

CALIFORNIA COASTAL COMMISSION

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W13d

Filed: 12/27/2019
180th Day: 6/24/2020
Tolled to: 8/20/2020
270th Day: 11/23/2020
Staff: MV-LB
Staff Report: 8/20/2020
Hearing Date: 9/9/2020

STAFF REPORT: REGULAR CALENDAR

Application No.: 5-19-1036

Applicant: Blue Lagoon Community Association

Agents: Walter Crampton, Principal Engineer
Terra Costa Consulting Group

Location: 30781 Coast Hwy, Laguna Beach, Orange County

Project Description: Construction of a 1,270 square foot shotcrete wall anchored by 12 tiebacks for slope stabilization on a coastal bluff to protect existing condominiums within the Blue Lagoon condominium complex, and related drainage improvements and planting of low water use and native plants.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project involves stabilization of a portion of a coastal bluff that has eroded. The proposed protective work is necessary to protect the existing condominium structure located on top of the bluff. The threatened structure was constructed in 1964. The work is proposed on a coastal bluff face, but it would not be the seaward-most development on the property; additional condominium structures are located seaward of the project, including at the base of the bluff, essentially on the beach. There is also an

existing seawall/revetment at the seaward side of the condominium complex, which is known as Blue Lagoon. The seawall/revetment was originally constructed in 1963. The proposed bluff slope stabilization will be located landward of the seawall/revetment and landward of some of the condominium structures located atop the seawall/revetment.

The applicant's geotechnical analysis indicates that the bluff instability is caused by water saturation. The resulting erosion, which would be stabilized by the proposed development, occurred as a result of heavy rainfall on January 22, 2017, when about 3.5 inches of rain fell in a 5-hour period. The shotcrete wall, drainage improvements, and replacement of high water use landscaping (i.e. lawn area) with decomposed granite and low water use and native plants are proposed to stabilize the bluff. The proposed wall is an irregular shape. The longest diagonal is approximately 50 feet and a shorter diagonal is approximately 30 feet. The square footage of the proposed wall is 1,270 square feet (less than the two diagonals multiplied due to its irregular shape). The greatest width of the wall is approximately 30 feet on a bluff face approximately 190 feet long (between two points beyond which the bluff curves). Of the eight units in the structure above the slope repair, five of the units are more seaward than the location of the proposed wall on the bluff face. At its longest point, the wall will extend from the top of the bluff to the base, a distance at that location of approximately 30 feet ([Exhibit 2](#)) The wall does not "wrap around" the bluff. The bluff is more north facing, than west facing in the area of the proposed repair. As proposed, the shotcrete wall will have a naturalized breccia finish to match the surrounding natural bluff, which will minimize visual impacts. The Commission's staff geologist has reviewed the proposed development and concurs that the proposed work appears to require the least amount of natural landform alteration, compared to other alternatives, necessary to address the instability and protect the existing structure.

There is history related to the seawall/revetment and to public access at the site (including a Settlement Agreement involving the applicant and the Coastal Commission in the 1980s), but the proposed bluff stabilization project will not in any way affect the seawall/revetment or existing public access. No changes to the Blue Lagoon seawall/revetment are proposed or approved under this Coastal Development Permit 5-19-1036.

The question of public access on the interior of the Blue Lagoon condominium complex was the subject of a Settlement Agreement (as described further under the heading "Site Background" in this staff report) and CDP Amendment No. 5-84-777-A1. Pursuant to the public access requirements imposed via the Settlement Agreement and past Commission actions at the site, the Blue Lagoon Association was required to offer to dedicate the sandy beach area immediately upcoast and adjacent to the Blue Lagoon development and the beach located seaward of the toe of the vertical seawall. The Blue Lagoon Association recorded the required offers to dedicate these beach areas and these offers were accepted by the City of Laguna Beach, and have been open to the public since that time (early 1990s). The Blue Lagoon Association thus complied with

the terms of the Settlement Agreement and with past Commission actions at the site related to implementation of the requirements of the Settlement Agreement. Should the Blue Lagoon site redevelop at some point in the future, public access may be a consideration at that time (similar to the redevelopment of Treasure Island Mobile Home Park into the Montage Resort, where public access was provided where previously it was not; Treasure Island was also previously an Area of Deferred Certification due to access issues, but now is part of the certified LCP because public access from Coast Highway to the sea is now available at and through the Montage Resort).

Staff is recommending approval of the proposed development subject to conditions to assure consistency with the Coastal Act policies regarding hazards, alteration of natural landforms, bluff protective devices, and scenic views. Staff is recommending nine special conditions, which require: 1) all previously imposed special conditions remain in effect; 2) removal of the bluff protective device in the event it no longer protects the structure it was intended to protect; 3) colorization and texturization of the shotcrete to mimic the natural surrounding bluff as proposed; 4) specific repair and maintenance work to be covered under this permit and requires that other future development may require an amendment to this permit, or a new coastal development permit, unless none is legally required; 5) implementation of water quality measures, drainage plan, and landscaping as proposed; 6) construction responsibilities; 7) no waiver of public rights; 8) assumption of risk; and 9) deed restriction.

Commission staff recommends that the Commission **APPROVE** Coastal Development Permit application 5-19-1036, as conditioned. The motion is on page 5. The standard of review is Chapter 3 of the Coastal Act.

