Pursuant to LBMC Section 25.07.012(G), a coastal development permit application may be approved or conditionally approved only after the Design Review Board has reviewed the development project and made all the following findings.

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

General Plan: Table 1 below identifies applicable policies and actions of the General Plan.

TABLE 1: GENERAL PLAN GOALS & POLICIES	CONFORM (Y, N OR N/A)
Land Use Element (LU) Policy 2.10 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.	N/A

TABLE 1: GENERAL PLAN GOALS & POLICIES	CONFORM (Y, N OR N/A)
<p>LU Element Action 4.3.1 Continue to pursue dedication and acceptance of beach access and other offers-to-dedicate throughout the City.</p> <p>LU Element 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.</p> <p>LU Element Action 4.3.3 Discourage the use of unimproved public accessways to coastal areas by vehicles unless necessary for reasons of public safety.</p>	N/A
<p>LU Element Policy 5.4 Preserve and maintain the residential character and livability of neighborhoods adjacent to commercial districts and/or individual businesses by regulating and minimizing impacts from commercial activities, including but not necessarily limited to deliveries, amplified music, light trespass, alcohol-related impacts, and employee or valet parking. Establishment of any new preferential parking districts in the coastal zone shall be prohibited.</p>	N/A
<p>LU Element Action 6.9.4 Work with private landowners and acquire public access rights necessary to provide a trail connection to the coast from Aliso Creek Regional Park for connectivity to the California Coastal Trail (CCT).</p>	N/A
<p>LU Element Action 7.3.2 Review all applications for new development to determine potential threats from coastal and other hazards.</p> <p>LU Element Action 7.3.3 Design and site new development to avoid hazardous areas and minimize risks to life and property from coastal and other hazards.</p>	Yes, the proposed repair and replacement project does not involve any foundation work or grading
<p>LU Element Action 7.3.4 Require new development to assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic stability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.</p>	Yes, the proposed repair and replacement project does not involve any foundation work or grading. The proposed project does not require protective devices.
<p>LU Element Action 7.3.5 Prohibit development on oceanfront bluff faces, except public improvements providing public access, protecting coastal resources, or providing for public safety. Permit such improvements only when no feasible alternative exists and when designed and constructed to minimize landform alteration of the oceanfront bluff face, to not contribute to further erosion of the oceanfront bluff face, and to be visually compatible with the surrounding area to the maximum extent feasible.</p>	Yes, no development is proposed on oceanfront bluff faces.
<p>LU Element Action 7.3.6 Require new development on oceanfront blufftop lots to incorporate drainage improvements, removal of and/or revisions to irrigation systems, and/or use of native or drought-tolerant vegetation into the design to minimize threats to oceanfront bluff recession.</p>	Yes, the proposed project is not new development.

TABLE 1: GENERAL PLAN GOALS & POLICIES	CONFORM (Y, N OR N/A)
<p>Land Use Element Action 7.3.8 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.</p>	<p>The existing residence is on a bluff site and it is legal nonconforming. Pursuant to the LUE, the bluff is now located at the stringline/building pad. The proposed legalization involves like for like replacement of west facing exterior doors and windows, and portions of the mid-level deck at the existing legal nonconforming structure. The 1996 DRB approval was conditioned to not allow any development on the sloped portion of the site. A stairway providing access from the home down to the beach was has been installed without the benefit of a coastal development permit of building permit.</p>
<p>LU Element Action 7.3.9 Ensure that new development, major remodels and additions to existing structures on oceanfront and oceanfront bluff sites do not rely on existing or future bluff/shoreline protection devices to establish geologic stability or protection from coastal hazards.</p>	<p>Yes, the repair/maintenance project is considered new development and is not a major remodel or an addition. The railing height will be increased from 36 inches to 42 inches as required by the building code. The scope of work also includes in-kind repair and replacement of west facing windows and doors, and portions of the deck as noted above.</p>
<p>LU Element Action 7.3.10 Allow oceanfront and oceanfront bluff homes, commercial structures, or other principal structures, that are legally nonconforming as to the oceanfront and/or oceanfront bluff edge setback, to be maintained and repaired; however, improvements that increase the size or degree of nonconformity, including but not limited to development that is classified as a major remodel pursuant to the definition in the Land Use Element Glossary, shall constitute new development and cause the pre-existing nonconforming oceanfront or oceanfront bluff structure to be brought into conformity with the LCP.</p>	<p>The LU defines an oceanfront bluff edge or coastal bluff edge define 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 area where fill has been placed near or over the bluff edge, even if buried beneath fill, shall be taken to be the bluff edge.</p> <p>The home is a legal nonconforming structure that was built in 1996 when the oceanfront setback was determined to be the deck and building stringlines. The proposed project is the maintain and repair or replace permitted elements including west facing windows, doors, and portions of the mid-level deck.</p>
<p>LU Element Action 7.3.11 Require all coastal development permit applications for new development on an oceanfront or on an oceanfront bluff property subject to wave action to assess the potential for flooding or damage from waves, storm surge, or seiches, through a wave uprush and impact report prepared by a licensed civil engineer with expertise in coastal processes. The conditions that shall be considered in a wave uprush study are: a seasonally eroded beach combined with long-term (75 years) erosion; high tide conditions, combined with long-term (75 year) projections for sea level rise; storm</p>	<p>The site is an oceanfront/bluff property. A wave uprush and impact report or coastal engineering report has not been requested as the project does not require foundation work or grading and is only repair, replacement, or maintenance of the existing permitted development.</p>

