

CALIFORNIA COASTAL COMMISSION

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W13a

Filed: 03/26/18
180th Day: NA
Staff: A. Spencer-LB
Staff Report: 08/21/20
Hearing Date: 09/09/20

STAFF REPORT: APPEAL-DE NOVO

Application No.: A-5-LGB-18-0014

Applicants: Peter Harle and Lori Olvera

Agent: D.P. Reynolds Corp.

Local Government: City of Laguna Beach

Appellant: Sharon Fudge

Location: 31101 S. Coast Highway, Laguna Beach, Orange County (APN: 056-012-15)

Project Description: Remove damaged retaining wall; repair existing patio (replace flagstone flooring in kind, no patio expansion); and construct a 36-inch tall PVC perimeter fence on the patio.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The applicants are proposing to remove an existing damaged retaining wall, repair the flooring of an existing seaward patio, and construct a 36-inch tall PVC perimeter fence on the patio of a beachfront lot located approximately 100 feet north of Aliso Creek in the South Laguna Beach area. The project site is developed with a single-family residence that was permitted in 1982 by the Coastal Commission (CDP No. 5-82-368;

Arciero). In March 2017, the wall that formerly occupied the seaward property line was severely damaged by erosion caused by Aliso Creek when it flowed towards the site during a winter storm. On March 24, 2017, the Commission issued Emergency CDP No. G-5-17-0019 for the temporary placement of a six-foot high, sixty-foot long chain-link fence inland of the oceanfront property line in order to enclose the damaged wall and to protect the beach-going public from being injured by it. On February 22, 2018, the City of Laguna Beach approved local CDP No. 17-2097 for construction of a 50-foot long, approximately six-foot high wall with 10-foot deep soldier piles, to replace the damaged wall. That CDP was appealed to the Coastal Commission on March 26, 2018. On May 11, 2018, the Commission found the locally-issued CDP to raise substantial issues, thereby accepting the appeal for a full de novo review of the CDP application.

The Laguna Beach certified Local Coastal Program (LCP) and the public access and recreation policies of the Coastal Act are the standard of review. The Land Use Plan portion of the certified LCP includes Open Space Conservation Element policies 1-A and 1-E, which prohibit the construction of man-made structures on the sandy portion of the beach, and further require that the open beach should be left in a natural state. The applicants have revised the project description to feature a short perimeter fence that would be sited on the developed patio (landward of the existing retaining wall) as opposed to the City approved development of a taller retaining wall with deepened footings that would have been sited on the beach sand. Therefore, the open beach will be free of development at this site, consistent with Open Space Conservation Element policies 1-A and 1-E.

In addition, Policies 7.3.9 and 7.3.13 of the Land Use Element (part of the LCP) prohibit the use of protective devices to protect accessory development and limit shoreline protection to those situations where primary residences with the legal right to protection are clearly threatened by erosion. According to a coastal hazards study submitted by the applicants, the residence (considered to be a primary structure) is not in imminent danger of erosion/flooding hazards. The proposed fence is designed to function as a perimeter marker and would not serve as a shoreline protective device for the private patio or the existing residence, neither of which are entitled to shoreline protection under LUE Policies 7.3.9 and 7.3.13. Although the applicants are not proposing a shoreline protective device at this time, staff is recommending that the Commission impose **Special Condition 2** to confirm that the development approved by this permit, including the fence and patio, is not entitled to protection, and to require the applicants to waive rights to future shoreline protection of the development subject to this permit. Staff is also recommending that the Commission impose **Special Condition 3**, which requires the applicants to assume the risk of development within an area with a known vulnerability to coastal hazards, including, but not limited to, coastal flooding. In addition, proposed **Special Condition 4** requires a coastal development permit for future development.

