

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: APPEAL – DE NOVO

Appeal No.: A-5-LGB-17-0033

Applicant: HCI Systems (Attn: Hany Dimitry)

Agents: Steven H. Kaufmann

Local Government: City of Laguna Beach

Local Decision: Approval with Conditions

Appellants: Derek Peterson and Mark Fudge

Project Location: 31987 Coast Highway, Laguna Beach, Orange County (APN: 056-160-41)

Project Description: Demolition of a two-story, 3,000-sq. ft. single-family residence with garage. The applicant is also requesting to retain a pre-Coastal Act non-conforming funicular tram and set of beach access stairs.

Staff Recommendation: Approval with conditions.

IMPORTANT HEARING PROCEDURE NOTE: In 2017, the City of Laguna Beach (City) granted a local approval (Local CDP No. 16-2180) for the demolition of a single-family residence on an ocean-fronting property on a coastal bluff. In 2019, the City granted a local approval (Local CDP No. 19-2820) for the construction of a new single-family residence and garage and other accessory structures at the same site. These local approvals also allowed for the retention of a funicular tram and set of beach access stairs that are non-conforming with coastal bluff setback requirements to remain onsite.

In June 2017, local CDP No. 16-2180 was appealed to the Coastal Commission. Subsequent to finding substantial issue, on April 13, 2018 the Commission approved at a

de novo hearing the demolition of the single-family residence with six special conditions. On May 22, 2018, appellant Mark Fudge filed a lawsuit in the Orange County Superior Court challenging the Commission's approval of the demolition. One of his arguments was that the Commission failed to properly evaluate the proposed demolition because it did not consider the construction of a new single-family residence at the same time as it considered the CDP for demolition of the existing house. Commission CDP No. A-5-LGB-17-0033 was nevertheless signed on July 9, 2018, and the previously existing residence at 31987 Coast Highway was subsequently demolished.

The Commission received a Notice of Final Local Action (NOFA) for Laguna Beach Local CDP No. 19-2820 on June 13, 2019. Local CDP No. 19-2820 approved the construction of a new single-family residence on this ocean-fronting, bluff property. In July 2019, appellants Mark and Sharon Fudge appealed Local CDP No. 19-2820 to the Coastal Commission. On September 11, 2019, the Coastal Commission found that the construction project raised a substantial issue based on the grounds that the appeal was filed.

Given that the Coastal Commission would be holding a de novo hearing on the construction of a new residence at the project site and that it could now consider both the demolition and new construction at the same hearing, the parties settled the 2018 lawsuit related to the demolition of the previously existing residence. The parties agreed to request that the court remand the CDP for the demolition back to the Commission so that it could reconsider the CDP for the demolition project at the same time as the de novo hearing on the new residence. The demolition project was subsequently remanded to the Commission for further proceedings.

Considering the above, Commission staff has scheduled this de novo public hearing to reconsider the coastal development permit application A-5-LGB-17-0033. Application Nos. A-5-LGB-17-0033 and A-5-LGB-19-0159 were scheduled together for the August 2020 Commission meeting so the Commission may consider them concurrently. However, on July 22, 2020, the applicant withdrew Application No. A-5-LGB-19-0159.

The standard of review is the City of Laguna Beach's certified LCP.

SUMMARY OF STAFF RECOMMENDATION

The subject site is an approximately 30,000-square-foot ocean-fronting lot located on a coastal bluff above the Thousand Steps public beach.

On remand, the applicant is proposing to demolish an existing single-family residence. The primary issues concern preservation of historic structures, bluff stability, and protection of cultural resources and natural resources. As noted above, the applicant has already demolished the residence that was on this property. The hearing on the demolition project must still occur due to terms reached in the settlement agreement between the appellants and the Coastal Commission. This report treats the former residence as if it is still on site.

The certified LCP encourages retention of historically significant structures but does not require that they be retained if the structure is not listed on the City's Historic Register or Inventory. The existing structure at the site is not listed on the City's Historic Register or Historic Inventory and has never been nominated for consideration for inclusion on the California Register of Historic Resources. Therefore, the exceptions allowed to non-conforming historic residences do not apply. Moreover, the existing structure is not currently structurally sound and the work required to make it structurally sound would adversely impact the degree of historical significance. In addition, the work required to make the structure structurally sound would constitute a "major remodel" which would require the structure to conform to the LCP's bluff top setback of 25 feet from the bluff edge. For these reasons, the Commission finds that the proposed demolition of the existing residence is consistent with the LCP policies regarding preservation of historically significant structures.

In addition, staff recommends special conditions to ensure that the cultural resources, natural resources are protected, and risks to life and property from hazards are minimized. Staff recommends approval of this de novo permit with **six (6) special conditions: 1)** preparation and implementation of a Construction (and Demolition) Monitoring Treatment Plan requiring the presence of qualified archaeological and Native American monitors during all project earth disturbing activities and establishing appropriate procedures to be implemented in the event cultural/archaeological resources are discovered; **2)** preparation and submission of final revised plans; **3)** conformance with the submitted erosion control and drainage plan; **4)** submittal of a seed list demonstrating that the seeds in the hydroseed mix are primarily California natives; **5)** as proposed by the applicant, all project-related parking shall be accommodated on the project site; and **6)** storage of construction materials, mechanized equipment and removal of construction debris.

TABLE OF CONTENTS

I. MOTIONS AND RESOLUTIONS.....	5
II. STANDARD CONDITIONS	5
III. SPECIAL CONDITIONS.....	5
IV. FINDINGS AND DECLARATIONS	11
A. PROJECT LOCATION AND DESCRIPTION	11
B. STANDARD OF REVIEW	12
C. BACKGROUND	13
D. HAZARDS	15
E. HISTORIC STRUCTURE	21
F. NATURAL RESOURCES/ESA	26
G. CULTURAL/ARCHEOLOGICAL RESOURCES	30
H. WATER QUALITY	33
I. PUBLIC ACCESS.....	36
J. LOCAL COASTAL PROGRAM	37
K. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)	38
APPENDIX A – SUBSTANTIVE FILE DOCUMENTS	39

EXHIBITS

[Exhibit 1 – Project Location](#)

[Exhibit 2 – Proposed Demolition Plan](#)

[Exhibit 3 – Vegetation Map](#)

[Exhibit 4 – Ex Parte Communication Forms](#)

I. MOTIONS AND RESOLUTIONS

Motion I: I move that the Commission **approve** Coastal Development Permit No. A-5-LGB-17-0033 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 I:

The Commission hereby approves Coastal Development Permit Application No. A-5-LGB-17-0033 and adopts the findings set forth below on grounds that the development, as conditioned, will be in conformity with the Certified Local Coastal Plan and the public access and recreation policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that will substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. Construction (and Demolition) Monitoring Treatment Plan.

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director, a Construction (and Demolition) Monitoring Treatment Plan (CMTP) for the proposed single family residence demolition project, prepared by a qualified professional and in conformance with subsection E of this condition that requires a qualified archaeological monitor and appropriate Native American(s) monitor to be present during all earth disturbing activities, describes the required qualifications and responsibilities of the archaeological and Native American monitors, and includes the requirements below:
- i. If any cultural deposits are discovered during project demolition/construction, including but not limited to skeletal remains and grave-related artifacts, traditional cultural sites, religious or spiritual sites, or artifacts, the permittee shall carry out significance testing of said deposits and, if cultural deposits are found to be significant, additional investigation and mitigation is required in accordance with this special condition including all subsections. No significance testing, investigation or mitigation shall commence until the provisions of this special condition are followed, including all relevant subsections;
 - ii. If any cultural deposits are discovered, including but not limited to skeletal remains and grave-related artifacts, traditional cultural sites, religious or spiritual sites, or artifacts, all construction shall cease in accordance with subsection B of this special condition;
 - iii. In addition to recovery and reburial, in-situ preservation and avoidance of cultural deposits shall be considered as mitigation options, to be determined in accordance with the process outlined in this condition, including all subsections;
 - iv. Archaeological monitor(s) qualified by the California Office of Historic Preservation (OHP) standards, Native American monitor(s) with documented ancestral ties to the area appointed consistent with the standards of the Native American Heritage Commission (NAHC), and the Native American most likely descendent (MLD) when State Law mandates identification of a MLD, shall monitor all project earth disturbing activities;
 - v. The permittee shall provide sufficient archeological and Native American monitors to assure that all project earth disturbing activities are monitored at all times;
 - vi. All required monitors shall be notified a minimum of 30 days prior to commencement of construction by confirmable means such as certified mail with return receipt. Attempts to contact the required monitors shall include a follow-up phone call. Attempts to contact the required monitors shall be documented;
 - vii. If human remains are encountered, the permittee shall comply with applicable State and Federal laws. Procedures outlined in the monitoring plan shall not prejudice the ability to comply with applicable State and Federal laws, including but not limited to, negotiations between the landowner and the MLD regarding the manner of treatment of human

remains including, but not limited to, scientific or cultural study of the remains (preferably non-destructive); selection of in-situ preservation of remains, or recovery, repatriation and reburial of remains; the time frame within which reburial or ceremonies must be conducted; or selection of attendees to reburial events or ceremonies. The range of investigation and mitigation measures considered shall not be constrained by the approved development plan. Where appropriate and consistent with State and Federal laws, the treatment of remains shall be decided as a component of the process outlined in the other subsections of this condition.