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Exhibits:

Exhibit 1 – Vicinity Map

Exhibit 2 – Project Plans

Exhibit 3 – Site Photos

Exhibit 4 – Proposed Shotcrete Breccia Finish

Exhibit 5 – Location of Condo Units Relative to Bluff

Exhibit 6 – Correspondence Received in Response to July Hearing Staff Report

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 5-19-1036 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 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

This permit is granted subject to the following special conditions:

1. **Prior Permit Conditions.** All regular and special conditions attached to Coastal Development Permit Numbers 5-84-777, as amended, 5-89-986, and 5-12-198 remain in effect.
2. **Removal of Bluff Protective Device.**
 - A. By acceptance of this permit the applicant agrees, on behalf of itself and any and all successors and assigns, that the applicant/landowner shall submit an application for an amendment to this coastal development permit (5-19-1036) or for a new coastal development permit to remove the bluff protective device approved by this coastal development permit in the event it no longer protects the existing structures it was constructed to protect, and shall see that application through to completion.
 - B. The applicant/landowner shall undertake development in accordance with any future final plan approved in connection with subsection A above and the related required future approved coastal development permit amendment or new coastal development permit. Any proposed changes to an approved future final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission-approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is legally required for any proposed minor deviations.
3. **Shotcrete Wall Appearance.**
 - A. The applicant shall implement the project as proposed including colorization and texturization of the shotcrete to mimic the appearance of the surrounding natural breccia bluff, as noted on plan sheets C-1, C-3, and L-2.
 - B. 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 be carried out without a Coastal Commission-approved amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.
4. **Future Maintenance.** By acceptance of this permit, the applicant acknowledges and agrees, on behalf of itself and all its successors and assigns, to the following:

A. That it shall maintain the bluff stabilization device, as approved by this CDP 5-19-1036, subject to the review established under the standard and special conditions of this permit.

B. Future maintenance and repair of the bluff stabilization device at the Blue Lagoon condominiums allowed pursuant to this CDP (as shown on [Exhibit 2](#) of the staff report dated 8/20/2020) may be completed without a new coastal development permit or amendment if such maintenance and repair is consistent with the requirements of this special condition, and subject to written request to and authorization by the Executive Director. Any proposed maintenance or repair that extends beyond the footprint of the project, would impact public access to the beach, or would involve more than hand tools and one lift truck shall require the issuance of an amendment to this Coastal Development Permit or a new coastal development permit from the California Coastal Commission.

C. The request for proposed maintenance and repair work shall include an analysis of the consistency of the proposed work with Part E of this condition, below. The request shall be submitted at least 90 days in advance of the proposed work for the review and written approval by the Executive Director. The Executive Director's review will be for the purpose of ensuring that the nature of the work, the method proposed for the work, and all other aspects of the proposed work is consistent with Coastal Development Permits 5-84-777, as amended, 5-89-986, 5-12-198, and 5-19-1036. No maintenance and repair work shall occur without the written authorization of the Executive Director.

D. Proposed maintenance and repair of the bluff stabilization device shall keep the bluff stabilization device within its approved dimensions. No future repair, maintenance, or any other activity pursuant to this permit affecting the bluff stabilization device shall be undertaken if such activity expands the footprint of the subject bluff protective device without a Coastal Commission approved amendment to this coastal development permit or a new permit, unless the Executive Director determines that no amendment or new permit is legally required.

E. Allowable Maintenance and Repair. Only maintenance and repair which is consistent with the following requirements shall be allowed; maintenance and repair which exceeds the following requirements shall require an amendment to this Coastal Development Permit or a new Coastal Development Permit, unless the Executive Director determines that no permit or amendment is legally required:

- 1) The maintenance and repair is located entirely within the dimensions of the shotcrete wall approved under this CDP ([Exhibit 2](#) of the staff report dated 8/20/2020);

- 2) Landscape maintenance consistent with the approved landscape plan ([Exhibit 2](#) of the staff report dated 8/20/2020);
- 3) The maintenance is the minimum amount of work to ensure the continued function of the bluff stabilization device;
- 4) The maintenance does not require replacement of more than 25% of the shotcrete wall approved under this CDP which shall be totaled cumulatively over time;
- 5) The maintenance would not result in impacts to public access and/or other coastal resources;
- 6) All work shall be accomplished using only hand tools and no more than one lift truck.

F. Within 30 days of completion of any maintenance or repair which has been authorized by the Executive Director pursuant to Part C of this condition, the applicant shall submit a letter to the Executive Director detailing all work completed. The maintenance and repair shall be carried out within 180 days of written authorization of the Executive Director. If not carried out within that timeframe, the project must be re-submitted for reauthorization from the Executive Director.

G. Other Agency Approvals. The Applicant acknowledges that these maintenance and repair stipulations do not obviate the need to obtain permits from other agencies for any future maintenance and/or repair episodes. Evidence of such approvals, or evidence that no approvals are required, shall accompany any request for maintenance and repair submitted to the Executive Director.

H. Non-Compliance. If the Applicant is not in compliance with the conditions of this permit or with the coastal development permits mentioned in Part C of this condition at the time that a maintenance or repair event is proposed, then the maintenance or repair event that might otherwise be allowed by the terms of this future maintenance and repair condition shall not be allowed by this condition unless and until compliance is achieved.

I. The applicant shall, by accepting the written authorization from the Executive Director, agree and ensure that the project contractor shall comply with the following construction-related requirements:

- 1) No construction materials, debris, or waste shall be placed or stored where it may be subject to wave erosion and dispersion, or where it would interfere with public access;
- 2) Any and all debris resulting from construction activities shall be removed from the site prior to the end of each work day;
- 3) No machinery or mechanized equipment shall be allowed at any time on a beach or within the active surf zone.

5. WATER QUALITY, DRAINAGE AND LANDSCAPING PLANS.

A. The applicant shall implement the project as proposed in conformance with the drainage depicted on the plans prepared by Terra Costa Consulting, dated 3/14/2019, showing that surface runoff will be captured by the proposed drainage system and conveyed to the base of the bluff in a non-erosive manner.

B. Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California, shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the project site. The applicant shall incorporate Best Management Practices (BMPs) into the construction and post-construction phases of the subject development. The applicant shall also comply with the applicable water efficiency and conservation measures of the City's adopted CALGreen standards concerning irrigation systems, and efficient fixtures and appliances.

C. The permittee shall undertake development in accordance with the approved final landscaping and drainage plans. 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.

