

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: APPEAL – DE NOVO

Application No.: A-5-LGB-20-0003

Applicant: Robyn Knudson

Agent: Homer Oatman, Oatman Architects, Inc.

Appellants: Mark and Sharon Fudge

Location: 1045 Gaviota Drive, Laguna Beach, Orange County
(APN: 644-076-05)

Project Description: Repair and replacement of structural posts, beams, railing, and stairs in-kind; installation of additional balusters on existing railings; installation of a code compliant handrail; and installation of interior fall protection at operable windows.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The applicant is proposing in-kind repair and maintenance of portions of an existing private deck and beach access stairway, as well as the rear portion of the associated duplex. The project includes: 1) the addition of additional balusters to existing deck railings to comply with the California Building Code's (CBC) spacing requirements for railing pickets; 2) the addition of interior safety rails for windows with sills lower than 24 in. above the interior finished floor, consistent with CBC requirements; 3) the installation

of a handrail for the repaired stairs as well as the installation of interior fall protection at several windows around the duplex; and 4) Like-for-like repair of one post, two beams, two joists, and one ledger of the existing lower seaward deck of the duplex. The post, beams, joists, and ledger are constructed of wood and have rotted to the point of replacement. Although non-conforming development (as to LCP policies) is present at the site, the proposed project will not increase the size or degree of nonconformity. The Commission previously heard this project on De Novo on April 16, 2021; however, the Commission voted to continue this project in light of additional information raised by Mark and Sharon Fudge, who appealed the local CDP to the Commission.

The project site is an irregular-shaped 4,821 square-foot ocean-fronting, bluff top lot located at 1045 Gaviota Drive in Laguna Beach. The site is located above Oak Street Beach, between the first public road (South Coast Highway) and the sea. The project site is developed with a four-level, approximately 37-foot high duplex and a wooden beach access staircase that were constructed in 1968, prior to passage of the Coastal Act. The existing duplex is located in close proximity to the edge of the coastal bluff. The applicant's bluff edge determination indicates that the two decks seaward of the existing duplex and a portion of the residence on the northern side of the residence extend almost five feet over the bluff edge depicted on the site plan, thus rendering the duplex and accessory structures as legally nonconforming development. Public access to the beach is available via public access stairways located at the seaward end of Anita Avenue (162 feet north of the project site) and at the seaward end of Oak Street (195 feet south of the project site).

The City of Laguna Beach LCP was certified by the Commission on January 13, 1993 (except for the areas of deferred certification: Three Arch Bay, Hobo Canyon, and Irvine Cove). The subject site falls within the City's certified LCP jurisdiction. Therefore, the standard of review for projects heard on appeal by the Coastal Commission that are located between the first public road and the sea, like this one, are the City's certified Local Coastal Program and the public access and public recreation policies of the Coastal Act.

Where proposed development is undertaken under the auspice of 'repair and maintenance,' a 'remodel' or 'remodel-addition,' it is important to determine the nature, extent, and location of work that is occurring on the existing structure to determine whether the scope of the development actually constitutes a replacement structure that requires the applicant to address all heretofore existing non-conformities with the certified LCP, such as inadequate or absent bluff edge setbacks, and the public access policies of the Coastal Act to ensure that the entire proposed development complies with the certified LCP.

In previous appeal actions in Laguna Beach, the Commission has found that a structure is considered redeveloped and, therefore, new development, if one of the following takes place: 1) 50% or more of the major structural components are replaced; 2) there is a 50% or greater increase in gross floor area; 3) replacement of less than 50% of a major structural component results in cumulative alterations exceeding 50% or more of that major structural component (taking into account previous replacement work on the

same structure); and/or 4) less than a 50% increase in floor area where the alteration would result in a cumulative addition of 50% or more of the floor area, taking into account previous additions to the structure. These decisions do not necessarily mean that any less extensive remodeling would not also result in a new structure, but only that remodeling that does reach these levels must be considered new development. Furthermore, Policy 7.3.10 of the LUE states that with regard to oceanfront and oceanfront bluff homes, commercial structures, or other principal structures, that are legally nonconforming as to the oceanfront and/or oceanfront bluff edge setback, improvements that increase the size or degree of an existing nonconformity shall cause the nonconforming structure to be brought into conformity with the LCP.