TABLE 1: GENERAL PLAN GOALS & POLICIES	CONFORM (Y, N OR N/A)
<p>waves from a 100-year event or a storm that compares to the 1982/83 El Niño event.</p> <p>OSC Policy 1.5Q Any development application for shoreline construction shall be reviewed with respect to the criteria contained in the Guidelines for Shoreline Protection, including the effects of beach encroachment, wave reflection, reduction in seacliff sand contribution, end effects and aesthetic criteria.</p>	
<p>LU Element Action 7.3.12 Site and design new structures to avoid the need for shoreline and/or oceanfront bluff protective devices during the economic life of the structure (75 years).</p>	<p>Yes, no new structures are proposed. The project is within the existing permitted structure and there is no need for protective devices because no grading or foundation work is proposed.</p>
<p>LU Element Action 7.3.13 Limit the use of shoreline/bluff protective devices to the minimum required to protect existing development in danger of erosion. Site and design any such protective devices as far landward as possible. "Existing development" for purposes of this policy shall consist only of a principal structure, e.g. residential dwelling, required garage, or second residential unit, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping etc. No shoreline/bluff protective device shall be allowed for the sole purpose of protecting an accessory structure.</p>	<p>Yes, no protective devices exist on site and none are proposed.</p>
<p>LU Element Policy 7.4 Ensure that development, including subdivisions, new building sites and remodels with building additions, is evaluated to ascertain potential negative impacts on natural resources. Proposed development shall emphasize impact avoidance over impact mitigation. Any mitigation required due to an unavoidable negative impact should be located on-site, where feasible. Any off-site mitigation should be located within the City's boundaries close to the project, where feasible.</p> <p>LU Element Action 7.4.2 Continue preparation of initial studies, pursuant to the California Environmentally Quality Act (CEQA), for any proposed development, including single-family residences located within environmentally sensitive areas (Same as Action 10.3.1).</p>	<p>Yes, the project site is identified as a coastal environmentally sensitive area. However, the proposed project is within the disturbed site and permitted structural footprint. In accordance with the CEQA Guidelines, staff determined the project is categorically exempt pursuant to Section 15301, Class 1(a) (Existing Facilities).</p>
<p>LU Element Policy 7.7 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).</p>	<p>Yes, there will be no changes to the existing runoff as the proposed work is within the permitted structure.</p>
<p>LU Element Policy 10.2 Design and site new development to protect natural and environmentally sensitive resources such as areas of unique scenic quality, public views, and visual compatibility with surrounding uses and to minimize landform alterations. (Same as Policy 7.3)</p> <p>LU Element Action 10.2.1 Adopt standards that require new development and related improvements to be located on the most suitable areas of the site to maximize safety and the preservation of sensitive resources.</p> <p>LU Element Action 10.2.5 On bluff sites, requires applications where applicable, to include a</p>	<p>Yes, no accessory structures are proposed. The proposed project is located in ESA, however, no impacts are contemplated because the work is within the existing structure and does not require structural foundations.</p>