In order to address the potential for public access impacts, the applicants have provided a debris management plan to guide the removal of the damaged retaining wall. Under this plan, the damaged materials would be removed without the use of large

mechanized equipment, and the debris would be carried out through the residence. There will be no materials staging on the public beach, and therefore, no adverse impacts to coastal access to and along Aliso Beach. Nevertheless, staff recommends that the Commission imposes **Special Condition 1**, which requires the applicants to conform to the Debris Management Plan that was submitted to Commission staff on July 17, 2020.

The proposed project, as revised by the applicants and conditioned as recommended, would be consistent with certified LCP policies as well as the Chapter 3 Coastal Act policies protecting public access and public recreation. Commission staff recommends that, after the de novo public hearing, the Commission **approve** the coastal development permit application with these **four special conditions**. The motion and resolution can be found on Page 5 of the staff report.

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EXHIBITS

[Exhibit 1 – Project Location/Vicinity Map](#)

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – Coastal Hazards Analysis](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit A-5-LGB-18-0014 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. 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 Commissioners present.

Resolution:

The Commission hereby approves the Coastal Development Permit for the proposed project and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the certified Local Coastal Program or the public access and/or 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 would substantially lessen any significant adverse impacts of the development on the environment.

II. 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 applicant 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 applicant to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. **Conformance with Debris Removal Plan.** The project shall conform to the Debris Management Plan submitted on July 17, 2020, indicating that the damaged retaining wall shall be removed with hand materials, and transported off site through the primary residence. No mechanized equipment shall be present on the public beach. The applicants shall undertake development in accordance with the approved plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
2. **No Future Bluff or Shoreline Protective Device.**
- A. By acceptance of this Permit, the applicants agree, on behalf of themselves and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. A-5-LGB-18-0014 including, but not limited to, the 36-inch PVC perimeter fence and the repaired patio, including in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, bluff retreat, landslides, or other coastal hazards in the future, and as may be exacerbated by sea level rise. By acceptance of this Permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under applicable law.
- B. By acceptance of this Permit, the applicants further agree, on behalf of themselves and all successors and assigns, that they are required to remove the development authorized by the permit, and restore the site, if:
- (1) the City or any other government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for use due to damage or destruction from waves, flooding, erosion, bluff retreat, landslides, or other hazards related to coastal processes, and that there are no feasible measures that could make the structures suitable for habitation or use without the use of bluff or shoreline protective devices;
- (2) removal is required pursuant to LCP policies for sea level rise adaptation planning; or

(3) the development requires new and/or augmented shoreline protective devices that conflict with relevant LCP or Coastal Act policies.

In addition, the development approval does not permit encroachment onto public trust lands, and any future encroachment must be removed unless the Coastal Commission determines that the encroachment is legally permissible pursuant to the Coastal Act and authorizes it to remain. Any future encroachment would also be subject to the State Lands Commission's (or other designated trustee agency's) leasing approval.

- 3. Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from bluff and slope instability, sea level rise, erosion, landslides and wave uprush or other tidal induced erosion; (ii) to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- 4. Future Improvements.** This permit is only for the development specifically described in Coastal Development Permit A-5-LGB-18-0014. Pursuant to Title 14 of the California Code of Regulations, Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit A-5-LGB-18-0014. Accordingly, any future improvements to the development authorized by this permit, including but not limited to, repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 of the California Code of Regulations, Sections 13252(a)-(b), shall require a Commission-approved amendment to Permit A-5-LGB-18-0014 or shall require an additional coastal development permit.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

The applicants are proposing to remove a damaged retaining wall, repair an existing seaward patio associated with an existing beachfront single-family residence, and construct a 36-inch tall, polyvinyl chloride (PVC) perimeter fence along the patio edge ([Exhibit 2](#)). A debris management plan for the project indicates that the remnants of the destroyed retaining wall will be removed by hand and carried off site through the

primary residence. No large mechanized equipment will be present on the public beach. No grading or landscaping is proposed.