6. Construction Best Management Practices.

A. The permittee shall comply with the following construction-related requirements and shall do so in a manner that complies with all relevant local, state and federal laws applicable to each requirement:

- (1) No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, rain, or tidal erosion and dispersion;
- (2) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
- (3) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;
- (4) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMP's shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and
- (5) All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

B. Best Management Practices (BMP's) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the onset of such activity. Selected BMP's shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:

- (1) The permittee shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These 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. It shall be located as far away from the receiving waters and storm drain inlets as possible;
- (2) The permittee shall develop and implement spill prevention and control measures;
- (3) The permittee shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50 feet away from a storm drain, open ditch or surface water; and
- (4) The permittee shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

7. Public Rights. The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. By acceptance of this permit, the applicant acknowledges, on behalf of itself and its successors in interest, that issuance of the permit and construction of the permitted development shall not constitute a waiver of any public rights that may exist on the property.

8. Assumption of Risk, Waiver of Liability and Indemnity. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from landslide activity, bluff retreat, waves, storms, erosion and/or earth movement, many of which will worsen with future sea level rise; (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.

9. Deed Restriction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant Blue Lagoon Community Association shall do one of the following:

A. Submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded a deed restriction in a manner that will cause said deed restriction to appear on the title of the parcel on which the proposed work will occur, and otherwise in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit, as they apply to the HOA, as covenants, conditions and restrictions on the use and enjoyment of the individual condominium units. The deed restriction shall include a legal description of the entire parcel or parcels against which it is recorded. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property;

OR

B. Submit to the Executive Director, for review and approval, documentation demonstrating that the applicant has executed and recorded an amended version of the condominium homeowners' association's Declaration of Restrictions or CC&Rs, as applicable, in a form and content acceptable to the Executive Director, which reflects the obligations imposed on the homeowners' association by the special conditions of CDP Nos. 5-19-1036, 5-84-777 (as amended), 5-89-986, and 5-12-198. This addition to the CC&Rs shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Location

The condominium complex that includes the subject site is located at 30781 Coast Highway, in the City of Laguna Beach ([Exhibit 1](#)). The proposed project involves stabilization of a portion of a coastal bluff that eroded, as necessary to protect a structure that existed prior to the effectiveness of the Coastal Act. The coastal bluff is located between two condominium structures (one on the top of the bluff and one at the base of the bluff), in the Blue Lagoon condominium complex. In addition to the threatened condominium structure at the top of the bluff, condominium structures are also present at the base of the bluff, essentially on the beach ([Exhibit 3](#)). The Blue Lagoon condominium complex was constructed in 1964. There is also a seawall/revetment at the seaward side of the complex. The seawall/revetment was originally constructed in 1963. The proposed bluff stabilization will be located on a

coastal bluff that is located landward of the beach level development, approximately 150 feet northeast of the ocean.

To stabilize the slope, the applicant proposes to construct a shotcrete wall that would occupy 1,270 square feet of the slope, and proposes planting low water use and native plants. The shotcrete wall would be 15" thick and would overlay the existing, failed gunnite on the face of part of the bluff. The shotcrete wall will extend from the top of the bluff to the bottom. The shotcrete wall will be reinforced by 12 tiebacks drilled into the bluff. The shotcrete wall will form a three-foot-high wall at the toe. The proposed wall is an irregular shape. The longest diagonal is approximately 50 feet and a shorter diagonal is approximately 30 feet. The square footage of the proposed wall is 1,270 square feet (less than the two diagonals multiplied due to its irregular shape). The greatest width of the wall is approximately 30 feet on a bluff face approximately 190 feet long (between two points where the bluff curves). Of the eight units in the structure above the slope repair, five of the units are more seaward than the location of the proposed wall on the bluff face. At its longest point, the wall will extend from the top of the bluff to the base, a distance at that location of approximately 30 feet ([Exhibit 2](#)). The wall does not "wrap around" the bluff. The bluff is more north facing, than west facing in the area of the proposed repair ([Exhibit 2](#)). As proposed, the shotcrete will have a naturalized breccia finish to match the surrounding natural bluff ([Exhibit 4](#)). The bluff is 45 to 50 feet in height.

The shotcrete wall will incorporate upper and lower brow ditches, at the top and at the base of the shotcrete wall. The brow ("v") ditches will be connected by a drainage pipe, running diagonally beneath the shotcrete wall. Proposed drainage measures include collection of water at the top of the slope and transport to the base via the brow ditches and drainage pipes and eliminating higher water use plants such as the lawn. ([Exhibit 2](#)). The drainage outlet will connect to existing drainage facilities in the driveway below the slope¹. The proposed drainage features are intended to address water saturation issues by reducing the amount of water introduced into the bluff. Water saturation has historically contributed to slope instability. The slope also eroded in this general area in 1969. Following that erosion, the gunnite was installed in an effort to protect the condominiums on top of the slope. Above the slope, south of condominium unit 83, a lawn area will be replaced with a decomposed granite trail and low water use and native plants. Proposed plants are identified on Plan Sheet L-2 ([Exhibit 2d](#)): *Arctostaphylos* 'pacific mist' (Pacific Mist Manzanita); *Atriplex* L. 'Breweri' Brewer Saltbush; *Rhus Integrifolia* (Lemonade Berry); and *corethrogyne Filansinfolia* 'silver carpet' (Silver carpet aster).

¹ Existing residential development at this site is pre-Coastal. The proposed project will not effect the larger site's existing drainage other than to convey drainage from the top of the bluff to the base in a non-erosive manner. The existing, pre-Coastal site drainage is not before the Commission.

Blue Lagoon is a multi-unit (119 units), multi-structure (15 structures) condominium complex located between the first public road (Coast Highway) and the sea, at 30781 Coast Highway in the City of Laguna Beach.

The area of erosion resulted from heavy rains during January 2017, which undermined the patios of units 76 and 77 of the condominium structure located at the top of the bluff. The applicant's geotechnical consultant, TerraCosta, states: "Based on the results of our stability analysis, the bluff top condominium structures are at eminent risk from further slides resulting from a severe storm similar to that which occurred in the winter of 1969 and again on January 22, 2017."