- viii. Prior to the commencement and/or re-commencement of any monitoring, the permittee shall notify each archeological and Native American monitor of the requirements and procedures established by this special condition, including all subsections. Furthermore, prior to the commencement and/or re-commencement of any monitoring, the permittee shall provide a copy of this special condition, the archeological monitoring plan approved by the Executive Director, and any other plans required pursuant to this condition and which have been approved by the Executive Director, to each monitor.
- B. If an area of cultural deposits, including but not limited to skeletal remains and grave-related artifacts, traditional cultural sites, religious or spiritual sites, or artifacts, is discovered during the course of the project, all demolition/construction activities in the area of the discovery that has any potential to uncover or otherwise disturb cultural deposits in the area of the discovery and all demolition/construction that may foreclose mitigation options or the ability to implement the requirements of this condition shall cease and shall not recommence except as provided in subsection C and other subsections of this special condition. In general, the area where construction activities must cease shall be no less than a 100 foot wide buffer around the cultural deposit.
- C. An applicant seeking to recommence demolition/construction following discovery of the cultural deposits shall submit a Significance Testing Plan for the review and approval of the Executive Director. The Significance Testing Plan shall identify the testing measures that will be undertaken to determine whether the cultural deposits are significant. The Significance Testing Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), and the Most Likely Descendent (MLD) when State Law mandates identification of a MLD.
 - i. If the Executive Director approves the Significance Testing Plan and determines that the Significance Testing Plan's recommended testing measures are de minimis in nature and scope, in that the testing will not have any adverse impact on the cultural resources, the significance testing may commence after the Executive Director informs the permittee of that determination.
 - ii. If the Executive Director approves the Significance Testing Plan but determines that the changes therein are not de minimis, significance testing may not commence until after an amendment to this permit is approved by the Commission.
 - iii. Once the measures identified in the significance testing plan are undertaken, the permittee shall submit the results of the testing to the Executive Director for review and approval. The results shall be accompanied by the project

archeologist's recommendation as to whether the findings are significant. The project archeologist's recommendation shall be made in consultation with the Native American monitors and the MLD when State Law mandates identification of a MLD. The Executive Director shall make the determination as to whether the deposits are significant based on the information available to the Executive Director. If the deposits are found to be significant, the permittee shall prepare and submit to the Executive Director a Supplementary Archeological Plan in accordance with subsection D of this condition and all other relevant subsections. If the deposits are found to be not significant, then the permittee may recommence earth disturbing activities in accordance with any measures outlined in the approved significance testing program.

- D. An applicant seeking to recommence demolition/construction following a determination by the Executive Director that the cultural deposits discovered are significant shall submit a Supplementary Archaeological Plan for the review and approval of the Executive Director. The Supplementary Archeological Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), the Most Likely Descendent (MLD) when State Law mandates identification of a MLD, as well as others identified in subsection E of this condition. The Supplementary Archeological Plan shall identify proposed investigation and mitigation measures. The range of investigation and mitigation measures considered shall not be constrained by the approved development plan. Mitigation measures considered may range from in-situ preservation to recovery and/or relocation. A good faith effort shall be made to avoid impacts to cultural resources through methods such as, but not limited to, project redesign, capping, and placing cultural resource areas in open space. In order to protect cultural resources, any further development may only be undertaken consistent with the provisions of the Supplementary Archaeological Plan.
- i. If the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological Plan's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, in that the changes will not have any adverse impact on the cultural resources, demolition/construction may recommence after the Executive Director informs the permittee of that determination.
 - ii. If the Executive Director approves the Supplementary Archaeological Plan but determines that the changes therein are not de minimis, demolition/construction may not recommence until after a subsequent amendment to the permit is approved by the Commission.
- E. Prior to submittal to the Executive Director, all plans required to be submitted pursuant to this special condition, except the Significance Testing Plan, shall have received review and written comment by peer reviewers in accordance with current professional practice, and by representatives of Native American groups with documented ancestral ties to the area (as identified by the Native American Heritage Commission and others known to the Executive Director). Names and qualifications of selected peer reviewers shall be submitted for review and approval by the Executive Director. The plans submitted to the Executive Director shall

incorporate the recommendations of the peer reviewers. Furthermore, upon completion of the peer review process, all plans shall be submitted to the California Office of Historic Preservation (OHP) and the NAHC for their review and an opportunity to comment. The plans submitted to the Executive Director shall incorporate the recommendations of the OHP and NAHC. Submittal of the plans to these entities shall be by confirmable means such as certified mail with return receipt and evidence of submittal shall be provided to the Executive Director along with the plans. If the OHP and/or NAHC do not respond within 30 days of their receipt of the plan, the requirement under this permit for that entities' review and comment shall expire, unless the Executive Director extends said deadline for good cause. All plans shall be submitted for the review and approval of the Executive Director.

- F. The permittee 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 approval by the Commission of a subsequent amendment to the coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Final Revised Plans.

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director, two (2) full sized sets of final revised project plans, which shall substantially conform with the project plans attached herein as Exhibit 2, except shall be modified to comply with the following:

- i. Any project plan that includes the funicular and bluff stairs shall include an annotation stating that these structures will need to be removed prior to or concurrent with the redevelopment of the property.
- ii. Removal of Gunite from Bluff: The applicant shall submit a project plan and written description of methods for removal of all existing, on-site gunite on the bluff face. In addition, a single landscape plan for the entire area to be revegetated, including the area of proposed demolition and the area of the removed gunite, shall be submitted for the review and approval of the Executive Director. The revegetation landscape plan shall demonstrate that only low water use, native plants shall be used (consistent with the requirements of Special Condition 4).

The permittee shall remove the gunite and implement the erosion control and revegetation landscape plan, in accordance with the approved final plans, concurrently, prior to, or immediately following (within 15 days of) the demolition of the single-family residence.

- B. 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 approval by the Commission of a subsequent amendment to the coastal development permit unless the Executive Director determines that no amendment is legally required.

3. **Erosion Control & Drainage Plans.** The applicant shall conform to the project erosion control and site drainage plans depicted in the demolition plans prepared by Brion Jeanette Architecture received in the Commission office on 12/5/17, Sheets Demo-1 through Demo-4 indicating use of the filtration pit and filtration tank, among other measures that will be implemented at the site. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
4. **Plant List.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director, a plant list documenting that the hydroseed mix to be used at the site will consist of WUCOLS Low and Very Low water use plants that are primarily native, as listed by the California Native Plant Society (See <http://www.cnps.org/cnps/grownative/lists.php>). 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, shall be carried out as depicted on the demolition plans prepared by Brion Jeanette Architecture, received in the Commission office on 12/5/17, Sheets Demo-1 through Demo-4, except that the area of gunite removal shall be added to the plan.

The permittee 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 approval by the Commission of a subsequent amendment to the coastal development permit unless the Executive Director determines that no amendment is legally required.

5. **Project Related Parking.** As proposed by the applicant, all project-related parking shall be accommodated on the subject site for the duration of the demolition project.
6. **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.

IV. FINDINGS AND DECLARATIONS

A. PROJECT LOCATION AND DESCRIPTION

The subject site is located at 31987 Coast Highway, in the South Laguna area of the City of Laguna Beach, Orange County. The subject lot is an approximately 29,415-square-foot, oceanfront, bluff lot located adjacent to Thousand Steps public beach. The project site is developed with a single-family residence, in addition to the existing non-conforming private beach stairs and funicular. The subject site is zoned Village Low Density and is surrounded by single-family residential development on three sides. The subject lot is a “U” shaped lot, with the two ends of the “U” fronting on Coast Highway. In the cradle of the “U” is a separate inset residential lot, developed with a single-family residence ([Exhibit 1](#)). Single-family residences also exist on either side of the subject site. The subject lot is located between the first public road (Coast Highway) and the sea (Thousand Steps Beach).