The project site is a 5,984 square foot lot located approximately 100 feet north of the mouth of Aliso Creek ([Exhibit 1](#)). The lot is developed with a single-family residence, a hardscape patio, and a damaged, approximately three-foot high wall located on the sandy beach at the applicants' oceanfront property line. The single-family residence was permitted in 1982 by the Coastal Commission (CDP No. 5-82-368; Arciero). A 5.5 foot tall cinderblock and wrought iron wall was permitted to be constructed on the seaward side of the property in 1987 by County of Orange Local CDP No. 86-74Z (Arciero). As stated in the record of County of Orange Local CDP No. 86-74Z, the former wall was not permitted as a shoreline protective device, or as a retaining wall; the wall was described as an "accessory use to an existing single-family residence" (it was likely approved as a privacy barrier).

The retaining wall was destroyed during a storm in March 2017, during which Aliso Creek flooded, temporarily changed direction, and flowed northwest toward the project site. The beach sand in front of the property eroded, causing the collapse of the former wall as well as damage to the applicants' flagstone patio landward of the wall. On March 24, 2017, the applicants obtained Emergency Coastal Development Permit G-5-17-0019 from the Coastal Commission for a temporary chain link fence to close off the damaged wall for public safety purposes. The applicants applied to the City of Laguna Beach for a local CDP to construct a replacement retaining wall because the property is within the City's LCP permitting jurisdiction.

The City of Laguna Beach approved local CDP No. 17-2097 for a replacement cinderblock and glass retaining wall with 10-foot deep soldier piles on February 22, 2018, which was appealed to the Coastal Commission on March 26, 2018. On May 11, 2018, the Commission found that the locally approved CDP raised a substantial issue with respect to the proposed development's consistency with the certified LCP and accepted the appeal for a full de novo review of the CDP application.

Following the substantial issue hearing, the applicants submitted revised project plans to reflect a retaining wall supported on shallower footings. However, the revised design still featured soldier piles and still raised concern as to whether the replacement wall would act as a shoreline protective device. In response to this revised project revision, Commission staff prepared a staff report recommending the Commission deny the revised project at the November 2019 Commission meeting. Before the hearing, however, the applicants exercised their right to a postponement in order to address the outstanding issues. Subsequently, the applicants proposed the 36-inch tall perimeter fence described above and the patio repair within the existing developed footprint, which is the project before the Commission.

B. Standard of Review

Section 30604 of the Coastal Act states, in relevant part:

(b) After certification of the local coastal program, a coastal development 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.

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

The standard of review for projects heard on appeal by the Coastal Commission that are located between the first public road and the sea, like this one, is the City's certified Local Coastal Program and the public access and 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 project site is located 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 (OSC), and the Coastal Technical Appendix. The Implementation Plan (IP) portion of the LCP is comprised of a number of documents including Title 25 Zoning Code.

Both the Coastal Act and the City's certified IP define development as follows:

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

The proposed project involves the construction of a perimeter fence on land located within the coastal zone. Therefore, the project constitutes development and requires a coastal development permit. Because the project is located within the City of Laguna Beach's certified jurisdiction, the standard of review for this project is the certified Laguna Beach LCP and the public access and recreation policies found in Chapter 3 of the Coastal Act.

C. Hazards

The certified Laguna Beach Local Coastal Program contains policies related to development in hazardous areas that carry out the provisions of Coastal Act Section 30253.

Land Use Element Policy 7.3.2 states:

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

Land Use Element Policy 7.3.3 states:

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

Land Use Element Policy 7.3.9 states:

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

Land Use Element Policy 7.3.11 states:

Action 7.3.11 Require all coastal development permit applications for new development on an oceanfront or on an oceanfront bluff property subject to wave action to assess the potential for flooding or damage from waves, storm surge, or seiches, through a wave uprush and impact report prepared by a licensed civil engineer with expertise in coastal processes. The conditions that shall be considered in a wave uprush study are: a seasonally eroded beach combined with long-term (75 years) erosion; high tide conditions, combined with long-term (75 year) projections for sea level rise; storm waves from a 100-year event or a storm that compares to the 1982/83 El Nino event.