TABLE 1: GENERAL PLAN GOALS & POLICIES	CONFORM (Y, N OR N/A)
<p>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.</p> <p>LU Element Action 10.2.6 Require all new development located on an oceanfront bluff top to be setback from the oceanfront bluff edge a sufficient distance to ensure stability, ensure that it will not be endangered by erosion, and to avoid the need for protective devices during the economic life of the structure (75 years). Such setbacks must take into consideration expected long-term bluff retreat over the next 75 years, as well as slope stability. The predicted bluff retreat shall be evaluated considering not only historical bluff retreat data, but also acceleration of bluff retreat made possible by continued and accelerated sea level rise, future increase in storm or El Nino events, and any known site-specific conditions. To assure stability, the development must maintain a minimum factor of safety against land sliding of 1.5 (static) or 1.2 (pseudo static, $k=0.15$ or determined through analysis by the geotechnical engineer) for the economic life of the structure.</p> <p>LU Element Action 10.2.7 Require all new development located on oceanfront bluffs to be sited in accordance with the stringline but not less than 25 feet from the bluff edge. This requirement shall apply to the principal structure and major accessory structures such as guesthouses and pools that require a structural foundation. The setback shall be increased where necessary to ensure geologic safety and stability of the development.</p> <p>LU Element Action 10.2.8 On oceanfront bluffs, require new minor accessory structures such as decks, patios and walkways that do not require structural foundations to be sited in accordance with stringline but not less than 10 feet from the bluff edge. Require accessory structures to be removed or relocated landward when threatened by erosion, geologic instability, or other coastal hazards.</p>	
<p>OSC Policy 1.5A The shoreline environment should remain in a natural state unless existing, substantial improvements are in imminent danger from erosion, flooding, or collapse. "Imminent Danger" is defined as a short-range threat from the immediate to a maximum range of three (3) to five (5) years. A threat presented in the context of geologic time shall not constitute imminent danger.</p>	<p>There is currently no shore protective device on site and no new device is proposed.</p>

TABLE 1: GENERAL PLAN GOALS & POLICIES	CONFORM (Y, N OR N/A)
<p>OSC Policy 4F Water Conservation and Native Plants – Ensure that development encourages water conservation, efficient irrigation practices and the use of native or drought tolerant non-invasive plants appropriate to the local habitat to minimize the need for fertilizer, pesticides herbicides and excessive irrigation. Prohibit the use of invasive plants and require native plants appropriate to the local habitat where the property is in or adjacent to Environmentally Sensitive Areas (ESAs).</p> <p>OSC Policy 8N Encourage the preservation of existing drought-resistant, native vegetation and encourage the use of such vegetation in landscape plans.</p>	Yes, no changes to the existing landscaping is proposed.
<p>OSC Policy 7K 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 recontouring and replanting where the natural landscape has been disturbed.</p>	N/A
<p>OSC Policy 8C Identify and maintain wildlife habitat areas in their natural state as necessary for the preservation of species.</p> <p>OSC Policy 8E - Protect the remaining stands of native Coastal Live Oak (<i>Quercus Agri folia</i>) and Western Sycamore (<i>Platanus racemosa</i>) located in upper Laguna and El Toro Canyons, and in Top of the World Park as a unique and irreplaceable resource.</p>	N/A
<p>OSC Policy 13H - Preserve public views of coastal and canyon areas from ridgelines.</p>	N/A
<p>Safety Element Policy 3I - Require the use of drought-resistant vegetation with deep root systems where appropriate for safety reasons in new development projects to reduce the potential for over-irrigation in the major canyons, high terraces and bluffs of the coastal fringe areas.</p>	N/A

Local Coastal Program (LCP): The City’s Coastal Development Program (LCP) constitutes all documents shown in Table 2 below.

TABLE 2: LOCAL COASTAL PROGRAM	CONFORM (Y, N OR N/A)
General Plan Land Use Map, excluding Blue Lagoon and Three Arch Bay	Yes, the proposed use is consistent with the underlying land use designation of Village Medium Density.
Land Use and Open Space/Conservation General Plan Elements	Yes, refer to Table 1 above.
Zoning Map	Yes, the proposed use is consistent with the underlying zoning designation of R-3.
Downtown Specific Plan	Yes, the site is not located within the Downtown Specific Plan.
Laguna Canyon Annexation Specific Plan	Yes, the site is not located within the Laguna Canyon Annexation Specific Plan.