Single family residences along Lagunita Drive are located adjacent to the Blue Lagoon development to the north, and the Montage Resort development is adjacent to the site to the south. Vertical access to the public beach seaward and north of the site (Victoria Beach) is available via Dumond Drive, located approximately 1,200 feet to the north of the subject site. Public access to the beach below the Montage Resort to the south is available via public beach access paths through the Montage Resort development, located approximately 400 feet to the south of the subject site.

Jurisdiction

Due to the lack of public access from Coast Highway to the sea at the site, Blue Lagoon is one of the areas of deferred certification in the otherwise certified city of Laguna Beach. Therefore, the Commission reviews the coastal development permit application directly, and the standard of review is the Chapter 3 policies of the Coastal Act.

B. Site Background

In 1963, a seawall approximately 500 feet long and 20 feet high was constructed on the site, and 2,000 tons of riprap were placed seaward of the seawall. Soon thereafter, the condominium structures, which protrude much farther seaward than adjacent structures, were constructed. The Blue Lagoon condominium complex was constructed in 1964. Thus, both the condominiums and the seawall/revetment are considered "pre-coastal." The seawall/revetment constructed at the site in 1963 remains at the seaward edge of the Blue Lagoon condominium complex. The Commission has approved past Coastal Development Permits (CDPs) for maintenance and repair of the seawall/revetment, including CDP Nos. 5-83-874-G, 5-84-777 (follow-up to 5-83-874-G), 5-84-777-A1, 5-89-986, and 5-12-198. In the late 1980s, the Blue Lagoon Community Association (Association) and the Coastal Commission entered into a settlement agreement related to the revetment/seawall repairs and related public access dedications. The stipulations of the settlement agreement were incorporated via CDP amendment 5-84-777-A1.

Most recently, CDP 5-12-198 approved returning the rock revetment to its original design configuration through the addition of 860 tons of imported and retrieved rock. CDP 5-12-198 included a special condition that required annual monitoring reports

assessing the status of the reconstructed revetment. The required monitoring reports have been received and show no new rock displacement has occurred since required monitoring began in 2015 (following the 2014 issuance of CDP 5-12-198).

In 1980, on appeal from the regional commission, the Commission approved an application to add 700 tons of riprap to the seawall with conditions, including conditions requiring lateral access seaward of the revetment, and conditions requiring stairways and signs to direct the public to lateral access landward of the revetment via the driveway behind the first row of condominium units when the seaward lateral access was impassable. The proposed development was completed without complying with the imposed permit conditions.

In 1983, the Association received emergency CDP 5-83-874-G in response to storm damage that occurred during the storms of 1982-1983. The emergency permit authorized: 1) construction of a new concrete 78 foot long seawall extension located immediately adjacent to the residences at Lagunita Drive, 2) repairs to the existing seawall including reconstruction of portions of the cement coping and extension of the coping 8-10 inches seaward along the length of the wall, and 3) the addition of 2,537 additional tons of riprap in front of the seawall. In 1984 the Commission approved with conditions Coastal Development Permit 5-84-777 authorizing the work performed under the emergency permit. The conditions for the permit included the conditions for lateral access seaward and landward of the seawall that were imposed in the 1980 permit. Additionally, the permit required the Association to assume the risk of the development, to provide required maintenance and sand replenishment, to undertake an engineering review of the long term impacts of the development, and to obtain a State Lands Commission review of the development. The proposed development was again completed without complying with the imposed permit conditions.

In 1985, the Association filed a petition for writ of mandate seeking judicial review of the Commission's 1984 permit decision, and the Commission filed a cross-complaint against the 119 condominium owners (who collectively own the beach seaward of the revetment) in response to this petition, seeking declaratory relief, permanent injunction, civil penalties and fines and exemplary damages for unpermitted work performed since 1984 on ocean protective devices on the Association's property. After negotiations, the Association and Commission entered into a settlement agreement which required each owner to agree to the previously imposed public access conditions to offer to dedicate an easement for lateral access in front of the seawall and to the sandy beach located on the northern (upcoast) side of the project, provided the Commission eliminate the conditions requiring access behind the revetment. The agreement stated that if the Commission grants a permit amendment to delete the through-project access requirement and the Association complies with the conditions of the 1984 permit, "such actions shall resolve the public access requirements under the Coastal Act applicable to the parties performing future work on the ocean protective device at Blue Lagoon, providing the work performed is located the minimum distance necessary from the

existing protective device to permit any construction, reconstruction, repair or maintenance required.” In 1987, after a majority of the unit owners had agreed to the settlement, the Commission approved permit amendment 5-84-777-A1, amending the conditions of the permit consistent with the settlement agreement.

In 1989, the Commission approved Coastal Development Permit 5-89-986, authorizing structural reinforcement of the seawall/revetment. Also proposed was the addition of 2,160 tons of riprap to the then existing volume of 4,240 tons, resulting in a revetment with a total volume of 6,400 tons of riprap material. This action took place prior to all 119 property owners agreeing to the settlement agreement, and the same conditions from CDP 5-84-777-A1 were imposed.

After each of the unit owners had agreed to the settlement agreement and recorded the offer, the City of Laguna Beach accepted the easement on December 13, 1991, for public access to the beach located upcoast of the development, and the beach located seaward of the seawall from the toe of the vertical wall (including the area of rip-rap placed in front of the wall) to the mean high tideline.