The applicant is proposing to demolish a two-story, approximately 3,000-square-foot single-family residence and attached approximately 503-square-foot garage ([Exhibit 2](#)). More specifically, the proposed demolition will include removal of the following: the brick entry courtyard; the concrete entry stairway leading to the courtyard; concrete retaining walls associated with the courtyard and stairway; the concrete stairway at the south side of the garage; the brick patio and guardrail at the seaward side of the residence from the courtyard to the sideyard; removal of existing ornamental vegetation, irrigation, and planter walls/pilasters at the driveway entrance to the property from Coast Highway; and removal of additional ornamental vegetation, irrigation, and planter walls as necessary to provide access for demolition equipment ([Exhibit 2](#)).

The applicant proposes to retain the non-conforming private beach stairs and funicular in place. Existing property line fences and associated footings along the property lines shared with 31981 and 31995 Coast Highway, and between 31985 Coast Highway and the subject site will all be retained in place.

B. STANDARD OF REVIEW

Section 30604(b) of the Coastal Act states:

After certification of the local coastal program, a coastal development permit shall be issued if the issuing agency or the commission on appeal finds that the proposed development is in conformity with the certified local coastal program.

In addition, Section 30604(c) of the Coastal Act states:

Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

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

Both the City's certified Local Coastal Program (LCP) and the Coastal Act require a coastal development permit for the demolition of an existing structure.

Section 30612 of the Coastal Act states:

An application for a coastal development permit to demolish a structure shall not be denied unless the agency authorized to issue that permit, or the commission, on appeal, where appeal is authorized by this division, finds, based on a preponderance of the evidence, that retention of that structure is feasible.

The City's certified LCP Implementation Plan (IP), Section 25.07.006(D), which basically tracks the Coastal Act definition of "development", defines "development" as follows (**emphasis added**):

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

The proposed demolition of the single-family residence constitutes development and requires approval of a coastal development permit.

C. BACKGROUND

Local CDP No. 16-2180 and Appeal No. A-5-LGB-17-0033

In 2017, the City approved a local CDP for the demolition of then-existing single-family residence at the project site. The local CDP authorized the retention of the non-conforming private beach stairs and funicular and gunite slope treatment on the bluff face at the project site. Originally, the application requested authorization for both the demolition of the pre-existing single-family residence and construction of a new single-family residence; however, the project was ultimately modified and limited to only demolition of the pre-existing single-family.

The City's approval of Local CDP No. 16-2180 was appealed to the Coastal Commission in June 2017.

In July 2017, appellant Mark Fudge filed a case against the City of Laguna Beach and the applicant in the Orange County Superior Court, demanding the court vacate the City's issuance of Local CDP No. 16-2180. On November 6, 2017, the trial court granted the demurrers without leave to amend, over Mr. Fudge's opposition, and the appeal went to the Fourth Appellate District, Division 3 (Appellate Case No. G055711).

In the interim, on August 9, 2017, the Commission found that the appeal raised a substantial issue. On April 13, 2018, after a public hearing, the Commission conditionally

A-5-LGB-17-0033
Appeal – De Novo

approved Coastal Development Permit No. A-5-LGB-17-0033 authorizing the demolition of the existing single-family residence and the removal of the gunite from the bluff face. The residence was subsequently demolished and the gunite was removed from the bluff face. The existing non-conforming private beach stairs and a funicular were left intact on-site.

Local CDP No. 19-2820 and Appeal No. A-5-LGB-19-0159

On June 13, 2019, the City of Laguna Beach Design Review Board (DRB) conditionally approved Local CDP No. 19-2820 for the construction of a 5,593 square-foot single-family residence with an attached two-car garage at the project site, and for the retention of nonconforming site conditions (funicular tram and beach access stairs).

On July 26, 2019, Mark and Sharon Fudge filed an appeal to the Commission. At its September 11, 2019 public meeting, the Commission found Substantial Issue on Appeal No. A-5-LGB-19-0159.

Orange County Superior Court Case – CDP No. A-5-LGB-17-0033

On May 22, 2018, one of the appellants sued the Coastal Commission, and one of the grounds for the lawsuit was that the Coastal Commission improperly segmented the project by considering the demolition of the existing single-family residence without consideration of the proposed new single-family residence. Given that the Commission would be holding a de novo hearing on the construction of a new residence at the project site (Application No. A-5-LGB-19-0159), the parties settled the 2018 lawsuit on the demolition of the previously existing residence by agreeing to hear the demolition project at the same time as the hearing on the new residence. Therefore, the demolition project was remanded to the Commission for further proceedings. The Commission has scheduled a new de novo public hearing to reconsider the CDP Application No. A-5-LGB-17-0033. Application Nos. A-5-LGB-17-0033 and A-5-LGB-19-0159 were scheduled together for the August 2020 Commission meeting so the Commission may consider them concurrently. However, on July 22, 2020, the applicant withdrew Application No. A-5-LGB-19-0159.

Emergency Permit No. G-5-20-0011

Most recently, on March 2, 2020, the Commission granted an Emergency Permit to HHMC Group LLC/Hany Dimitry for:

“The upper portion of a concrete block wall topped by a wood fence along approximately 55 feet at the seaward end of the sideyard property wall located between 31987 and 31981 So. Coast Highway has failed. The concrete block and wood fence in turn sit atop a poured in place concrete wall. The poured in place concrete wall was not damaged and will remain in place as is. The fallen portion of the wall is now resting on the neighboring residence (at 31981), which blocks the only secondary egress from the 31981 property and would threaten life in the event the front door is blocked due to emergency or other unforeseen circumstance. In addition, the failed wall is unstable and could cause further property damage and/or injury. The applicant will remove the failed wall and install a temporary construction fence on the 31987 property. The damaged fence/wall will be removed by bolting supporting horizontal lumber beams onto the fallen structure, connecting rope to the fallen structure via bracket saddle, and manually pulling the fence/wall back onto

the 31987 property. The debris will be manually loaded into a dump truck on the 31987 property and then disposed of off-site at a certified landfill. During the removal operation, the fallen wall will be supported on the 31981 property with horizontal lumber beams and "kicker" supports between the damaged wall and the residence. The temporary chain link construction fencing with green mesh wind screen will be supported on fencing posts placed every six inches adjacent to the northwest property line on the 31987 property, which is otherwise currently vacant. Removal of the damaged fence/wall and installation of the temporary construction fence is expected to take 48 hours to complete once authorization to proceed is received."

D. HAZARDS

Laguna Beach Land Use Element:

Policy 7.3 states:

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

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

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

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

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

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

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.

The proposed demolition project will occur on an ocean-fronting lot on a bluff. Such locations can be hazardous. The methods of accomplishing proposed demolition should be reviewed and evaluated to assure the demolition work does not destabilize the subject site or surrounding area. And as required by LCP Land Use Element (LUE) Action 10.3.2, such review is appropriate for all stages of development, which includes the demolition stage. As such, the demolition project must be reviewed for consistency with the hazard and bluff development policies cited above.

The hazards policies of the LCP require, among other things, that all new development be: 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.

The proposed project includes demolition of an existing residence, associated hardscape and ornamental landscape. The applicant has provided a detailed description of construction methods to be employed with the proposed demolition – all demolition work will be accomplished with a small backhoe tractor, a Bobcat excavator, and workers using hand tools. The excavator will aid in pulling down the wood structure and digging the 30-inch deep sump pit. The backhoe will level out the disturbed area and collapse the wood materials, a bucket attachment will allow for picking up debris and transferring it to the on-site dumpster, and a jack hammer attachment will break up the concrete hardscape and foundation. It is expected that three to four workers using hand tools, such as sledgehammers, will assist with the deconstruction. Demolition debris will be removed from the site and recycled as required by the City of Laguna Beach.

In addition, measures are proposed (and discussed in greater detail later in this report under Water Quality) to address construction and post-construction site drainage and water quality measures. Site drainage will be directed to a sump pit for filtration and then pumped to the street. In addition, sandbags placed along the bluff edge are intended to prevent or reduce drainage from flowing over the bluff face. Also discussed in greater detail later in this report (under Water Quality), the applicant proposes to vegetate the site once demolition is complete. The disturbed area will be hydroseeded to stabilize the earth in the areas from which the structure, hardscape and ornamental landscaping are

removed. All of these measures will remain in place for the (currently unknown) duration of the exposed, post demolition area. In addition, the applicant proposes to regularly check the effectiveness of these measures to assure on-going protection.