TABLE 2: LOCAL COASTAL PROGRAM	CONFORM (Y, N OR N/A)
Title 25 (Zoning Code)	Yes, refer to the Project Summary Table on the plan set.
Chapter 12.08, Preservation of Heritage Trees Ordinance	Yes, the proposed landscape plan does not include removal of any heritage trees.
Chapter 14.78 Geology Reports	A geotechnical report was not requested because no grading or foundation work is proposed.
Title 21 (Plats and Subdivision)	Yes, the project does not involve a subdivision.
Title 22 (Excavation and Grading)	Yes, not applicable because no excavation or grading is proposed.
Shoreline Protection Guidelines (as adopted by Resolution 88.43)	There is currently no shore protective device on site and no new device is proposed.
Design Guidelines for Hillside Development (as adopted by Resolution 89.104)	Yes, the project, does not change the existing appearance of the permitted home.
South Laguna Community Design and Landscape Guidelines (as adopted by Resolution 89.104)	Yes, the project is not located in South Laguna.
Fuel Modification Guidelines (of the Safety General Plan Element)	Yes, not applicable.
Summer Festival Parking Agreements	Yes, not applicable.
2004 LCP Amendment that includes Title 16 (Water Quality Control)	Yes, not applicable.
2010 Design Guidelines – A Guide to Residential Development	Yes, refer to the discussion under the Design Review heading below.

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

The site is located between the sea and the first public road paralleling the sea (South Coast Highway). The project conforms with the certified LCP as evidenced in Table 2 above. The project conforms with all applicable policies of the Chapter 3 of the Coastal Act, including public access; recreation; marine environment; land resources; and development. Therefore, this finding can be made.

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

In accordance with the California Environmental Quality Act (CEQA) Guidelines, the project is categorically exempt pursuant to Section 15301, Class 1(a) (Existing Facilities), which allows repair, permitting, and minor alterations to existing private structures that involve negligible or no expansion of use beyond that of which is existing. Furthermore, structural plans have been provided that confirm that no foundation work is required. The property is located within an environmentally sensitive area, however, there is no evidence

of any unusual environmental conditions. Therefore, an exception to the exemption does not apply.

Design Review

Pursuant to LBMC Section 25.05.040(H), physical improvements, and site developments subject to design review shall be designed and located in a manner which best satisfies the intent and purpose of design review, the city's village atmosphere and the design review criteria. Each of these criteria are further clarified in a publication named "Design Guidelines" that has been developed by the city to assist designers in understanding the following design review criteria. These guidelines complement the zoning regulations by providing conceptual examples of potential design solutions and design interpretations. The guidelines are general and may be utilized with flexibility in their application to specific projects.

Design Review Criteria No. 1 | Access. *Conflicts between vehicles, pedestrians and other modes of transportation should be minimized by specifically providing for each applicable mode of transportation. Handicapped access shall be provided as required by applicable statutes.*

Design Review Criteria No. 2 | Design Articulation. *Within the allowable building envelope, the appearance of building and retaining wall mass should be minimized. Articulation techniques including, but not limited to, separation, offsets, terracing and reducing the size of any one element in the structure may be used to reduce the appearance of mass.*

Design Review Criteria No. 3 | Design Integrity. *Consistency with the applicant's chosen style of architecture should be achieved using appropriate materials and details. Remodels should be harmonious with the remaining existing architecture.*

Design Review Criteria No. 4 | Environmental Context. *Development should preserve and, where possible, enhance the city's scenic natural setting. Natural features, such as existing heritage trees, rock out-cropping, ridgelines and significant watercourses should be protected. Existing terrain should be utilized in the design and grading should be minimized.*

Design Review Criteria No. 5 | General Plan Compliance. *The development shall comply with all applicable policies of the general plan, including all of its elements, applicable specific plans, and the certified local coastal program.*

Design Review Criteria No. 6 | Historic Preservation. *Destruction or alteration to properties with historic significance, as identified in the city's historic resources inventory or historic register, should be avoided whenever possible. Special preservation consideration should be given to any structures over forty-five years old.*

Design Review Criteria No. 7 | Landscaping. *Landscaping shall be incorporated as an integrated part of the structure's design and relate harmoniously to neighborhood and community landscaping themes. View equity shall be an important consideration in the landscape design. The relevant landscaping guidelines contained in the city's "Landscape and*

Scenic Highways Resource Document” should be incorporated, as appropriate, in the design and planned maintenance of proposed landscaping.