The proposed plans indicate that the project consists primarily of repair and maintenance, and no major structural components of the primary structure will be altered. The square footage of the residence would not be increased, neither the roof structure nor the exterior walls are being altered, and the foundation is not being altered. Approximately 15% of the pre-coastal beach access staircase, which is a legal existing non-conforming structure, would be repaired, which is below the 50% threshold that would constitute a new stair structure. The one post, two beams, two joists, and one ledger associated with the lower seaward deck (which is also a pre-coastal accessory structure) would not constitute alteration of the lower deck by more than 50%. The proposed project in this case does not constitute a major remodel, and would not result in a replacement structure. Furthermore, the proposed repair and maintenance actions would not increase the size or degree of the existing onsite nonconformities and therefore would not be considered new development that would require the entire structure to be brought into conformity with the LCP pursuant to LUE Policy 7.3.10.

Therefore, Commission staff recommends that the Commission **APPROVE** coastal development permit application A-5-LGB-20-0003 with five special conditions requiring the applicant to: 1) obtain an amendment to this CDP or a new CDP for any future development; 2) conform to the submitted plans upon project approval; 3) provide a Laguna Beach Building Department job card to verify the degree of alterations undertaken for the project; 4) adhere to construction best management practices in order to protect water quality; and 5) record a deed restriction to memorialize the special conditions of approval for this project. The motion is on Page 5 of the staff report.

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EXHIBITS

[Exhibit 1 – Project Site and Existing Condition](#)

[Exhibit 2 – Proposed Project Plans](#)

[Exhibit 3- Excerpts From Original Construction Plans \(1968\)](#)

MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit A-5-LGB-20-0003 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 Coastal Development Permit A-5-LGB-20-0003 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the certified Local Coastal Program and the public access and recreation policies 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.

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.

SPECIAL CONDITIONS

1. Future Improvements. This permit is only for the development described in coastal development permit No. A-5-LGB-20-0003. Pursuant to Title 14 California Code of Regulations (CCR) Section 13250(b)(6), and LCP Section 25.07.008, the exemptions otherwise provided in Public Resources Code (PRC) Section 30610(a) shall not apply to the development governed by coastal development permit CDP No. A-5-LGB-20-0003. Accordingly, any future improvements to the permitted single family residence and/or guest house authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in PRC Section 30610(d) and Title 14 CCR Sections 13252(a)-(b), shall require an amendment to Permit No. A-5-LGB-20-0003 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

2. Conformance with Proposed Project Plans. By acceptance of this coastal development permit, the permittee agrees to carry out the project in conformance with the project plans dated 6/5/2020 prepared by Homer Oatman, Oatman Architects, Inc.

3. Confirmation of the Extent of Demolition, Removal, and/or Replacement. After demolition, removal, and/or replacement has been completed, the applicant shall provide the Executive Director, for review and approval, a certified copy of the City of Laguna Beach Building Department job card showing that such work has been performed pursuant to the plans approved under this coastal development permit.

If the Building Department job card, accepted by the Executive Director, indicates additional demolition, removal, and/or replacement has already occurred or must occur due to the deteriorated state of building/structural elements which were proposed by the applicant to remain/keep, the applicant shall halt construction immediately and submit a complete coastal development permit amendment application or an application for a new coastal development permit. The application shall address the issue of revisions to the project due to the need for additional demolition. Whether an amendment or a new application is required shall be determined by the Executive Director.

No further development may occur until either:

- a) The Executive Director determines, in writing, pursuant to the Building Department job card, that all building/structural elements identified as to “remain” or “keep” are intact and structurally sound; or
- b) The applicant submits a coastal development permit amendment application if so directed by the Executive Director and the coastal development permit amendment is subsequently approved by the Coastal Commission and issued by the Executive Director; or

c) The applicant submits a new coastal development permit application if so directed by the Executive Director and the coastal development permit is approved by the Coastal Commission and issued by the Executive Director.

4. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris. By acceptance of the permit, the permittee agrees to 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:

- i. 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;
- ii. Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
- iii. 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;
- iv. 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
- v. 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.

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. By acceptance of the permit, the permittee agrees that the following measures shall be used during construction:

- vi. 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;
- vii. The permittee shall develop and implement spill prevention and control measures;
- viii. 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

ix. The permittee shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

5. Deed Restriction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

FINDINGS AND DECLARATIONS

A. Project Description

The applicant is proposing in-kind repair and maintenance of portions of an existing private deck and beach access stairway, as well as the rear portion of a duplex ([Exhibit 2](#)). The project includes: 1) the addition of additional balusters to existing deck railings to comply with the California Building Code's (CBC) spacing requirements for railing pickets.