OCEANFRONT, BLUFF AND BLUFFTOP HAZARDS

A preliminary geotechnical report was prepared by Geofirm dated September 12, 2016, and supplemented on May 25, 2017, September 28, 2018, and June 12, 2019, for the site in conjunction with the proposed new single-family residential project at the site subject to Application No. A-5-LGB-19-0159.

The applicant has also provided a coastal hazards analysis (sea level rise, wave runup and bluff/shoreline erosion analysis) prepared by GeoSoils, Inc. dated June 3, 2016.

Specifically regarding the demolition project, the applicant's geotechnical consultant states: "The proposed demolition is geotechnically suitable and approved to proceed to construction." The Coastal Hazard Analysis evaluated the project including the proposed new residence. The Coastal Hazard Analysis concludes:

"The potential coastal hazards associated with the development at 31987 Coast Highway, Laguna Beach, include shoreline erosion and wave runup. This report uses the guidelines in the CCC Sea-Level Rise Policy Guidance document for determination and discussion of coastal hazards. As demonstrated in USACOE 2002 the shoreline fronting the site is stable over the long term. However, the beach is subject to temporary but measurable wave runup and beach erosion. During the coincidence of an eroded beach, high tides, and high waves, the back beach area fronting the site may be subject to wave runup. However, based upon our analysis, and because the existing and proposed improvements are located above the beach, the development is safe from coastal hazards. It should also be noted that there are bedrock outcroppings in the surf zone near this site and adjacent properties that act like a breakwater to incoming waves. There are no recommendations necessary to mitigate potential coastal hazards. New shore protection will not be required to protect the proposed development over the next 75 years. The development will neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or adjacent area."

The geotechnical review performed for the subject site and proposed demolition finds that the proposed demolition is geotechnically suitable. The Coastal Hazards Analysis states that the proposed demolition will neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or adjacent area.

LUE Action 10.2.6 requires new development on oceanfront bluff sites to be setback from the oceanfront bluff edge a sufficient distance to ensure stability and to avoid the need for bluff/shore protection devices. This application is limited to the proposed demolition project. Commission finds the proposed demolition project is consistent with LUE Action 7.3.9 and Action 10.2.6 which require that new development on oceanfront bluff sites do not rely on existing or future bluff/shoreline protection devices to establish geologic stability or protection from coastal hazards. Based upon the conclusions of the geotechnical and coastal hazards consultants, and upon the construction and post construction measures

proposed to be implemented with the proposed demolition project, the proposed demolition can be found to be consistent with the LUP hazard policies cited above.

OTHER DEVELOPMENT ONSITE

Existing development on the subject site includes a funicular (a cable railway lift with associated cab, track, foundations and landing), a concrete and wood stairway to the beach, and gunite/shotcrete cover from the seaward edge of the existing seaward development (patio edge) and extending down the bluff face approximately 16 linear feet from the patio edge.

The applicant has submitted historic photos indicating that both the funicular and bluff stairway to the beach have been present at the site since prior to 1972, thus pre-dating the Coastal Commission's jurisdiction in the area. The applicant asserts that the funicular is fully functioning and has also submitted photos indicating it was used as recently as May 2017. Photos from May 2017 and Summer 2016 show the cab of the funicular at the base of the bluff (beach level). Commission staff observed the cab of the funicular at its upper position on February 8, 2018. Currently the existing residence at the site is not occupied due to its deteriorated condition, and the applicant suggests that that is why the funicular is not in more regular use. However, the applicant has offered to demonstrate the funicular in use but has indicated lead time is necessary to assure power is on at the site. Commission staff walked the bluff stairway on February 8, 2018. Although there are two points at which the stairway railing is in need of simple repair and ice plant has begun to creep over portions of the stairway, the stairs are currently functional.

LUE Action 7.3.5 prohibits development on oceanfront bluff faces (with a few exceptions for public improvements). LUE Action 7.3.8 requires, where applicable, that applications for development on oceanfront bluff sites identify and remove all unpermitted and/or obsolete structures which encroach into oceanfront bluffs. In the case of the existing funicular and stairway on the bluff face, these structures pre-date the requirement to obtain a coastal development permit and so are not considered to be unpermitted. According to the applicant, both structures are still functional, although the functionality of the funicular has not been demonstrated to Commission staff. The structures may nevertheless be "obsolete" if they are not safe and/or do not comply with applicable safety codes. The City's record does not address this issue. Finally, because this permit would allow the existing single-family residence to be demolished, both of these bluff structures would no longer be able to perform their intended function to serve the existing pre-Coastal Act residence. Thus, they will become obsolete once the demolition takes place. In this case, both bluff structures are non-conforming structures and, therefore, cannot be extended or altered in a way that would increase the degree of non-conformity. Thus, these portions of the proposed development, which would be rendered obsolete with the demolition of the existing residence, will need to be removed upon redevelopment of the property. **Special Condition 2** requires that the applicant submit final revised project plans with annotations stating that the non-conforming funicular and bluff stairs will need to be removed prior to or concurrent with the redevelopment of the property.

The Preliminary Geotechnical Report prepared by Geofirm states: "The impetus for the shotcrete [gunite] and its integrity with regard to its intended purpose are uncertain." In

addition, the Structural & Construction Feasibility Assessment prepared by Brion Jeannette Architecture, Core Structure, Inc., and Corbin-Reeves Construction (December 22, 2016) which assesses the structural condition of the existing residence states: “The gunite on the slope is cracked and erosion is evident below.” In addition, photos in the appendix of the Construction Feasibility Assessment characterize and depict the “gunite cover on the bluff face is cracked and failing.” Thus, it appears that the gunite on the bluff face may be detrimental to bluff stability. Because both the geotechnical consultant and the structural feasibility consultants have indicated the gunite is in poor condition and does not appear to serve any clear or required stability function, it may be deemed obsolete. As such, it should be removed as required by LUE Action 7.3.8 (identify and remove all unpermitted and/or obsolete structures which encroach into oceanfront bluffs). Removal of the gunite could have the unintended consequence of affecting bluff stability by exposing the bluff face to the elements, which might lead to or accelerate erosion. However, if the area exposed by the gunite removal were to be included in the area proposed by the applicant to be revegetated, that would assist in providing bluff stabilization.

Special Condition 2 requires removal of all bluff face gunite and revegetation of the area of removal. 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.

E. HISTORIC STRUCTURE

Regarding preservation of historic structures, the City’s certified LCP includes the following policies:

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.

In addition to the LUE policies cited above, the certified Implementation Plan portion of the LCP, Title 25 Chapter 25.45 (Historic Preservation) establishes the process for listing a structure on the City’s Historic Register or Historic Inventory and provides incentives intended to promote listing an historic property. The residence proposed for demolition is believed to have been constructed in approximately 1930, making it well over 80 years old. The age of the structure has raised questions regarding its historic significance. However, under Chapter 25.45, listing a property on the City’s Historic Register or Historic Inventory by a property owner is a voluntary, rather than mandatory action. Likewise, Policy 2.2 of

the LUE encourages, rather than requires, preservation of historically significant residential structures.

In any case, the residence proposed for demolition was evaluated for historic significance during the proposed project's review by the City of Laguna Beach (Historic Resource Assessment, Lazzaretto, Iker, Aranguren; 10/24/16; Peer Review of Historic Resource Assessment, Heck, LSA, 11/9/16; Historic Resource Assessment, Lazzaretto, Iker, Aranguren, 11/30/16; Addendum to Peer Review of Historic Resources Assessment, Heck, LSA, 12/2/16; CEQA Analysis and Recommendations, Jerabek, ESA, 4/10/17). Three of the four reports generally conclude that the residence to be demolished may qualify as an historic structure.

Based upon the three reports suggesting that the existing residence may constitute an historic structure, concern was raised during the local government's review of the proposed demolition project that because the existing residence on the site is potentially historic, that then triggers the requirement to perform a CEQA Initial Study. However, the City did require and consider the historic significance evaluations cited above. Also, the City did consider whether to require a CEQA Initial Study or, alternately, a CEQA Categorical Exemption for the proposed demolition. Public Resources Code Section 5024.1 provides the criteria for determining when an historic resource may be listed on the California Register of Historic Resources.

Public Resources Code 5024.1(c)(1-4) states:

(c) A resource may be listed as an historical resource in the California Register if it meets any of the following National Register of Historic Places criteria:

- (1) is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage.
- (2) is associated with the lives of persons important in our past.
- (3) embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values.
- (4) has yielded, or may be likely to yield, information important in prehistory or history.