Design Review Criteria No. 8 | Lighting and Glare. *Adequate lighting for individual and public safety shall be provided in a manner which does not significantly impact neighboring properties. Reflective materials and appurtenances that cause glare or a negative visual impact (e.g., skylights, white rock roofs, high-gloss ceramic tile roofs, reflective glass, etc.) should be avoided or mitigated to a level of insignificance in those locations where those surfaces are visible from neighboring properties.*

Design Review Criteria No. 9 | Neighborhood Compatibility. *Development shall be compatible with the existing development in the neighborhood and respect neighborhood character. Neighborhood character is the sum of the qualities that distinguish areas within the city, including historical patterns of development (e.g., structural heights, mass, scale or size), village atmosphere, landscaping themes and architectural styles.*

Design Review Criteria No. 10 | Pedestrian Orientation. *Commercial development design shall enhance and encourage pedestrian uses. Incorporation of articulated building masses, compact open spaces and courtyards, mixed use developments, use of landscaping as part of design, and orientation to pedestrian access should be maximized.*

Design Review Criteria No. 11 | Privacy. *The placement of activity areas (e.g., decks, picture windows and ceremonial or entertainment rooms) in locations that would result in a substantial invasion of privacy of neighboring properties should be minimized.*

Design Review Criteria No. 12 | Public Art. *Public art is encouraged and shall be displayed where feasible or required by the Art in Public Places ordinance.*

Design Review Criteria No. 13 | Sign Quality. *Signs shall be incorporated into the architecture of the structure and shall be made of high-quality materials, be simple in design and be visually compatible with the surrounding physical environment in terms of color, scale and size. Use of natural materials in the construction of signs is encouraged.*

Design Review Criteria No. 14 | Sustainability. *New development should consider architecture and building practices which minimize environmental impacts and enhance energy efficiency by: (a) reducing energy needs of buildings by proper site and structural design; (b) increasing the building’s ability to capture or generate energy; (c) using low-impact, sustainable and recycled building materials; (d) using the latest best management practices regarding waste and water management; and (e) reducing site emissions.*

Design Review Criteria No. 15 | Swimming Pools, Spas and Water Features. *Swimming pools, spas and water features shall be located, designed and constructed where: (a) Geology conditions allow; (b) Noise produced by circulatory mechanical pumps and equipment is mitigated; and (c) Any associated fencing or other site improvements are compatible with neighboring properties.*

Design Review Criteria No. 16 | View Equity. *The development, including its landscaping, shall be designed to protect existing views from neighboring properties without denying the subject property the reasonable opportunity to develop as described and illustrated in the city's "Design Guidelines." The "Design Guidelines" are intended to balance preservation of views with the right to develop property.*

Pursuant to LBMC Section 25.05.040(B)(1)(q), design review is required any instance where a coastal development permit is required to be issued by the city. Because the project is repair and replacement of elements of the existing permitted home, staff believes the design review criteria listed above is not applicable except No. 5 General Plan Compliance which has been analyzed under the CDP discussion above. Furthermore, the project limited to work within the permitted structural footprint is consistent with the 2010 Design Guidelines – A Guide to Residential Development.

Conclusion: Staff is not aware of any concerns from neighbors as of the completion date of this report (12/31/19). Staff is generally supportive of the proposed scope of work and recommends a condition of approval requesting improvements on the bluff be removed and the slope to be restored. If the DRB agrees with staff, the DRB should direct staff to prepare a resolution to conditionally approve design review and a coastal development permit and adopt the CEQA exemption.

Attachments: Project Summary Table
Letter from Applicant (November 26, 2019)
Coastal Commission Staff Report (September 10, 2019) *No hearing was held*
Minutes & Staff Report (August 8, 2019)
Project Plans

- b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.**

Mark and Sharon Fudge
P.O. Box 130
Laguna Beach, CA 92652-
0130

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

• Introduction

The proposed project is sought to cure a violation (exterior door and window replacements with stucco repair and patching carried out in 2016)¹ as well as to permit new repairs to that already failing construction. In addition there will be repairs to middle level deck (20% damaged according to applicant), installation of code compliant 42-inch high glass deck railings, and re-tiling of two bathrooms. Our review of past development also shows that there are other violations on the property, most notably a staircase to the beach, but also interior structural work (headers and floor joists through RBP 17-0876), and possible expansion of the decks. It is also unclear what portions of the scope of work approved are the actual 'repairs' to be done and which are already present at the site. Other than the repairs to the 2016 work, everything listed above has already been completed without benefit of permitting and therefore constitutes unpermitted development/violations.

Essentially the same project² was appealed by us to the Coastal Commission previously (A-5-LGB-19-0194) and was recommended by staff to the Commissioners to determine that a Substantial Issue existed. The item was to be heard at the November 13, 2019 hearing but was withdrawn by the applicant.

¹ Although a building permit (RBP 16-1978) and design review permit were obtained, a CDP was never issued for the work to replace existing sliding doors and windows on the oceanside of the structure. This work involved extensive structural changes and the use of a mechanized lift as well as a crane to deliver materials to the site. See A-5-LGB-19-0194.

² The project approved in August 2019 included a fence and gate that have been removed from the scope of the project before you now.