2) the addition of interior safety rails for windows with sills lower than 24 in. above the interior finished floor, consistent with CBC requirements.

3) the installation of a handrail for the repaired stairs as well as the installation of interior fall protection at several windows around the duplex.

4) like-for-like repair of one post, two beams, two joists, and one ledger of the existing lower seaward deck of the duplex. The post, beams, joists, and ledger are constructed of wood and have rotted to the point of replacement.

The project site is an irregular-shaped 4,821 square-foot ocean-fronting, bluff top lot located at 1045 Gaviota Drive in Laguna Beach ([Exhibit 1](#)). The site is located above Oak Street Beach, between the first public road (South Coast Highway) and the sea. It is in an area where development approved by the City pursuant to its certified LCP is appealable to the Coastal Commission. The area is characterized by residential

structures on ocean-fronting bluffs. Public access to the beach is available via public access stairways located at the seaward end of Anita Avenue (162 feet north of the project site) and at the seaward end of Oak Street (195 feet south of the project site).

The project site is developed with a four-level, approximately 37-foot high duplex was constructed in 1968, prior to passage of the Coastal Act. The applicant provided the original building plans which show the existing duplex as well as an accessory beach access staircase ([Exhibit 3](#)). In 1973, the California Coastal Zone Conservation Commission (the predecessor to this Commission) approved an administrative CDP for a ten-foot addition to the living room of the duplex. In 2007 (after certification of the Laguna Beach LCP), the City issued Local CDP No. 07-27 for a shotcrete and rock nail slope stabilization to prevent the bluff slope on which the duplex rests from sliding. In addition to the development approved in the aforementioned CDPs, additional work appears to have taken place without obtaining CDPs; in 2015, local building permit RBP-2015-0496 approved the demolition of an unpermitted kitchen to eliminate an unpermitted third unit developed within the interior of the structure, restoring the structure back into the original permitted duplex.

Project History

On December 12, 2019, the City of Laguna Beach Design Review Board (“DRB”) approved Local CDP No. 19-4711 and Design Review 19-4710 to authorize the repair and maintenance activities proposed for accessory structures associated with an existing duplex. On January 3, 2020, the Coastal Commission’s South Coast District Office received a valid Notice of Final Action for Local CDP No. 19-4711. The Commission issued a Notification of Appeal Period on January 7, 2020. On January 16, 2020, Mark and Sharon Fudge filed an appeal of Local CDP No. 19-471, which raised the following concerns with the City-approved development:

- 1) The scope of the City’s approval is not accurate;
- 2) The project does not include an accurate determination of the bluff edge and associated setbacks;
- 3) The City’s approval allows for the replacement of nonconforming development, inconsistent with the City’s LCP; and
- 4) The City conducted an inadequate review of public view impacts from the beach and the ocean.

On March 12, 2020, the Commission held a hearing to determine whether the submitted appeal (A-5-LGB-20-0003) raised a substantial issue with regard to consistency with the city’s certified LCP. In its finding of substantial issue for the project, the Commission found that the City CDP was improper because it did not analyze the impacts of proposed repairs to the beach access stairway, structural posts, and beams, and deemed some repairs exempt from CDP requirements even though the structures to be repaired are within 50 feet of a coastal bluff. The Commission also found that the City did not require a bluff edge determination for the subject blufftop lot and that the City did

not adequately analyze whether the proposed repair and maintenance activities would increase the size or degree of nonconformity of the existing duplex.

Because the Commission found that a substantial issue existed based on the grounds on which the appeal was filed in 2020, the Commission's action voided the local coastal development permit and the Commission is required to hold a de novo hearing on the merits of the project.

Following the substantial issue hearing, the applicant addressed the deficiencies of the City's project analysis. The applicant provided a bluff edge determination and demolition calculations for the proposed repair and maintenance activities to help the Commission determine whether the size or degree of the existing conformities would be increased. A de novo hearing was held on April 16, 2021. During the hearing, appellants Mark and Sharon Fudge raised additional concerns with the project. First, the appellants asserted that the lower-level seaward deck was constructed on public beach, not within the applicant's property lines. Second, the appellants asserted that an accessory storage structure located on the lower-level seaward deck was constructed after construction of the subject duplex without a CDP. Third, the appellants asserted that the lower seaward deck has been substantially altered without the required CDPs. The appellants presented aerial images to support their third contention. The Commission voted to continue the item and directed staff to further analyze the extent of alterations that were undertaken on the lower-level seaward deck.