Land Use Element Policy 7.3.13 states:

Action 7.3.13 Limit the use of shoreline/bluff protective devices to the minimum required to protect existing development in danger from erosion. Site and design any such protective devices as far landward as possible. "Existing development" for purposes of this policy shall consist only of a principle structure, e.g. residential dwelling, required garage, or second residential unit, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis

courts, cabanas, stairs, landscaping etc. No shoreline/bluff protective device shall be allowed for the sole purpose of protecting an accessory structure.

OSCE Policy 1-E states:

“Prohibit the construction of buildings and other man-made structures on the sandy portion of the beach unless necessary for public health and safety.”

OSCE Policy 1-F states:

“Shoreline protective devices which may adversely affect the sand supply or cause an adverse impact to shoreline processes shall not be approved unless the situation is one in which there is clear evidence that the existing structure(s) are in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply and unless all feasible alternatives have been explored.”

The project site is located on an oceanfront lot, and is therefore vulnerable to erosion, flooding, wave runup, and storm hazards. These hazard risks are exacerbated by sea-level rise that is expected to occur over the coming decades. In this geographic area, the main concerns raised by beach fronting development are impacts to public access and recreation, and whether hazardous conditions might eventually lead to a request to build a shoreline protection device to protect the proposed development. In this case, a retaining wall is proposed in association with a single-family residence. The main concern raised by this project is whether or not the proposed retaining wall could function as a shoreline protective device.

The Coastal Act discourages shoreline protection devices because they generally cause adverse impacts to coastal resources and can constrain dynamic coastal processes. As a sandy beach erodes, the shoreline will generally migrate landward toward the structure, resulting in a reduction and/or loss of public beach area with no increase of the landward extent of the beach. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines, which narrows the beach area available for public access. Shoreline protective devices also result in a progressive loss of sand because shore material is not available to nourish the nearshore sand bar. The lack of an effective sand bar can allow such high wave energy on the shoreline that materials may be lost offshore, where it is no longer available to nourish the beach. This also affects public access through a loss of beach area. Shoreline protection devices such as revetments, seawalls, and bulkheads cumulatively affect shoreline sand supply and public access by causing accelerated and increased erosion on adjacent public beaches. Protective structures are often placed on public lands rather than on the private property they are intended to protect, resulting in a physical loss of beach area formerly available to the general public. In general, shoreline protection devices are not attractive, can detract from a natural beach experience, and adversely impact public views. Shoreline protective devices tend to conflict with various LCP and Chapter 3

policies because shoreline structures can have a variety of adverse impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach.

Sea Level Rise

Sea level has been rising for many years. Several different approaches have been used to analyze the global tide gauge records in order to assess the spatial and temporal variations, and these efforts have yielded sea level rise rates ranging from about 1.2 mm/year to 1.7 mm/year (about 0.5 to 0.7 inches/decade) for the 20th century, but since 1990 the rate has more than doubled, and the rate of sea level rise continues to accelerate. Since the advent of satellite altimetry in 1993, measurements of absolute sea level from space indicate an average global rate of sea level rise of 3.4 mm/year or 1.3 inches/decade – more than twice the average rate over the 20th century and greater than any time over the past one thousand years. Recent observations of sea level along parts of the California coast have shown some anomalous trends; however, there is unequivocal evidence that the climate is warming, and such warming is expected to cause sea levels to rise at an accelerating rate throughout this century.