In response to the staff report published in conjunction with the Coastal Commission’s July 2020 hearing (but postponed from that hearing by the applicant), the Commission received correspondence expressing concerns regarding the current Blue Lagoon project and the staff recommendation ([Exhibit 6](#)). This correspondence raises questions regarding the history of public access associated with the site. As referenced above, there is significant history related to past Commission actions at the site including CDP actions (cited above) involving the seawall/revetment and public access. As described above, related to these past CDPs is a Settlement Agreement (Agreement) entered into by the Blue Lagoon Community Association (Association), each separate condominium unit owner, and the Coastal Commission in late 1986. Under the Agreement, the Association agreed to offer to dedicate lateral access in front of the seawall/revetment (from the toe of the vertical wall seaward) and to an area of sandy beach on the upcoast side of Blue Lagoon which abuts Lagunita Beach (also known as Victoria Beach), provided the through-project public access conditions (lateral access landward of the beach level condominium structures) of CDP 5-84-777, including stairways and signs, were eliminated. Consistent with the Settlement Agreement, these conditions for inland lateral public access were eliminated. Also consistent with the Settlement Agreement, the Association recorded the required Offer to Dedicate the lateral access areas. The offer was accepted by the City of Laguna Beach on December 13, 1991, and the area has been available for public use ever since.

The correspondence related to the July 2020 staff report laments the inability to consistently use the public access seaward of the revetment in more recent years. It is true that the area seaward of the revetment tends to be safely accessible only during periods of low tides. However, this circumstance is not inconsistent with past permit

approvals related to the revetment or other Blue Lagoon projects, and has no bearing on the currently proposed project. The dedicated area located upcoast of Blue Lagoon remains openly accessible.

The correspondence also compares the subject site seawall with the seawall at 11 Lagunita. There are, however, important distinctions between that seawall and the one at Blue Lagoon. First, the Blue Lagoon development, including the residential development and the revetment/seawall, were constructed in the early 1960s, well prior to the creation of the Coastal Commission in the early 1970s, whereas the seawall at 11 Lagunita was constructed circa 2005, and the CDP that eventually authorized it after-the-fact imposed conditions limiting its authorization, which conditions the Commission later found to have been violated.² Second, the subsequent CDPs for work on the Blue Lagoon seawall have been approved by Coastal Commission, whereas the Lagunita seawall violation arises from unpermitted development to the structure it was intended to protect. No work is proposed to the pre-Coastal structures at the Blue Lagoon site as part of this current CDP application 5-19-1036. Finally, a previous dispute, described above, regarding public access and the Blue Lagoon development that exists to date were resolved pursuant to a Settlement Agreement and corresponding CDPs and the related offer to dedicate and subsequent acceptance of the public access easements. If there are current allegations of interference with public access at or by the Blue Lagoon Community Association, they have not been identified in correspondence received ([Exhibit 6](#)). Staff acknowledges high tides, exacerbated by sea level rise, have likely narrowed and reduced the frequency of the passable area seaward of the revetment. However, the Commission is not aware of these issues flowing from any sort of interference with the public access requirements of CDP 5-84-777, as amended, or access which is otherwise available, such as to state tidelands. If Commission staff becomes aware of any such allegations, the Commission's enforcement staff will investigate. Any proposed additional work that may be contemplated on the revetment in the future (not already covered by existing CDPs), will require a new CDP or a CDP amendment, unless the Executive Director determines none is legally required. Under the current CDP application 5-19-1036, no work is proposed on the revetment or the area seaward of the revetment and no impacts to public access are anticipated as a result of the proposed project.

The correspondence also points out that the offer to dedicate was only binding for 21 years, which the correspondent notes has elapsed. While that is true, in this case, as noted above, the offer was accepted within that 21-year period and the area made public, so there is no continuing significance to the establishment of that 21-year time period.

² See CDP No. A-5-LGB-14-0027 (approved in October, 2015) and the Commission's findings adopted in connection with enforcement orders CCC-18-CD-02 and CCC-18-AP-02 (issued August, 2018).

The most recent Commission action on the revetment occurred via CDP 5-12-198, approved 6/13/2013. CDP 5-12-198 allowed the permittee to return an existing rock revetment to the design configuration previously authorized by the Commission in the 1980s through the importation of 860 tons of rock to replace that which had been lost due to wave action, and the retrieval of existing errant rock located outside the footprint of the revetment. As a condition of approval of CDP 5-12-198, the Commission required annual monitoring of the revetment to monitor and identify damage or changes to the revetment such that repair and maintenance is completed in a timely manner to avoid further encroachment of the revetment on the beach. The applicant has provided the required annual monitoring reports, the most recent of which is dated October 2019. Nevertheless, enforcement staff will investigate the suggestion of interference with access at the site, and, if such interference is discovered, address it as a separate matter.

Finally, the correspondent requests imposition of a special condition requiring a boundary determination of the mean high tide line in front of the property, and a special condition to develop a public walkway in front of this property, or at least return of the public access easement that was associated with previous CDP conditions. As described above, the public access easement in front of the property remains in effect, in compliance with past CDPs at the site. A boundary determination would not affect the public access easement, which already extends from the toe of the armoring into the ocean. Thus, that entire area seaward of the armoring remains public regardless of the location of the mean high tide line. Moreover, unless there were some allegation that the mean high tide line were so far inland that the currently proposed project would be on public lands, which has not been alleged, it is unclear how the location of that line would bear on the question before the Commission which is about the consistency of the currently proposed project with the Coastal Act. Thus, it appears that the requested information would also be irrelevant to the current review. Finally, as is acknowledged in the correspondence, these arguments were put forth at the time the Coastal Commission considered CDP 5-12-198 for revetment repairs. At that time the Commission did not endorse the measures requested. No different circumstances have been identified that would make them applicable now. The requested special conditions were not imposed when the revetment itself was before the Commission.