In response to the additional concerns raised at the April 16, 2021 hearing, the applicant provided additional project information. First, the applicant provided the 1968 construction plans for the duplex which show the accessory shed structure on the lower-level seaward deck. These plans demonstrate that the shed is a legally permitted accessory structure. Second, the applicant provided survey record documents which identify the seaward property line at the 1918 mean high tide line. A subsequent topographic survey prepared by Toal Engineering Inc. shows the lower-level seaward deck as being setback 35 ft. from the 1918 Mean High Tide Line (the established seaward setback), and therefore within the applicant's private property. Finally, as detailed below, the applicant provided information demonstrating that the lower-level seaward deck has not been substantially altered. There is ample evidence to support the recommendation of Approval with Conditions for this project.

B. Standard of Review

Section 30604(b) of the Coastal Act states:

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

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

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

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

Both the City's certified Local Coastal Program (LCP) and the Coastal Act require a coastal development permit for new development. The City's certified LCP Implementation Plan (IP) Title 25 Zoning, Section 25.07.006(D), which basically tracks the Coastal Act definition of development, defines "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 of access, thereto; the construction, reconstruction, demolition or alteration of the size of any structure, including any facility of any private, public or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes; and kelp harvesting."

In addition, the City's certified Local Coastal Program (LCP) and the Coastal Act require a coastal development permit for improvements located on a beach and within 50 feet of the bluff edge. Section 25.07.008(A) of the certified IP states, in relevant part, that "improvements to any structure where the structure or the improvement is located on a beach, in a wetland or stream, seaward of the mean high tide line, within fifty feet of a coastal bluff edge, in an environmentally sensitive habitat area, and/or in an area designated as highly scenic in the certified Land Use Plan" require a coastal development permit.

Thus, the proposed project, which is comprised of a series of minor repair and maintenance improvements within fifty feet of a coastal bluff edge, constitutes non-exempt development and requires approval of a coastal development permit consistent

with the policies of the certified LCP and the public access and recreation policies of the Coastal Act.

C. Development

The City's certified LCP includes the following policies regarding development:

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

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

Action 10.2.7 states: Require all new development located on oceanfront bluffs to be sited in accordance with the stringline but not less than 25 feet from the bluff edge. This requirement shall apply to the principal structure and major accessory structures such as guesthouses and pools that require a structural foundation. The setback shall be increased where necessary to ensure geologic safety and stability of the development.

Action 10.2.8 states: On oceanfront bluffs, require new minor accessory structures such as decks, patios and walkways that do not require structural foundations to be sited in accordance with stringline but not less than 10 feet from the bluff edge. Require accessory structures to be removed or relocated landward when threatened by erosion, geologic instability or other coastal hazards.

IP Section 25.50.004(B)(4)(d) states:

(i) Balconies, patios or decks in excess of thirty inches above the finished grade, including patio deck covers, and other similar architectural features may project a maximum of five feet beyond the applicable building setback or to the applicable deck stringline, whichever is least restrictive. In no case shall such projections be closer than ten feet to the top of an oceanfront bluff.

(ii) Decks, patios and other similar improvements that are thirty inches or less above finished grade shall not encroach closer than ten feet to the top of an oceanfront bluff.

Bluff Edge Determination

The existing duplex is located in close proximity to the edge of the coastal bluff. The geologic study submitted by the applicant depicts a bluff edge location for the project site. Based on the applicant's bluff edge determination, the two decks seaward of the existing duplex extend almost five feet over the determined bluff edge depicted on the site plan. In addition, a portion of the residence on the northern side of the residence extends almost five feet over the bluff edge. LUE Actions 10.2.7 and 10.2.8 require bluff top residences to observe a 25-ft. minimum setback for primary structures and a 10-ft. minimum setback for accessory structures (such as decks and landscaping) that do not require foundations. The applicant's bluff edge determination shows that the existing duplex and its accessory structures (the beach access staircase and the seaward decks) do not conform with the LUP's blufftop setback requirements. Given that the duplex was constructed prior to passage of the Coastal Act, the duplex constitutes a legally nonconforming structure with respect to the bluff edge setbacks. If the proposed development includes alterations to the main house such that it would constitute a major remodel as described above, these extensions into the required bluff edge setback would need to be removed and the structure made to conform with the LCP's current bluff edge setback standards, as referenced above. The bluff edge and the depicted setback have been reviewed and verified by the Commission's staff geologist. However, as described below, the extent of work proposed does not rise to the level of major remodel, and so the requirement to remove existing non-conformities is not raised.