The State of California has undertaken significant research to understand how much sea level rise to expect over this century and to anticipate the likely impacts of such sea level rise. On November 7, 2018, the Commission adopted a science update to its Sea Level Rise Policy Guidance. This document provides interpretive guidelines to ensure that projects are designed and built in a way that minimizes sea level rise risks to the development and avoids related impacts to coastal resources, consistent with Coastal Act Section 30253. These guidelines state, “to comply with Coastal Act Section 30253 or the equivalent LCP section, projects will need to be planned, located, designed, and engineered for the changing water levels and associated impacts that might occur over the life of the development.” The most recent projections in the statewide sea level rise guidance indicate that sea levels in this area may rise between 5.5 and 6.7 ft. by the year 2100, though there is a risk of much more significant sea level rise depending on various uncertainties, including the dynamics of ice sheet loss. The projection is given in a range largely because researchers cannot know exactly how much greenhouse gases people will continue to emit over the coming decades – large-scale curtailment of greenhouse gas emissions would keep sea level rise towards the lower end of the projections, while business as usual emissions scenarios would result in the higher end of the projections. Because the world has continued along the “business as usual” scenario (and data suggests temperatures and sea level rise are tracking along the higher projections), the Ocean Protection Council and the Natural Resources Agency have continued to recommend that we avoid relying on the lower projections in planning and decision-making processes.

Application to the Proposed Project

Commission staff has reviewed the submitted coastal hazards analysis and has utilized the USGS Coastal Storm Modeling System (CoSMoS) to analyze the project site's vulnerability to coastal hazards including up to 6.7 feet of sea level rise that may occur by 2100 (6.7 feet represents the amount of sea level rise that would occur using the medium-high risk aversion scenario for residential development in the Commission's sea level rise guidance). Based on the site conditions, beach erosion and wave uprush events will not significantly impact the single-family residence given the current width of the public beach. The flood maps also show that the subject site is not likely to flood over the next 75 years under a 6.6 ft. sea-level rise scenario (the closest available model to the 6.7 feet analyzed) and a 100-year storm scenario ([Exhibit 3](#)). This was determined using the "Flood Potential" model, which utilizes spatially variable elevation data to display the minimum and maximum flooding possible. This is in part due to the residence being elevated above the beach level. This is substantiated by the applicants' coastal hazards analysis, which identifies the lowest living floor level for the residence as being positioned above any potential ocean flood elevation. The patio, however, is sited at the beach sand level. According to the CoSMoS model, if 6.6 feet of sea level rise occurs, flooding impacts would reach the patio; wave uprush projections would stop just short of the patio but would erode virtually all of the public beach sand in front of the project site. The coastal hazards analysis shows that while the residence may not be immediately vulnerable to coastal hazards due to its elevation above the beach, the patio (which is at the beach sand level) is more vulnerable to wave uprush and flooding impacts under a 6.6 foot sea level rise scenario.

Action 7.3.13 of the Land Use Element limits the use of shoreline and/or bluff protective devices to the minimum protection required to protect existing development from erosion. "Existing development" in this policy is defined as a principal structure, which includes a residential structure, a required garage, or a second unit (i.e. an accessory dwelling unit) and has a legal right to shoreline protection. Decks, patios, pools, tennis courts, cabanas, stairs, and landscaping are considered accessory structures; and Action 7.3.13 provides that no shoreline protection device shall be permitted for the sole purpose of protecting accessory structures. Open Space/Conservation Element Policy 1-E prohibits the construction of buildings or any structure on the sandy portion of the beach, while Open Space/Conservation Element Policy 1-F provides that shoreline protective devices that adversely affect shoreline sand supply or shoreline processes shall not be approved unless there is "clear evidence" that existing structures are in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. These policies are consistent with Coastal Act policies that prohibit new development that causes "destruction of the site or surrounding area" (Section 30253) and only allow construction that "alters natural shoreline processes" when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local sand supply (Section 30235, emphasis added).