The City Council determined that the structure proposed for demolition did not meet any the four criteria of Public Resources Code Section 5024.1(c)(1-4). The City Council found that there was not substantial evidence in the record, based upon all of the historic resource assessments and public testimony at the local level, to support a determination that the existing residence proposed for demolition is historic. Based upon this, the City issued a CEQA Categorical Exclusion for the project¹.

Although sections of the LUE encourage preservation of historic structures and Title 25 provides historic preservation standards, the LUE policies regarding historic preservation

¹ Transcription of Audio of the Laguna Beach Special City Council Meeting, Item #3, Re: Appeal of Denial of Design Review 16-2178 for a new single-family dwelling at 31987 Coast Highway, April 18, 2017.

encourage, rather than require preservation of historic or potentially historic structures. For example, LUE Policy 2.2 states:

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

Likewise, Chapter 25.45 of Title 25 establishes the standards for determining whether a structure qualifies as an historic resource and also establishes the process for listing a structure on the City's Historic Register or Historic Inventory and provides incentives intended to promote listing an historic property by the property owner. However, while this section establishes benefits when qualifying structures are added to the Historic Register or Historic Inventory, it does not compel an unwilling property owner to do so. The residence is not listed on either the City's Historic Register or Historic Inventory. In addition, the residence has never been nominated for consideration for inclusion on the California Register of Historic Resources.²

The LUE policies cited above also indicate that "character-defining components of Laguna Beach's traditional neighborhoods" be protected. The proposed project would demolish the existing single-family residence. The residences surrounding the subject site are a more or less eclectic mix of architectural styles and ages. The residence immediately down-coast is a wood and glass, more or less modernesque structure. The residence located between the subject site and Coast Highway is a shingled, mansard roofed structure. And the residence two lots up-coast, adjacent to the Thousand Steps public access stairway, is a sort of English cottage with gabled windows, brick double chimney, and cone shaped turret. Inland of Coast Highway, across from the site, the homes range from 1960s style, fronted by glass sliders, to smaller, traditional bungalow style homes. It may be worth noting that the subject residence, while visible from the beach below, is not visible from Coast Highway. It would be difficult to say that demolition of the residence at the subject site would have any significant effect on the character of the surrounding neighborhood.

When considering the question of retaining an existing structure on-site, the structural integrity of the residence must also be considered and evaluated. The seaward edge of the second floor of the existing residence and the brick patio at the seaward edge of the lower level abut a near vertical drop (the bluff elevation descends from a 125-foot elevation to a 110-foot elevation over only 16 lineal feet). The edge of the existing residence is located less than seven feet from the near vertical drop. New development in this area would be required to be setback a minimum of 25 feet from the bluff edge consistent with the LUE. Therefore, consideration must be given to whether the methods necessary to retain a non-conforming structure in its current location would require measures to such a degree that retention of the existing structure would in fact constitute a "major remodel" and thus be required to conform to the current bluff edge setback requirements.

² Public Resources Code Section 5024.1 provides the procedures by which an historic resource may be listed on the California Register of Historic Resources. Section 5024.1(f)(4) provides that if the owner of a private property objects to the nomination, the property shall not be listed. However, Section 5024.1(f)(5) allows that, in such case, the property may be listed as eligible for listing.

Dr. Street has determined that based on the LUE definition, the bluff edge line occurs at elevations of approximately +147-150 feet above MSL. Seaward of this bluff edge line constitutes the bluff face. Above this bluff edge line, the inclined bluff top maintains a relatively consistent slope of 7.5:1, to points well beyond PCH; seaward of this bluff edge line, the downward gradient increases, and is generally maintained continuously to the base of the bluff. In other words, this bluff edge line (at between +147-150 ft elevation) represents the first major slope break where the bluff top transitions to the bluff face. The one exception to the continuity of the downward gradient of the slope below the LUE bluff edge line occurs in the location of the proposed house, where there is a level bench at about the +124-foot elevation. Under the LUE bluff edge definition, this ledge represents “a case where there is a step like feature at the top of the bluff”; accordingly, the bluff edge occurs at the landward edge of the topmost riser, at the inland side of the bench.

In the central portion of the lot, in the area of the proposed residence, the CCC bluff edge is approximately 2 -10 feet landward of the proposed residence. Therefore, the existing residence is sited entirely on the coastal bluff face and does not conform to any of the required bluff setbacks.

The certified LCP Land Use Element (LUE) defines “major remodel” as:

Alteration of or an addition to an existing building or structure that increases the square footage of the existing building or structure by 50% or more; or demolition, removal, replacement and/or reconstruction of 50% or more of the existing structure; greater specificity shall be provided in the Laguna Beach Municipal Code.

In past actions in Laguna Beach and elsewhere the Commission has found that calculating whether a project constitutes a major remodel (and thus triggers the requirement to bring non-conformities into conformance) includes consideration of modification and/or removal of existing exterior walls, roof and floors, and foundations. These modifications and/or removals are tabulated cumulatively to determine the 50 percent criteria.

A Structural & Construction Feasibility Assessment prepared by Brion Jeannette Architecture, Core Structure, Inc.³, and Corbin-Reeves Construction (December 22, 2016) assesses the structural condition of the existing residence and finds:

“The house’s foundation and structural brick walls are failing and have little to no structural value at this time. They are not reinforced with steel and they cannot handle the load of the structure. Multiple leaking plumbing pipes are undermining the foundations and hardscape areas causing settlement, erosion, cracking and spalling. The brick at the walls is disintegrating and bulging due to the existing structural loads. The gunite on the slope is cracked and erosion is evident below. The guardrails at the oceanward side are bowing oceanward and do not meet the Building Code requirements for height or loading. The garage structure is also failing due to the age and weight of the clay roof tile – the roof framing is sagging

³ The signatory to the Study for Core Structure, Inc. is Amir Deihimi, P.E., a registered, professional civil engineer.

and causing the wall framing to deflect. The foundation here is in disrepair as well, evidence of leaking in the rooms below has been noted in the previous report.”

The Structural & Construction Feasibility Assessment continues:

“The only way to provide a structurally sound foundation that could withstand the seismic and wind loads that are currently required by the Building Code for a 3-story structure [the existing residence includes two residential stories and a third, garage level] would be to shore up the entire structure and completely redo the foundation. Due to the existing building’s proximity to the top of the bluff (as close as 6’-6” away) deeper foundation will be required than if a new house were to be constructed at the current City planning and California Coastal Commission required bluff top setback of 25’-0”. The house must be stripped of all finishes, roof tiles, windows, doors, etc. to lighten its weight prior to the shoring operation. Holes would have to be made through the floors and roof for installation of the supporting elements, pump jacks and bracing. Because of existing site constraints, removal of parts of the building and site elements will have to take place in order to get the equipment necessary to drill the shear pins or the lateral stability caissons, excavate, and shore. This will involve removal of existing walls and other site elements to allow for wider pathways of sufficient width and the creation of pads of sufficient substance to support the cranes necessary to hoist equipment over the existing structures. The existing reduced setback at the bluff creates a dangerous working conditions [sic] and does not provide adequate room for the type of drill rig that would be necessary to drill the shear pins or caissons required from the soils report. It would be necessary to demolish large portions of the oceanward side of the house and decks to create a safe working environment for the contractors.”

Based upon the extent of work necessary to stabilize the existing structure in its current location as described in the feasibility assessment cited above, such work would constitute a “major remodel” as defined in the LUE and would thus trigger relocation of site development landward of the current location. Moreover, the work required to stabilize the structure would also significantly reduce or eliminate the historic significance the existing structure might otherwise retain.

Conclusion

The certified LCP encourages retention of structures that are considered to be historically significant; however, it does not require that they be retained if the structure is not listed on the City’s Historic Register or Inventory. The existing structure at the site is not listed on the City’s Historic Register or Historic Inventory and has never been nominated for consideration for inclusion on the California Register of Historic Resources. Moreover, the existing structure is not currently structurally sound and the work required to make it structurally sound would adversely impact the degree of historical significance. In addition, the work required to make the structure structurally sound would constitute a “major remodel” which would require the structure to conform to the LCP’s bluff top setback of 25 feet from the bluff edge, and possibly rectify other non-conforming issues. For these reasons, the Commission finds that the proposed demolition of the existing residence is consistent with the LCP policies regarding preservation of historically significant structures and protection of traditional neighborhoods.