In summary, the question of public access on the interior of the Blue Lagoon condominium complex was addressed by the settlement agreement described above and the Commission's approval of CDP Amendment 5-84-777-A1. The Blue Lagoon Community Association was required to offer to dedicate the sandy beach area upcoast of the Blue Lagoon development and the beach located seaward of the seawall from the toe of the vertical wall. The Blue Lagoon Association recorded the required offers to dedicate these beach areas and these offers were accepted by the City of Laguna Beach, and have been open to the public since that time. Based on the information available at this time, the Blue Lagoon Community Association has complied with and is in compliance with the terms of the settlement agreement and with past Commission

actions at the site. Should the Blue Lagoon site redevelop at some point in the future, public access may be considered at that time (similar to the redevelopment of the Treasure Island Mobile Home Park into the Montage Resort, where public access was provided where previously it was not; Treasure Island was also previously an Area of Deferred Certification due to access issues, but now is part of the certified LCP because public access from Coast Highway to the sea is now available at and through the Montage Resort). The proposed bluff slope stabilization will be located landward of the seawall/revetment and the condominium structures located atop it. The proposed project will not in any way effect the Blue Lagoon seawall/revetment or existing public access. No changes to the Blue Lagoon seawall/revetment or to public access are proposed or approved under Coastal Development Permit 5-19-1036.

c. Shoreline Protection

Coastal Act section 30253 states, in pertinent part:

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (b) 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.

Coastal Act section 30251 states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to **minimize the alteration of natural land forms**, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting. [emphasis added]

Coastal Act section 30235 states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted 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 shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible.

Section 30235 Override

Section 30235 requires the Commission to authorize shoreline protection devices (or cliff retaining walls) even if they would be inconsistent with other Chapter 3 policies, but only when necessary to protect an existing structure or public beach in danger of erosion (or when necessary to serve coastal-dependent uses). In addition, 30235 requires that any such armoring be designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Shoreline protective devices are no longer required to be authorized by Section 30235 after the existing structures they protect are redeveloped, no longer present, or no longer require armoring.

Coastal Act Section 30253 prohibits new development that would “in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.” Coastal Act Section 30251 also requires that development minimize alteration of natural landforms (such as coastal bluffs), and also requires that scenic and visual qualities be protected. Bluff protective devices can have a variety of negative impacts on coastal resources including adverse effects on shoreline sand supply, scenic qualities, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach.

At this point in time, there is no feasible alternative to the armoring that could both protect the endangered pre-Coastal structure and remain consistent with all applicable provisions of the Coastal Act. The armoring in this case is actually being authorized using the “override” provisions of 30235 of the Coastal Act because it could not be found consistent with Section 30253’s protective devices prohibition or with Section 30251’s requirement that alteration of natural landforms (such as bluffs) be minimized, so the armoring authorization is tied to its compliance with the provisions of 30235. The proposed armoring is nevertheless being approved by the Commission, however, based on the “override” provision of Section 30235 that instructs the Commission to approve a shoreline protective device to protect an existing structure if specified criteria are satisfied.

Coastal Act Section 30253 also requires that new development minimize risk, assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area. The condominium structure at the top of the bluff is currently at risk due to geologic instability, threatening its structural integrity. The proposed bluff stabilization is intended to restore stability to the structure atop the bluff. In that sense, the proposed development would be consistent with those portions of Section 30253. However, development must also be consistent with other portions of Section 30253.

Section 13577(h)(1) of the Commission’s Regulations defines coastal bluff to include “those bluffs, the toe of which is now or was historically (generally within the last 200 years) subject to marine erosion[.]” The subject bluff currently proposed for stabilization meets this definition of “coastal bluff.” The Commission’s staff geologist has reviewed the proposed development and states: “... this is a “coastal bluff” that occurs along what

was once a beach (part of Blue Lagoon complex appears to have been built directly on the beach) and has likely experienced marine erosion in the past 200 years.” Although development currently prevents wave action (marine erosion) from reaching the bluff, prior to the construction of the seawall/revetment at the site in 1963 and the condominiums in 1964, wave action certainly reached the toe of the subject bluff, causing marine erosion. Were it not for the development located between the toe of this bluff and the sea, it would still be subject to marine erosion. And so, the subject site must be considered a coastal bluff and the proposed development must be considered for consistency with Coastal Act Sections 30251 and 30253.

The proposed project involves construction of a tied back shotcrete wall on the face of a coastal bluff with the intent to stabilize the eroded section of the bluff. Thus, the proposed development would alter a natural landform and constitutes a bluff protective device. While Section 30253 prohibits development that would in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs, Section 30235 of the Coastal Act requires that such construction be permitted, even when it alters natural shoreline processes, when required to protect existing structures and when it is designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

In this case, the proposed bluff protective device is intended to protect pre-Coastal Act residential development (i.e., development that was existing at the time section 30235 was enacted) located immediately above the eroded bluff area. The applicant’s geotechnical consultant TerraCosta Consulting Group, in a letter report dated 11/27/2019, commented on a 2011 geotechnical assessment prepared by ViaGeos:

“Interestingly, their report states that, “It is noted that results of stability analysis respond significantly to the degree of saturation assumed in calculations. The factor of safety will decrease with an increasing saturation of earth materials, and the intercept position of the calculated 1.5 factor-of-safety boundary will shift further away from the top of slope and toward the rear of the residential units.” When using a more reasonable pore pressure parameter of 0.2, the minimum deep-seated factor of safety is 1.09 at the building foundation. Copies of stability analysis are included in Appendix C. **Based on the results of our stability analysis, the bluff top condominium structures are at eminent risk from further slides resulting from a severe storm similar to that which occurred in the winter of 1969 and again on January 22, 2017.**” [Emphasis added.]

The Commission’s staff geologist has considered the information submitted by the applicant’s geotechnical consultant and concurs that, at a minimum, Unit 77 of the condominium building above the bluff is in danger from erosion of the bluff. Based on the information provided by the applicant’s consultant, it appears that the area of the bluff failure itself is not so much causing the threat, but rather the failure is a symptom of the underlying instability that emerges when the upper bluff materials become saturated

(and thus weakened) during heavy rains. TerraCosta's slope stability analysis, which increase the level of soil saturation well beyond that considered by the previous consultant, is appropriate and reasonable. Thus, the consultant's conclusion of imminent risk of further slides is accurate. Based upon the geotechnical information, the proposed bluff stabilization is necessary to protect the existing structure, which is in danger from further erosion. Based on the geology, the Commission's staff geologist has determined the long-term bluff erosion rate has been fairly low even under natural conditions, and now has slowed even further. Thus, the proposed bluff repair will have no significant effect on erosion rates.