Under the LUP policies described above, the existing development on the project site would not be entitled to a shoreline protective device. The residence has not been demonstrated to be in immediate danger of coastal flooding or wave uprush, and any

proposed shoreline protective device would serve to protect the patio, which is an accessory structure that is not entitled to shoreline protection. In this case, however, the applicants are proposing to construct a perimeter fence that would be placed on the existing patio, which would be repaired under the project proposal. The base of the perimeter fence would be embedded approximately one foot into the flagstone patio flooring, but would not extend into the sand below the patio. The proposed fence is not designed to protect the residence or the patio from coastal hazards (including flooding and erosion) and is therefore not considered a shoreline protective device. Although the applicants are not proposing a shoreline protective device at this time, the Commission imposes **Special Condition 2** to confirm that the development approved by this permit, including the fence and patio, is not entitled to future shoreline protection, and requires the applicants to waive rights to future shoreline protection. In addition, the applicants would be required to remove the approved development if the City or any other government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for use due to coastal hazards and that there are no measures that could make the structures suitable for habitation or use without the use of bluff or shoreline protective devices. In addition, the public trust boundary may migrate landward in response to rising sea levels.¹ If the public trust boundary does migrate landward and encompasses the development approved under CDP No. A-5-LGB-18-0014 the development would need to be removed pursuant to **Special Condition 2**. The Commission also imposes **Special Condition 3**, which requires the applicants to assume the risks of development within an area with a known vulnerability to coastal hazards, including, but not limited to, coastal flooding. Finally, the Commission imposes **Special Condition 4**, requiring a coastal development permit for future development. The project, as revised by the applicants and conditioned by the Commission, is consistent with the shoreline protective device policies found in the certified LCP.

D. Public Access/Recreation

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30220 of the Coastal Act states:

¹ The Public Trust boundary separates tidelands, submerged lands, and navigable waterways protected for public use from privately owned lands. For more information on public trust lands, visit <https://www.slc.ca.gov/public-engagement/>.

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.”

The applicants are proposing to remove an existing damaged retaining wall, replace damaged patio flooring, and construct a PVC perimeter fence along the edge of the repaired patio. The subject site is a beachfront lot that is located on Aliso Beach. In fact, the western property line is located on the sandy beach. The damaged retaining wall is located on the beach sand (along the property line) and is currently held in place with a chain link fence, which the Commission approved under Emergency Permit G-5-17-0019. In order to undertake the proposed project, the existing retaining wall would need to be removed. Given that the existing retaining wall is located on the sandy beach, the proposed removal has the potential to impact public access, particularly through the use of large mechanized equipment on the public beach.

In order to address the aforementioned concern, the applicants have submitted a debris removal plan regarding removal of the retaining wall. According to the plan, the existing wall, along with the footings and glass would be broken out with jackhammers, removed by hand, and transported through the residence to be disposed. The chain link fence approved under Emergency Permit G-5-17-0019 would remain in place during the removal of the wall to prevent debris from falling to the public beach. The fence would be removed upon removal of the existing retaining wall. The work site would only be accessed through the existing residence, and the wall removal would not require any large mechanized equipment or staging areas on the public beach. The proposed replacement fence would be sited on the existing patio, landward of the existing retaining wall and off the sandy beach. As proposed by the applicants, the project would not result in adverse impacts to public coastal access to and along Aliso Beach. Nevertheless, the Commission imposes **Special Condition 1**, which requires the applicants to conform to the Debris Management Plan that was submitted to Commission staff on July 17, 2020. Any changes to the approved plan must be reported to the Commission’s Executive Director through an amendment.

As proposed by the applicants, the project is consistent with the public access and recreation policies found in Chapter 3 of the Coastal Act.

E. California Environmental Quality Act

Section 13096 of the Commission’s administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified 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 approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment. The project as conditioned herein incorporates measures necessary to avoid any significant environmental effects under the Coastal Act, and there are no less

environmentally damaging feasible alternatives or mitigation measures. Therefore, the proposed project is consistent with CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

Coastal Commission Appeal Application No. A-5-LGB-18-0014 and associated file documents.

City of Laguna Beach Certified Local Coastal Program.