F. NATURAL RESOURCES/ESA

Regarding protection of natural resources and environmentally sensitive areas the City's certified LCP includes the following policies:

Land Use Element:

Policy 5.2 states:

Ensure that all new development, including subdivisions and the creation of new building sites and remodels that involve building additions, is adequately evaluated to ascertain potential negative impacts on natural resources and adjacent development, emphasizing impact avoidance over impact mitigation. Required mitigation should be located on-site rather than off-site. Any off-site mitigation should be located within the City's boundaries and in close proximity to the project.

Policy 7.3 states:

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

Policy 7.4 states:

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

Action 7.4.2 states: 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).

Goal 10 states:

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

Policy 10.2 states:

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

Open Space/Conservation Element:

Policy 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 8-C states:

Identify and maintain wildlife habitat areas in their natural state as necessary for the preservation of species.

Policy 8-I states:

Environmentally Sensitive Areas (ESA's) as defined in Section 30107.5 of the California Coastal Act shall be identified and mapped on a Coastal ESA Map. The following areas shall be designated as Environmentally Sensitive Areas: Those areas shown on the Biological Resources Values Map in the Open Space/Conservation Element as "Very High" habitat value, and streams on the Major Watersheds and Drainage Courses Map which are also streams as identified on the USGS 7.5 Minute Quadrangle Series and any other areas which contain environmentally sensitive habitat resources as identified through an on-site biological assessment process, including areas of "High" and "Moderate" habitat value on the Biological Resources Values Map and areas which meet the definition of ESA's in Section 30107.5 of the Coastal Act, including streams, riparian habitats, and areas of open coastal waters, including tidepools, areas of special biological significance, habitats of rare or endangered species, near-shore reefs and rocky intertidal areas and kelp beds.

The LCP policies 5.2, 7.3, 7.4, 10.2, 7-K, 8-C, and 8-I require that all new development is adequately evaluated to ascertain potential negative impacts on natural resources including environmentally sensitive habitat areas (ESAs), and that development be designed and sited to protect natural resources and environmentally sensitive resources, and to minimize landform alteration.

A vegetation survey was conducted in November 2017 by a senior project biologist for the subject site to determine whether the site constitutes an environmentally sensitive habitat area (Results of Vegetation Survey, Glenn Lukos Associates, 12/5/17). The survey identifies and maps all vegetation on the project site and assessed the site for special-status species. The survey found that "nearly all vegetation on the property consists of non-native ornamental species ..." The survey did identify disturbed California Buckwheat Scrub, Laurel Sumac Scrub, and Saltbush Scrub, and some lemonadeberry individuals present at the subject site. The disturbed California Buckwheat Scrub, Laurel Sumac Scrub, and Saltbush Scrub are all located near the base of the bluff, well outside the proposed demolition footprint. Two of the four lemonadeberry individuals are also located near the base of the bluff. The other two lemonadeberry individuals are located higher on the bluff, about mid-way to the existing building pad on which sits the residence to be demolished. But these two individuals are also located well outside the proposed project's footprint ([Exhibit 3](#)).

Of the native plants on site, the Vegetation Survey states:

"Disturbed California Buckwheat Scrub

A patch of disturbed California buckwheat scrub covering 0.010 acre was identified at the northwest corner of the site between the steps and the adjacent property.

California buckwheat (*Eriogonum fasciculatum*) is the dominant species comprising

about 70- to 80-percent of the cover. According to the membership rules of the MCVII, areas with 50-percent cover by this species are classified as California buckwheat scrub. The area is characterized as disturbed because it is growing on broken concrete and cobble on a linear mound at the corner of the property. California buckwheat scrub is designated as G5S5 in the California Natural Diversity Database. This alliance would not be affected by the proposed demolition.

Laurel Sumac Patches

Laurel Sumac Patches cover approximately 0.030 acre in two small patches consisting entirely of laurel sumac along the northern edge of the site outside of the demolition area as well as at the southwest corner of the site, where it comprises approximately 60-percent cover with lemonade berry comprising 30-percent cover and California encelia comprising 10-percent of the cover. Membership rules for the MCVII define this alliance as areas with laurel sumac exhibit >50-percent absolute cover or >30-percent relative cover. Laurel sumac (*Malosma laurina*) is a common native shrub and is listed in the California Natural Diversity Database as G4S4 and is not considered a special-status native vegetation alliance. This alliance would not be impacted by the demolition.

Saltbush Scrub

A patch of Saltbush scrub covering approximately 0.026 acre occurs near the southwest corner of the site consisting of a monocultural stand of big saltbush (*Atriplex lintiformis* subsp. *Breweri*). The patch of saltbush is well outside of the proposed demolition zone and would not be affected by the project. In addition, saltbush (a.k.a. quailbush) scrub is listed in the California Natural Diversity Database as G4S4 and is not considered a special-status native vegetation alliance. Saltbush scrub will not be impacted by the demolition.”

Although natural resources in the form of native plants are present on site, the proposed demolition project will have no impact on them. The native plants are located both linearly and vertically distant from the demolition project. The steepness of the bluff seaward of the demolition footprint will prevent construction equipment from interfering with the native plants on-site. In addition, the native plants will be separated from the demolition project’s footprint by construction fencing that further delineates the extent of the proposed demolition work. Within the footprint of the proposed demolition project, only existing developed area (hardscape and existing residence) and ornamental landscaping are present. As stated above, the project biologist finds that the native plants on site will not be impacted by the proposed demolition project. Therefore, as proposed the demolition project is not expected to have adverse impacts on natural resources (native plants) at the site.

It should be noted that, although the City’s Notice of Public Hearing for this project states, in the project description, that the proposed development will include “construction in an environmentally sensitive area (oceanfront)” it more accurately should have stated “construction in an Environmentally Sensitive Land/Resource.”

The LCP LUE Glossary defines an Environmentally Sensitive Land/Resource as:

“Land or resources that have been identified in the City's General Plan as having one or more of the following characteristics: 1) high-or very-high-value biological habitat, as described in the Open Space/Conservation Element; 2) **located on the oceanfront**; 3) a City-mapped watercourse; 4) geologic conditions such as slide-prone formations, potentially active fault, inactive fault, landslide potential, liquefaction potential, and soft coastal headlands; 6) hillside slopes greater than 45%; 7) adjacent wildland area, which requires fuel modification; and 8) major or significant ridgelines.” (Emphasis added.)

Meanwhile, the LCP OS/C Policy 8F describes “Environmentally Sensitive Areas (ESA’s) as:

“Environmentally Sensitive Areas (ESA’s) as defined in Section 30107.5 of the California Coastal Act shall be identified and mapped on a Coastal ESA Map. The following areas shall be designated as Environmentally Sensitive Areas: those areas shown on the Biological Resource Values Map in the Open Space/Conservation Element as “Very High” habitat value, and streams on the Major Watersheds and Drainage Courses Map which are also streams as identified on the USGS 7.5 Minute Quadrangle Series and any other areas which contain environmentally sensitive habitat resources as identified through an on-site biological assessment process, including areas of “High” and “Moderate” habitat value on the Biological Resources Values Map and areas which meet the definition of ESA’s in Section 30107.5 of the Coastal Act, including streams, riparian habitats, and areas of open coastal waters, including tidepools, areas of special biological significance habitats of rare or endangered species, near-shore reefs and rocky intertidal areas and kelp beds.”

The LCP LUE Glossary defines an Environmentally Sensitive Habitat Area (ESHA) as:

“The Coastal Act defines environmentally sensitive area as any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.”

The City’s use of the term ESA in its LCP mimics the term Environmentally Sensitive Area as that term is defined in Section 30107.5 of the Coastal Act. Both the ESA description in Policy 8-I of the OS/C Element and the definition of ESHA in the LUE Glossary specifically reference the Coastal Act definition of ESA. That definition emphasizes *biological* resources that are “rare or especially valuable.” The term Environmentally Sensitive Land/Resource is specifically defined separately, as a distinct entity, in the LCP LUE Glossary. It is the term Environmentally Sensitive Land/Resource that specifically references land or resources located on the “oceanfront.” Neither the LCP LUE Glossary nor OS/C Element Policy 8-I include the term “oceanfront.” Moreover, the subject site is not mapped as habitat on the City’s Biological Resources Values Map (under any of the three habitat value categories of Very High, High, or Moderate), is not identified as a stream on the Major Watersheds and Drainage Courses Map, and it is not identified as a stream on the USGS 7.5 Quadrangle Series. Nothing in the project record indicates that the site supports significant habitat, other than the one, isolated native shrub described above. Therefore, oceanfront land, such as the subject site, is accurately called an Environmentally Sensitive Land/Resource, and is not automatically ESA.