Major/Minor Remodel

Where proposed development is undertaken under the auspice of 'repair and maintenance,' a 'remodel' or 'remodel-addition', it is important to determine the nature, extent, and location of work that is occurring on the existing structure. This assessment is necessary in order to determine the scope of the development—i.e., whether the extent of the development is such that the resulting structure actually constitutes a replacement structure that requires the applicant to address all heretofore existing non-conformities with the certified LCP, such as inadequate or absent bluff edge setbacks, and the public access policies of the Coastal Act to ensure that the entire proposed development complies with the certified LCP. "New development" or redevelopment requires a permit and must comply with all of the certified LCP policies—and, hence, include sufficient setbacks from the bluff edge.

While the dividing line between an improvement (or repair and maintenance) and "redevelopment" is not always clear, at a certain point, substantial alterations to a home can no longer be considered minor improvements, but instead must be considered to have resulted in a new structure. The City's certified Land Use Element defines "major remodel" as:

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

existing structure; greater specificity shall be provided in the Laguna Beach Municipal Code.”

In previous appeal actions in Laguna Beach, the Commission has found that a structure is considered redeveloped and, therefore, new development, if one of the following takes place: 1) 50% or more of the major structural components are replaced; 2) there is a 50% or greater increase in gross floor area; 3) replacement of less than 50% of a major structural component results in cumulative alterations exceeding 50% or more of that major structural component (taking into account previous replacement work on the same structure); and/or 4) less than a 50% increase in floor area where the alteration would result in a cumulative addition of 50% or more of the floor area, taking into account previous additions to the structure. These decisions do not necessarily mean that any less extensive remodeling would not also result in a new structure, but only that remodeling that does reach these levels must be considered to new development. Furthermore, Policy 7.3.10 of the LUE states with regard to oceanfront and oceanfront bluff homes, commercial structures, or other principal structures, that are legally nonconforming as to the oceanfront and/or oceanfront bluff edge setback, improvements that increase the size or degree of an existing nonconformity shall cause the nonconforming structure to be brought into conformity with the LCP.

Moreover, LUE Action 7.3.8 of the LUE (cited above) requires, where applicable, that applications for new development (e.g., redevelopment of a site) on oceanfront bluff sites identify and remove all unpermitted or obsolete structures which encroach into oceanfront bluffs. The subject application does not rise to the level of a major remodel or new development, and the existing decks and stairway (which have been verified to be pre-coastal structures through a review of the original 1968 plans) are legally nonconforming structures. There are no identified unpermitted or obsolete structures on the property.

Here, the applicant has submitted information regarding the extent of proposed alterations to the existing residence. The proposed plans indicate that the project consists primarily of repair and maintenance, and no major structural components of the primary structure will be altered. The square footage of the residence would not be increased, neither the roof structure nor the exterior walls are being altered, and the foundation is not being altered at all. Approximately 15% of the pre-coastal beach access staircase would be repaired, which is below the 50% threshold that would constitute a new stair structure. The one post, two beams, two joists, and one ledger associated with the lower seaward deck (which is also a pre-coastal accessory structure) would not be altered by more than 50%.

In response to the Commission’s direction at the April 2021 hearing, staff asked the applicant to detail the extent of alterations undertaken on the lower seaward deck. In an email dated October 26, 2021, the applicant noted that the only substantive change to the lower-level deck structure was the replacement of the 36-in. wooden deck handrails with 42-in. wooden deck handrails to comply with the state’s building code requirements. This work was undertaken along with the slope stabilization project that was permitted under CDP No. 07-27. There have been no further changes to the deck

structure (including floor and framing replacement), although the deck has been periodically stained throughout the life of the accessory structure. Based on the available evidence, the deck does not appear to have been altered by more than 50 percent.