Our contentions for the first appeal were: 1) that the bluff top edge and setbacks were not properly determined; 2) the the proposed repair and maintenance work was improperly exempted from CDP requirements; and 3) visual impacts were not assessed

Since the applicant returned to the City to obtain a CDP for the repair and maintenance work within 50 feet of the edge of a bluff, the second contention is now moot. However, our first and third contentions (bluff edge/setback and visual impacts) remain for this subject appeal.

The City did not require the applicant to provide a formal bluff edge determination but did acknowledge that the subject structure is non-conforming due to bluff top setbacks and that the bluff edge is now located at the building pad. Prior to the certification of the Land Use Element in 2012, 'bluffs' were defined differently, but now essentially mirror the Coastal Act definition. Past findings of the Commission on our multiple appeals related to this subject have found the LUE to be the controlling document.

• Summary

In addition to the lack of a formal bluff edge determination, and the prohibition of private development on a bluff face, this approval of the project brings up other issues of nonconformity with the LCP such as the failure to determine if nonconformities have been expanded, failure to require setback conformance, failure to require the removal of unpermitted development at the site, failure to review impacts to visual and natural resources, and failure to require the recordation of a shoreline protective device waiver. We ask that the staff again recommends a finding that Substantial Issue exists and that the Commission reviews the application at a de novo hearing in the future.

• Appeal

1. Bluff Edge/prohibition of development on bluff faces.

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

The city's staff report acknowledges that the existing residence is nonconforming due to bluff edge setbacks and that the bluff edge is now located 'at the building pad' - although a bluff edge determination was never made by a qualified party. It goes on to say "*no development is proposed on oceanfront bluff faces*", but that is untrue. The entirety of the house is most likely on the bluff face and therefore any work done to the house is defined as development on a bluff face. Additionally, there is 'new development' evidenced by the placement of new, higher hand rails.

The LUE prohibits not just 'new development' but 'development' in total on oceanfront bluff faces unless it is a public improvement. "Development" is defined in the certified LCP as "*the placement or erection of any solid material or structure on land ... the construction, reconstruction, demolition or alteration of the size of any structure*". "Structure" is defined as '*anything that is constructed or built; for example, a building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, or electrical power transmission and distribution line.*'

The staff report states that ‘the proposed legalization ’involves like for like replacement of west facing exterior doors and windows - this is untrue. The replacement involved an improvement to the house which required structural changes (beams and headers) that compromised the structural integrity of the home evidenced by the placement of new beams and headers.

2. Expansion of Non-conformities:

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

We acknowledge that owners of oceanfront bluff homes have the right to **repair and maintain** their property, even if the structure is nonconforming. However, there are three questions that must be asked before a project can be found compliant with the LCP. The first is whether or not the structure is *legally* nonconforming. The second is whether or not a nonconforming structure has the right to undertake ‘improvements’, as the specific language above is only to allow a principal structure to be ‘maintained and repaired’. The third question is whether or not the project at issue has increased the size or degree of the nonconformity of the structure. In this case, the answer to the first question is ‘*no*’ - it is not *legally* nonconforming. The answer to the second question is ‘*no*’ - a legally nonconforming structure does not have the right to improvements³, and the third question must be answered ‘*yes*’ - the size and degree of the nonconformities have been increased.

CCR §13250 states that a ‘structure’ includes: 1) all fixtures directly attached; 2) other structures on the property normally associated with a residence (such as garages, pools, fences, sheds); and 3) landscaping on the lot.

The scope of work for this project is not limited to ‘repair and maintenance’ of the structure however. The staff report itself describes the requested action is ‘to allow for **improvements** to a single-family dwelling’. It also includes the ‘legalization’ of the new beams/headers and slider doors, and windows (done in 2016) and replacement of 20% of the decks (which timing is unknown, but already completed) none of which have been examined to determine if that work increased the size or degree of nonconformity of the structure. Because the work was originally done without benefit of permits, it constitutes a violation of the Coastal Act and the LCP, meaning the results of that work have negated the legal nonconforming status of the structure.

Part of the work that needs ‘legalization’ does not qualify as ‘repair and maintenance’ as the work was not done to restore the structure to its original condition. These previous activities were ‘improvements’ to the house and required structural changes (the installation of beams and headers) to carry out the construction of the improvements.