City of Laguna Beach staff, responding via email to Commission staff questions regarding how the City approaches the ESA designation on oceanfront sites, states that the City would consider the subject site an Environmentally Sensitive Land/Resource as defined above. According to City staff this designation triggers a requirement for a coastal hazards analysis/wave run-up study and geotechnical report for all development that involves foundation work on oceanfront lots. Additional building setbacks, open space areas and/or other conditions may be imposed as a result of design review consideration of these required documents. Both a coastal hazards analysis/wave run-up study and geotechnical report have been submitted for the proposed project. City staff indicates that “The site is not considered an ESHA, as there is no high or very high value habitat mapped on or near the subject property. It is considered an ESL/R as defined above because it is an oceanfront lot, which is noted in the definition as bullet #2.”⁴

The area is recognized in the LCP as an Environmentally Sensitive Land/Resource due to the site being an oceanfront lot. This designation triggers a requirement for a coastal hazards analysis/wave run-up study and geotechnical report for all development that involves foundation work on oceanfront lots. Additional building setbacks, open space areas and/or other conditions may be imposed as a result of design review consideration of these required documents. Both a coastal hazards analysis/wave run-up study and geotechnical report have been submitted for the proposed project. Therefore, the LCP policies related to Environmentally Sensitive Land/Resource areas have been complied with here.

The LCP requires that the project site be evaluated for the presence of natural resources on the site, including sensitive habitat. The applicant has provided the above described Vegetation Survey for the site. Although the Vegetation Survey did identify native plants on site, they are located well outside the proposed demolition project footprint ([Exhibit 3](#)). The proposed demolition project will not impact the natural resources (native plants) on site. In addition, Dr. Jonna Engel, Commission’s senior ecologist, has reviewed the vegetation analysis, and concurs that the subject bluff does not support coastal bluff environmentally sensitive areas (ESA). The patches of native species are fragmented and small and associated with larger patches of non-native invasive iceplant and ornamental vegetation, and does not comprise of a large, in-tact native coastal bluff habitat. A patch of laurel sumac also occurs on the slope. While this is a native species it is not typically a member of coastal bluff habitat. Therefore, the Commission finds the proposed development is consistent with the LCP policies cited above that require protection of natural resources and sensitive areas.

G. CULTURAL/ARCHEOLOGICAL RESOURCES

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

Policy 12-A states:

⁴ Email from Evan Jedynak, Associate Planner, City of Laguna Beach to Meg Vaughn, Staff Analyst, California Coastal Commission, 11/22/17.

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

Policy 12-B states:

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

Policy 12-C states:

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

Policy 12-D states:

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

The question of requiring conditions to address cultural resources on the coastal development permit for the proposed demolition project was raised previously when the Commission considered whether the proposed demolition project raised a substantial issue with regard to the grounds upon which the appeal was filed. At that time, Commission staff recommended, and the Commission found, that concerns regarding protection of archaeological resources potentially present at the site did not raise a substantial issue. However, after the Substantial Issue hearing on August 9, 2017, Commission staff received input from a professional archaeologist with expertise in the coastal Orange County area: Patricia Martz, Ph.D. Professor Emerita, Depart of Anthropology, California State University, Los Angeles and President of the California Cultural Resources Preservation Alliance, Inc. Dr. Martz has been involved with previous projects before the Coastal Commission, particularly in the Bolsa Chica vicinity of Orange County. Regarding the subject site and proposed demolition, Dr. Martz provided the following comments:

“The area where the property to be demolished (31987 Coast Hwy., Laguna Beach), is culturally sensitive as archaeological sites have been recorded in the vicinity. If the property was constructed prior to 1970 when CEQA was in place, the property would not have been inspected for the presence of archaeological resources and there is the potential for the presence of buried cultural materials. Therefore, I strongly recommend that if a permit is approved, there is a condition for a qualified archaeological and a Native American monitor during any ground disturbing activities.”

An archaeological site is known to exist just beyond a half mile from the site, at 31461 Coast Highway (archaeological site: P-30-000842). Because the existing residential structure at the site was constructed in circa 1930, the subject site likely has never been evaluated for the presence of cultural/archaeological resources. Although construction of the existing residence circa 1930 may have disturbed any resources that might have been

present at that time, there is nevertheless the potential that resources may yet remain on site.

Thus, the project may potentially have effects on cultural/archaeological resources. Discussion in the LCP Open Space/Conservation Element, Topic 12 (Archaeology/Paleontology), acknowledges that issues relating to cultural and scientific resources focus on the need for proper mitigation measures, including preservation of archaeological sites. Policy 12-A promotes conservation of such sites. Policy 12-C requires that development adjacent to a historically significant site be sited and designed to protect the visual setting of the site. This application, however, is limited to demolition, so visual impacts due to construction of new structures are not expected. Policy 12-D requires preservation of cultural/scientific sites that have archaeological significance. Moreover, the Commission has previously allowed development in areas identified by project archaeological consultants as too disturbed to contain significant archaeological materials, only to discover, too late, that significant resources were present after all, but lost due to development approved under the assurance that no resources would be present. In this case, no archaeological evaluation for the site has been conducted.

Although the Commission has not typically required that cultural resource protection plans be prepared and implemented with the type and location of development currently proposed, based upon the input from a qualified professional archaeologist (cited above), and because LCP OS/C Element Topic 12 policies require consideration of preservation of archaeological sites, a Construction (and Demolition) Monitoring Treatment Plan must be prepared and implemented in conjunction with the proposed demolition project. The Construction (and Demolition) Monitoring Treatment Plan must require that all ground disturbing activities associated with the proposed demolition project must include monitoring by a qualified archaeologist and appropriate Native American(s). The archaeological monitor must be qualified by the California Office of Historic Preservation standards. The Native American monitor must have documented ancestral ties to the area and be appointed consistent with the standards of the Native American Heritage Commission. Without such monitors, there is no assurance that any cultural resources that may yet survive on-site would be recognized as such and treated appropriately. Also, in the event of such discovery(ies), work should be halted until a qualified archaeologist can evaluate the nature and significance of the find.

The proposed project has been conditioned to submit a Construction Monitoring Treatment Plan (CMTP) that requires a qualified archaeological monitor and appropriate Native American monitor(s) to be present during all earth disturbing activities and describes measures to be implemented in the event cultural resources are discovered. In addition, it should be clear that if Native American human remains are discovered, in addition to State requirements such as but not limited to, notification to NAHC and the Most Likely Descendent (MLD), consideration shall be given to allowing the remains to remain in place, undisturbed.

To reduce the potential for impacts on any cultural resources that may be present at the site, the Commission imposes **Special Condition 1** requiring preparation and

implementation of a Construction (and Demolition) Monitoring Treatment Plan that, among other things, assures:

- That all ground disturbing project activities be monitored by a qualified archaeologist and by appropriate Native American(s);
- That a pre-construction/demolition workshop for construction/demolition personnel will occur and be conducted by a qualified archaeologist and appropriate Native American, to discuss the potential for discovering cultural/archaeological resources; and,
- That if any cultural resources are discovered all project activities within the area that could impact the resources (minimum of 100 feet from the discovery) shall cease; and
- That a specific process to protect the resource(s) will be implemented, including a significance testing procedure, and a procedure to follow should the finds be determined to be significant.

Special Condition 1 identifies the specific measures to be implemented with the proposed development, requires that those measures be included in an approved Construction (and Demolition) Monitoring Treatment Plan, and that the approved Construction (and Demolition) Monitoring Treatment Plan be implemented. Only as conditioned, can the project be found to be in conformance with the Policies 12-A, 12-B, 12-C, and 12-D of the certified LCP.

H. 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.

Policy 9-I states:

Require new development projects to control the increase in volume, velocity and sediment load of runoff from the greatest development areas at or near the source of increase to the greatest extent feasible.

Policy 9-J states:

Require new developments to maintain runoff characteristics as near as possible to natural discharge characteristics by maintaining the natural conditions of the watershed.

Policy 9-K states:

Promote preservation and enhancement of the natural drainage of Laguna Beach.

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, either directly or via the community's storm drains, which ultimately flow to the sea. The applicant is proposing measures to address these water quality concerns. The proposed project involves demolition of an existing residence and related hardscape and removal of specific, ornamental landscaping as shown on the demolition plan ([Exhibit 2](#)). No new construction is included as part of this application. New construction is the subject of Application No. A-5-LGB-19-0159, which has concurrently been scheduled for the Commission's August 2020 meeting.