Alternatives

Alternatives to the proposed method of bluff stabilization were considered, including non-structural measures, such as improved landscaping and drainage, and stabilization of the slide area with vegetation netting. However, the applicant's geotechnical consultant, TerraCosta, found that "landscaping cannot stabilize this very steep section of highly weathered terrace deposits that failed during the 2016-17 storms. Landscaping would also not be a feasible option in preventing further shallow rock falls within highly weathered zones of the San Onofre Breccia, which resulted in the slumping of the overlying terrace deposits." A slough wall alternative was also found by the consultant to be "inadequate for a long-term stabilization as any failure would immediately fill the entire space behind the slump wall, with the next failure simply flowing over the wall with high velocity debris flows flowing down the 45+ foot-tall, near vertical bluff, severely damaging, if not destroying Unit 84."

Reviewing the proposed project in consideration of alternatives, the Commission's staff geologist has indicated that the proposed alternative is acceptable and likely the least landform alteration necessary to protect the threatened structure: "the wall seems appropriately sized – it would treat the immediate area of the slide that appears to be most unstable, but would not be extended along the entire slope in front of the 76-83 building." Based upon the geotechnical information provided, it appears that the proposed bluff stabilization project is the minimum-sized development necessary to protect the existing development.

However, for a bluff protective device to comply with the requirements of Coastal Act Section 30235, it must be both necessary to protect existing development, and also must be designed to eliminate or mitigate adverse impacts on local shoreline sand supply. In this case, because development is present between the toe of the bluff and the beach, impacts to natural shoreline sand supply in this case are expected to be minimal to insignificant. Viewed in isolation, the proposed wall would fix a small portion of the back beach and prevent natural bluff erosion and sand delivery to the shoreline. In reality, the existing Blue Lagoon development, and especially the seawall, means that the back of the beach has effectively been pushed far seaward, so the new wall wouldn't materially change the situation. The only way that the new wall would start to be an active barrier to the inland migration of the beach (i.e., with rising sea level)

would be if the seawall and condominium complex in front of it were removed. Based on the geology, the long-term bluff erosion rate has been fairly low even under natural conditions, and now has slowed even further. So even assuming that sand eroded from this portion of the bluff is able to get to the beach, the sand supply impact of the project would likely be very small. Therefore, the proposed bluff stabilization is consistent with the requirements of Coastal Act Section 30235 regarding impacts on local shoreline sand supply.

However, at some point in the future, if the existing condominium structure that the proposed bluff protective device is designed to protect is no longer present at the site, or has been significantly improved to the point of a major remodel, or is redeveloped, the bluff protective structure would remain inconsistent with sections 30251 and 30253 without being eligible for the 30235 override. It would therefore no longer be consistent with the Coastal Act. Thus, in the event that the condominium structure is demolished, damaged to the point that it is no longer safe for habitation, or otherwise removed, or significantly altered or improved, the bluff protective device must also be removed because it would no longer be necessary and would become inconsistent with the Coastal Act. To address this scenario, **Special Condition No. 2** is imposed, which requires the applicant to remove any and all bluff face development that is no longer protecting the pre-Coastal bluff top development it was approved under this permit to protect. Additionally, development on coastal bluffs adjacent to the shoreline is inherently hazardous. The bluff could continue to erode in the future, even with the proposed stabilization measures. For that reason, the Commission imposes **Special Condition No. 6**, requiring the applicant to assume the risks of the development. As conditioned, the proposed development would be consistent with Coastal Act Sections 30235, 30253, and 30251.

D. Visual Resources

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Although the coastal bluff to be stabilized is located inland of other development located on the beach level, the bluff is visible from the publicly accessible and popular Victoria Beach. As such, it is important to assure that the proposed development will not create

adverse impacts to scenic public views. As indicated in the prior section, the proposed project is inherently inconsistent with this Coastal Act Section, but it must be approved to protect an existing structure. However, even if section 30235 requires that armoring be approved, Section 30251 still requires that any such armoring be as consistent with its visual protection policies as possible. The subject bluff stabilization project as proposed includes measures to address potential adverse visual impacts. The shotcrete has been designed to be colored and textured to mimic the color and texture of the breccia of the surrounding natural bluff ([Exhibit 2](#)). The proposed breccia design will enable the shotcrete to blend in to the natural scenery. In order to assure that public views are protected, **Special Condition No. 3** requires that the shotcrete be colored and texturization to mimic the breccia of the surrounding natural bluff. Except as described in Section C. Shoreline Protection, above, and only as conditioned, the project is consistent with Section 30251 regarding protection of public views.

E. 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 within the Blue Lagoon condominium complex located between Lagunita/Victoria Beach (upcoast) and Treasure Island/Montage beach (downcoast). Public access to Lagunita/Victoria Beach is available via Dumond Drive, located approximately 1,200 feet to the north of the subject site. Lagunita/Victoria Beach immediately abuts the seaward-most development at Blue Lagoon. In addition, public access is available seaward of the seawall/revetment at Blue Lagoon. The two beaches (Lagunita/Victoria and Montage) are thus linked during low tides. Public access to Treasure Island/Montage beach is available via public beach access paths through the Montage Resort development, located approximately 400 feet to the south of the subject site. Public access from Coast Highway through the Blue Lagoon complex to the sea is not available. No public access impacts are anticipated because the project would not create any changes to existing coastal access, which already does not exist onsite due to the presence of existing, pre-coastal residential development. The proposed development is also consistent with earlier public access required pursuant to the Settlement Agreement and past Commission actions discussed earlier in this staff report. As conditioned, the proposed bluff stabilization project will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. The Commission finds the proposed project, as conditioned, is consistent with the LCP public access policies cited above and with the public access policies of the Coastal Act.