In the section of the ‘conformance chart’ prepared by City staff for the LUE Action 7.3.10, there is no analysis of whether or not the scope of work will increase the size or degree on nonconformity of the structure - which is one of the essential questions here. The deck railings,

³ See “Improvements” vs “Repair & Maintenance” Concept sheet- Exhibit 1

which are nonconforming as they are seaward of the bluff edge, are being increased in size which is increasing the size of the structure's mass/bulk as well.

Once it has been determined that the structure is no longer legally nonconforming, and that the work has increased the degree of nonconformity, the structure must be brought into conformity with the LCP - which prohibits development on a bluff face. The proposed work is likely unpermittable.

3. Nonconformities and Setbacks

***LBMC 25.56.009** If any part of a nonconforming portion of the structure is substantially removed or modified in such a way that it compromises the structural integrity of the building, that portion must be rebuilt in conformance with zoning regulations.*

Since the structure is nonconforming as to the bluff top setback, the portion of the building that has been structurally compromised (the replacement of doors and windows and repair of the deck) must now conform to the bluff edge setback.

The zoning regulations that govern setbacks are codified in LBMC 25.50.004. Relevant portions are listed below (with **emphasis** added):

25.50.004 Building setback lines.

(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:***

(3) *Except as provided in subdivision (5) of this subsection, the oceanfront building setback line on all oceanfront property situated between Laguna Avenue and Thalia Street is fixed and established as the line drawn through the points where the plane of elevation fourteen feet above mean sea level touches the land mass (other than beach sand) of the particular parcel involved.*

(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.*

(a) ***An "oceanfront bluff" is 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*
- (d) *Building Projection Setback.*
- (i) *Balconies, patios or decks in excess of thirty inches above the finished grade, including patio deck covers, and other similar architectural features may project a maximum of five feet beyond the applicable building setback or to the applicable deck stringline, whichever is least restrictive. In no case shall such projections be closer than ten feet to the top of an oceanfront bluff.*
 - (ii) *Decks, patios and other similar improvements that are thirty inches or less above finished grade shall not encroach closer than ten feet to the top of an oceanfront bluff.*

Although the parcel in question lies between Laguna Avenue and Thalia Street and would be governed by subparagraph (B)(3) above (which establishes the setback line where the plane of elevation fourteen feet above mean sea level touches the land mass), it is also controlled by subparagraph (B)(4) which states that in addition to (B)(3) “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.”

LBMC 25.50.004(B)(4)(a) defines an ‘oceanfront bluff’ differently than the more recently certified Land Use Element defines an oceanfront bluff. The LUE has been upheld as the controlling document by the Commission in past actions. Previous decisions have been made on this parcel based on the (now) outdated definition. However, even this outdated code allows a determination to be made if the provision applies to the specific landform or not in part 25.50.004(B)(4)(a)(ii) of the subsection - “*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.*” Therefore, the ‘new’ definition of bluff in the Land Use Element is able to be integrated into the zoning code even though this particular landform may not have a slope greater than forty-five degrees. Today, the landform is considered to be an oceanfront bluff according to the LUE certified definition.

What this all means is that the decks can not be rebuilt unless they conform with the ten foot setback from the top of the bluff. The windows and doors (which are improvements to the structure) can not be rebuilt unless they conform with the twenty five foot setback from the top of the bluff. The structure is built in front of the bluff edge, and the work that expanded the nonconformity has already occurred.

4. Unpermitted development/Natural Resources

Stairs

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

The City staff report clearly spelled out that when the home was built in 1996, the DRB approval was conditioned to not allow any development on the sloped portion of the site (i.e. the bluff face). In 1999 the applicant attempted to have the condition removed but the Design Review Board denied the request, which was upheld by the City Council. However, at some point, a stairway providing access from the house down to the beach has been built without benefit of permitting (neither a CDP or a building permit) and therefore should be removed.

City staff recommended an approval of the project with a condition 'requesting' improvements on the bluff be removed and the slope to be restored. The Board did not follow this recommendation and instead approved the project and directed staff to research the past permitting of any slope improvements and if the permitting does not exist, pursue code enforcement. This decision was inconsistent with the certified LCP in that LUE Action 7.3.8 requires the removal of unpermitted structures as part of the application. The application did not include the removal of any unpermitted work and thus did not comply with the LCP. A recommendation of Substantial Issue of noncompliance with the certified LCP must be made.

To defer the removal of a violation (the stairs) and move forward with permitting was based on the statements of the applicant's attorney who stated that it 'wasn't fair' and that the owners should have a hearing to decide the matter. However, the recommendation to remove the staircase and restore the slope was in the staff report and the owner should have asked for a continuance prior to the hearing to make a case for retention of the violation. What wasn't 'fair' was the applicant's failure to prepare for the hearing and to expect another opportunity to argue for retention while being allowed to move forward with the requested development.