During the proposed demolition activities and for the duration of the time that the site remains vacant, it is important to assure that site drainage will not result in adverse impacts to the surrounding drainages, beach area, and ocean. If left untended for extended and/or unknown timeframes, site runoff may cause destructive erosion and unacceptable pollutant loads which could be carried onto the beach and into the ocean.

To address these concerns, the applicant has proposed measures to protect water quality. These measures include placement of 18-inch high, woven fabric gravel bags filled with coarse sands along the seaward edge of the demolition project footprint, and in other strategic locations on the site. Also proposed is stabilization of the site entrance from the roadway to inhibit sediments from being deposited onto the public roadway. Construction fencing consisting of five-foot-high chain link fencing with green mesh fabric will be placed along the seaward edge of the demolition project footprint, and across each of the “U” shaped segments of the lot. In addition, a lined sump pit will be installed at the lowest area of the demolition footprint (the current lower/basement level of the residence) to collect storm water and filter it before returning it to the street. The sump pit will be 30 inches deep, lined with visqueen, and approximately 400 square feet. The sump pit will have a filtration tank within it with a submersible pump with a float switch at 24 inches to activate the sump pump whenever the level of water reaches that point. The sump pump will receive the filtered storm water from the filtration tank and pump it up to Coast Highway where it will be discharged through the curb face. The six-inch drainage pipe will be fitted with a T-shaped end cap so the water will be dispersed to the curbside/gutter and not out into the roadway. The system will be fitted with a back-up generator and a backflow preventer. In addition, the site is proposed to be monitored regularly by the applicant to assure all water quality drainage measures remain in good working order.

In addition, in order to control erosion once demolition is complete, the applicant has proposed that the disturbed area of the site will be hydroseeded with a drought tolerant WUCOLS⁵ Low and Very Low Water seed mix to stabilize the site. Vegetating the site will help to retain water on-site and minimize the amount of drainage that leaves the site. However, although the applicant has proposed using low and very low water use hydroseed mix to vegetate the otherwise barren, post-demolition site, the proposed landscaping hydroseed mix must also be limited to primarily California native plants. Native plants tend to reduce the need for pesticide and fertilizer use.

Pesticides and fertilizers can add toxins to site runoff. Thus, use of plants that are both low water use and primarily native aids in promoting water quality. Therefore, **Special Condition 4** is imposed which requires the applicant to submit a list of seeds that will be included in the hydroseed mix that demonstrates that seed mix will be comprised primarily of seeds native to California.

Special Condition 3 requires the project to conform to the site drainage and erosion control plan as proposed ([Exhibit 2](#), Demolition Plan). In addition, the Commission imposes **Special Condition 6** which identifies construction related measures to be incorporated into the project during construction/demolition. By incorporating these water quality protection measures into the proposed development, as proposed and as conditioned, the project minimizes the effect of construction and post-construction activities on water quality and the marine environment. 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

⁵ WUCOLS provides evaluations of the irrigation water needs for over 3,500 taxa (taxonomic plant groups) used in California landscapes, prepared by UC Davis California Center for Urban Horticulture (CCUH).

the introduction of pollutants into coastal waters, and minimization of erosion, sedimentation and other pollutants in runoff from construction-related activities.

I. Public Access

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

Land Use Element:

Policy 4.3 states:

Maintain and enhance access to coastal resource areas, particularly the designated public beaches, by ensuring that access points are safe, attractive, and pedestrian friendly.

Action 4.3.1 states: Continue to pursue dedication and acceptance of beach access and other offers-to-dedicate throughout the City. The City shall maintain an inventory of public access and open space dedication or offers-to-dedicate to ensure such areas are known to the public and are protected through the coastal development permit process. (Same as Action 6.9.1)

Action 4.3.2 Maintain and improve public pedestrian access to and along beaches and oceanfront bluff using public rights-of-way and public easements. Protect, and where feasible, formalize, continued public use over areas used historically by the public (i.e. public prescriptive rights) to gain access to and along beaches, oceanfront bluffs, and other recreational areas.

Coastal Land Use Plan Technical Appendix:

The location and amount of new development shall maintain and enhance public access to the coast by providing adequate parking facilities or providing substitute means of serving the development with public transportation.

Open Space/Conservation Element:

Policy 3-A states:

Retain and improve existing public beach accessways in the City, and protect and enhance the public rights to use the dry sand beaches of the City.

Also, projects located between the sea and the first public road paralleling the sea, such as the subject site, must be consistent with the public access 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 adjacent to/above Thousand Steps public beach in South Laguna. The South Laguna area draws a significant number of visitors, especially to its public beaches. Thousand Steps beach is one of the larger pocket beaches and provides a wide sandy area enclosed by rocky headlands at either end. It is accessed from the public accessway located two lots upcoast of the subject site, opposite the end of 9th Avenue. Limited public parking is available in the vicinity along some portions of Coast Highway in the project area.

Construction projects can adversely impact public access by displacing otherwise available on-street, public parking spaces.

The applicant has indicated that the proposed demolition work is expected to be conducted by a maximum of three to four workers at any given time and that there is adequate space on-site to accommodate parking for these workers. In addition, smaller dump trucks are proposed to be used until a sufficient off-street loading area is created for larger dump trucks. All equipment to be stored overnight will be stored on-site, outside the street travelway. Placement of the on-site dumpster will incorporate use of a flagman to direct traffic during placement. Moreover, all work will occur within the existing developed footprint, accessed from Coast Highway. No long term, post demolition impacts to public coastal access are anticipated because the project will not create any changes to the existing access situation. As proposed by the applicant, project-related parking will be accommodated on the subject site for the duration of the demolition project. **Special Condition 5** is imposed to memorialize this mitigation measure.

As conditioned, the proposed demolition will not impact existing public parking available in the area, and the proposed demolition 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 demolition 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.

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 demolition, 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 April 18, 2017, the Laguna Beach City Council found that the proposed demolition was categorically exemption from CEQA (Categorical Exemption [Section 15303, Class 3(a)]). The proposed demolition has been conditioned in order to be found consistent with the certified LCP. Mitigation measures, in the form of special conditions, require the applicant to: **1)** prepare and implement a Construction Monitoring Treatment Plan to assure protection of cultural/archaeological resources; **2)** prepare and submit final revised plans; **3)** conform with the submitted erosion control and drainage plan; **4)** submit a seed list demonstrating that all seeds in the proposed hydroseed mix are low water use and primarily California natives; **5)** accommodate all construction parking on-site; and **6)** implement measures regarding storage of construction materials, mechanized equipment and removal of construction debris.

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect which 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 complies with the applicable requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

1. Certified City of Laguna Beach Local Coastal Program.
2. City File Record for Local CDP No. 16-2180 and Local CDP No. 19-2820.
3. Preliminary Geotechnical Investigation for New-Single Family Residence by Geofirm, 9/13/16.
4. Geotechnical Review of Demolition Plan by Geofirm, dated May 25, 2017.
5. Coastal Hazards Analysis for Proposed New Residence, 31987 Coast Highway, Laguna Beach, Orange County by GeoSoils, Inc., dated June 3, 2016.
6. Transcription of Audio of the Laguna Beach Special City Council Meeting, Item #3, Re: Appeal of Denial of Design Review 16-2178 for a new single-family dwelling at 31987 Coast Highway, dated April 18, 2017.
7. Results of Vegetation Survey for 31987 Coast Highway, Laguna Beach (Dimitry Residence), Orange County by Glenn Lukos Associates, dated December 5, 2017.
8. Historic Resource Assessment, Lazzaretto, Iker, Aranguren, dated October 24, 2016.
9. Peer Review of Historic Resource Assessment, Heck, LSA dated November 9, 2016.
10. Historic Resource Assessment, Lazzaretto, Iker, Aranguren, dated November 30, 2016.
11. Addendum to Peer Review of Historic Resources Assessment, Heck, LSA, dated December 2, 2016.
12. CEQA Analysis and Recommendations, Jerabek, ESA, dated April 10, 2017.
13. Preliminary Geotechnical Investigation, Proposed Residence Remodel by Geofirm, dated March 29, 2018.
14. Response to City of Laguna Beach Geotechnical Report Review Checklist by Geofirm, dated May 8, 2018.
15. Supplemental Geotechnical Investigation of Bluff Slope Stability, Proposed Residence Remodel by Geofirm, dated May 8, 2018.
16. Coastal Hazard Analysis for Remodel of Single Family Residence, 8 Rockledge Road, Laguna Beach, Orange County, California by GeoSoils Inc., dated November 28, 2016.
17. 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.
18. 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.
19. Emergency Permit No. G-5-20-0011