F. Maintenance and Repair

The applicant most recently received a coastal development permit for work on the seawall/revetment at the subject site in 2014 (CDP No. 5-12-198, Blue Lagoon Community Association). In conjunction with that CDP, the applicant proposed a long-term maintenance and repair program to allow for occasional maintenance and repair, including the replacement of limited quantities of rock, over an extended period of time without the requirement to obtain an additional coastal development permit. This

program included strict limits on the nature of the projects covered by that authorization. The specific types of repair and maintenance projects allowed and the related requirements were set forth in Special Condition No. 3 of CDP 5-12-198. The Commission approved the requested repair and maintenance program at that time. That program has worked well, allowing minor repairs within the scope of the approved project and requiring, among other things, annual monitoring reports on the seawall/revetment. The applicant has submitted the required monitoring reports annually as required.

Based on the success of the earlier repair and maintenance program, the applicant requested that a similar repair and maintenance program be applied to the proposed bluff remediation project. Commission staff agreed to recommend approval of a program that would allow very specific repair and maintenance of the proposed bluff remediation shotcrete wall and associated landscaping. As described in Special Condition No. 4, no specified repair and maintenance may occur without written request to the Executive Director and written authorization from the Executive Director. The goal is to streamline the process for minor, necessary repair and maintenance work, by specifically defining what work may occur and authorizing it via this CDP (5-19-1036). As described in Special Condition No. 4, although this subject permit would authorize specific repair and maintenance activities, it also requires that such work be limited only to that described in the Special Condition, and is subject to the review and approval of the Executive Director. Special Condition No. 4 also requires that repair and maintenance other than that described in the special condition will require an amendment to this permit or a new Coastal Development Permit, unless the Executive Director determines that none is legally required.

Special Condition No. 4 outlines specific actions that are considered to be repair and maintenance actions that would not require an additional coastal development permit (beyond this one) or amendment. Special Condition No. 4 also outlines steps required of the applicant/permittee prior to conducting any work that constitutes repair and maintenance, including submitting a written request describing the work to the Executive Director for review and written approval prior to commencement of the repair and maintenance. As conditioned, limited repair and maintenance may occur, while still allowing oversight by the Executive Director.

G. Deed Restriction

Finally, to ensure that any prospective future owners of the property are made aware of the applicability of all of the conditions of this permit, the Commission imposes **Special Condition No. 9**, which requires the property owner to record a deed restriction against the property, referencing all of the special conditions contained in this staff report and imposing them as covenants, conditions and restrictions on the use and enjoyment of the property.

H. Local Coastal Program

Coastal Act section 30604(a) states that, prior to certification of a Local Coastal Program (“LCP”), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The City of Laguna Beach 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 subject site is located within the Hobo Canyon area of deferred certification. Certification in this area was deferred due to inability to certify policies regarding development in sensitive habitat areas in conformity with the Chapter 3 policies of the Coastal Act. However, the proposed project will not result in any significant adverse impacts to sensitive habitat areas.

The Land Use Plan of the LCP consists of the Coastal Land Use Element, Open Space/Conservation Element, Coastal Technical Appendix, and Fuel Modification Guidelines (of the Safety Element of the City’s General Plan as adopted by Resolution 89.104). 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. Laguna Beach has a certified Local Coastal Program (LCP), but there are four areas of deferred certification in the City: Irvine Cove, Blue Lagoon, Hobo Canyon, and Three Arch Bay.

The proposed development that is subject to this permit application (No. 5-19-1036) is located within the Blue Lagoon Area of deferred certification. The Blue Lagoon area was deferred due to issues regarding public access. The area remains uncertified.

As discussed above, the proposed development, as conditioned, will not adversely impact coastal resources or public access in a manner inconsistent with the Coastal Act. Therefore, the Commission finds that approval of this project, as conditioned, will not prejudice the ability of the City of Laguna Beach to prepare a Local Coastal Program for the areas of deferred certification that conforms with and is adequate to carry out the Chapter 3 policies of the Coastal Act.

I. 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 that would substantially lessen any significant adverse effect which the activity may have on the environment.

The City of Laguna Beach is the lead agency responsible for certifying that the proposed project is in conformance with CEQA. The City determined that in accordance with CEQA, the project is Categorically Exempt from Provisions of CEQA, citing CEQA Guidelines section 15304. However, 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 CEQA.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, in the form of special conditions, require: 1) all previously imposed special conditions remain in effect; 2) removal of the bluff protective device in the event it no longer protects the structure it was intended to protect; 3) colorization and texturization of the shotcrete to mimic the natural surrounding bluff as proposed; 4) specific repair and maintenance work to be covered under this permit and requires that other future development will require an amendment to this permit, or a new coastal development permit, unless none is legally required; 5) implementation of water quality measures, drainage plan, and landscaping as proposed; 6) construction responsibilities; 7) no waiver of public rights; 8) assumption of risk; and 9) deed restriction.

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that 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. Coastal Development Permit Amendment Application No. 5-19-1036 and associated file documents.
2. Coastal Development Permit No. 5-83-874-g and associated file documents.
3. Coastal Development Permit No. 5-84-777 (follow-up to 5-83-874-g) and associated file documents.
4. Coastal Development Permit No. 5-84-777-A and associated file documents.
5. Coastal Development Permit No. 5-89-986 and associated file documents.
6. Coastal Development Permit No. 5-12-198 and associated file documents.
7. Response to Comments, TerraCosta Consulting Group, Response to Comments, 11/27/2019.
8. City of Laguna Beach, Community Development Dept. Staff Report, Design Review 19-3333 Variance 19-3338, 6/27/2019.
9. ViaGeos Updated Engineering Geologic and Geotechnical Evaluation, 6/12/2017.
10. ViaGeos Engineering Geologic Evaluation, 6/3/2011.