OS/C Policy 7K - 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 recontouring and replanting where the natural landscape has been disturbed.

Additionally, when staff recommended restoration of the slope after removal of the stairs, there should have been some type of plan of how to carry out the restoration, but there was none. This is inconsistent with OS/C Policy 7K above which requires recontouring and replanting where natural landscape has been disturbed.

We would ask that the removal of the unpermitted staircase (as well as the removal of any other unpermitted development) and the restoration of the slope via a habitat restoration plan be required by the Commission during a de novo review of the application.

5. Unpermitted development/Visual Resources/Natural Resources

Railings

LUE Policy 2.10 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 effort 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.).

When the staff report conformance chart stated that this policy is “N/A”, they are incorrect because the new development (the glass railings) do not minimize adverse impacts on views from the public beach just below the site, or from the ocean, from increased glare. There was no analysis of this factor by the City.

Also, there was no analysis of how these glass railings will impact avian species at the beach and no conditions imposed to protect them.

6. Failure to require waiver of future shoreline protective devices

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

The staff report states that the repair/maintenance project is considered new development and is not a major remodel or an addition. It explains that the railing height will be increased from 36” to 42” as ‘required by building code’. This explanation is coupled with a conformance review of LUE Action 7.3.9 which states that new development, must not rely on existing or future bluff/shoreline protection devices to establish geologic stability or protection from coastal hazards, but does not include the second sentence of the action which requires a waiver of any such rights. There was no waiver required and therefore a Substantial Issue of inconsistency with the certified LCP must be found.

• Conclusion

We ask that the Commission find that this appeal presents a ‘Substantial Issue’ and to review the application in accordance with the certified LCP at a later de novo hearing.

Thank you for your consideration.

Exhibit 1: “Improvements” vs “Repair & Maintenance” Definitions Concept sheet (generated by appellants)

Exhibit 1 'Improvements' vs 'Repair & Maintenance' Definitions

Concept: 'Improvement' vs 'Repair/Maintenance' definitions.

- Reference: Industry standards and tax codes -

Both state that an **'improvement'** is something that increases the value of, or that will extend the 'useful life' of the property. Improvements include: adding something that previously was not there or upgrading something that was existing. Examples are: adding Central A/C, replacing an entire roof, replacing all existing plumbing/electric, renovating kitchens or bathrooms, replacing all windows, adding a deck or building an in-ground pool.

On the other hand, a **'repair'** is necessary **maintenance** to keep the property in habitable and working condition. Repairs do not add significant value to a property or extend its life. When something is repaired, it is generally restored to its previous good condition, not improved upon. Examples include: repairing leaks in a roof, replacing a window, replacing cracked floor tiles, repairing existing plumbing, painting

According to the IRS, capital improvements must fix some defect or design flaw, must improve the value of a property, must become a permanent part of the property so that removal would cause some impactful damage to the property, and must be added with the intention of becoming a permanent part of the property. A repair simply keeps the property in the same condition.

- Reference: Wikipedia -

Defines **'home repair'** as 'involving the diagnosis and resolution of problems in a home and is related to home **maintenance** to avoid such problems'. Repairs often mean simple replacement of worn or used components intended to be periodically renewed by a home-owner. Some repairs are to fix broken or damaged things. If the item is replaced, it is not repaired. Periodic maintenance falls under the general class of home repairs. These are inspections, adjustments, cleaning, that should be done regularly to ensure proper functioning of all the systems in a house and to avoid costly emergencies. This category would include repainting or staining outdoor wood or masonry. Lack of maintenance will ultimately cost more due to higher costs associated with repairs or replacements to be made later.

- Reference: dictionary.com -

repair - (verb) to restore to a good or sound condition after decay or damage; mend
repairs, (in bookkeeping, accounting, etc.) the part of maintenance expense that has been paid out to keep fixed assets in usable condition, as distinguished from amounts used for renewal or replacement.

maintain - (verb) to keep in existence or continuance; preserve; retain

improve - (verb) to bring into a more desirable or excellent condition; to make (land) more useful, profitable, or valuable by enclosure, cultivation, etc.; to increase the value of (real property) by betterments, as the construction of buildings and sewers.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

 Signature of Appellant(s) or
 Authorized Agent

D
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 e
 : February 24, 2020

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby
 authorize _____

To act as my/our representative and to bind me/us in all matters concerning this appeal.

 Signature of
 Appellant(s)

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