Based on the available evidence, the proposed development does not constitute a major remodel, and would not result in any replacement structure(s). Furthermore, the proposed repair and maintenance actions would not increase the size or degree of the existing onsite nonconformities and is therefore would not be considered as new development that would require the entire structure to come into conformity with the LCP pursuant to LUE Policy 7.3.10. However, as detailed below, extra precautions should be taken to ensure that approved development is consistent with the applicant's proposal.

The Commission typically looks at cumulative development over time when determining whether or not a project constitutes redevelopment. Although this project can be considered a minor remodel, even small improvements that may not ordinarily need a CDP (such as replacing doors and/or windows or other small additions) could add to the total alterations to the primary structural elements over time and push the alteration total of one or more elements over the 50 percent threshold. This would then qualify the residence as new development that would be required to conform to the current building standards (including the bluff edge setback). To ensure that the development is consistent with the LCP and relevant Coastal Act policies, the Commission imposes **Special Condition 1**. This condition requires a new CDP or amendment for all future improvements, including repair and maintenance actions that would ordinarily not require a permit.

Although the project plans indicate that the project is repair and maintenance, and not new development, additional conditions must be imposed to assure that the quantity and location of alterations to the existing residence occur in the manner proposed. First, the Commission imposes **Special Condition 2**, which requires the applicant to undertake development only in accordance with the Commission-approved final plans. Any changes to the approved plans would require an amendment to the CDP, unless the Executive Director finds that an amendment is not required. Should the quantity or location of alterations actually carried out substantially differ from that which is proposed and identified specifically by the Commission-approved plans, the Commission may establish requirements for the project to be reassessed based on the revised alteration/demolition plan. The Commission therefore imposes **Special Condition 3**, which requires that the applicant submit a copy of the City Building Department job card after any proposed alterations are complete. The City's job card would verify the extent of work and the condition of the residence remaining. If the job card indicates that more alterations have occurred than were approved or that the elements of the residence originally proposed to remain are not structurally sound on their own and would require reinforcement, the applicant shall be required to immediately halt construction and submit an amendment application or an application for a new coastal development permit, if legally required.

D. Public Access and Recreation

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.

Section 30214 of the Coastal Act states, in relevant part:

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following: ...

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

In addition, regarding public access, Section 25.07.012 (F) of the certified IP states, in relevant part:

Review Criteria. To ensure compliance with the Certified Local Coastal Program, the following criteria shall be incorporated into the review of all applications for coastal development permits:

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

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

The subject property is located adjacent to Oak Street Beach and is located between the first public road (Coast Highway) and the sea. The property fronts Gaviota Drive and extends approximately seaward down a bluff slope to the sandy beach. Vertical public access from Coast Highway to the beach is available via a public access staircase at Anita Street, located approximately 150 ft. north of the project site.

The project must be found consistent with both the public access and recreation policies of Chapter 3 of the Coastal Act and the LCP policies. In this case, the proposed project would not have any impacts on the Anita Street beach accessway. The proposed project would not encroach further down the bluff face and would therefore not obstruct access to or across the sandy beach below. The proposed development is on the applicant's property, for which the seaward property line is located at the 1918 Mean High Tide Line. However, given the ambulatory nature of the Mean High Tide line, the extent of private property can and is expected to change overtime with the migration of the mean high tide line. Nevertheless, the project can be found in this case to be consistent with the Coastal Act Chapter 3 public access and recreation policies as well as the certified LCP policies.

E. Visual Resources

The City's certified LCP includes the following visual resource policies:

Laguna Beach Land Use Element:

Policy 2.8 states, in relevant part:

Require building design and siting to be compatible and integrated with natural topographic features, minimize significant alteration of topography and/or other significant onsite resources, and protect public views...

Policy 2.10 states:

Maximize the preservation of coastal and canyon views (consistent with the principle of view equity) from existing properties and minimize blockage of existing public and private views. Best efforts should be made to site new development in locations that minimize adverse impacts on views from public locations (e.g. roads, bluff top trails, visitor serving facilities, etc.)

Policy 3.10 states:

Require building design and siting to be compatible and integrated with natural topographic features, minimize significant alteration of natural topography or other significant on-site resources, and protect public views as specified in the Design Guidelines and Landscape and Scenic Highways Resource Document by maintaining the low-profile character of structures. Require use of appropriate landscaping, special architectural treatments, and siting considerations for projects visible from major highways and arterial streets. Best efforts should be made to site new development in locations that minimize adverse impacts on views from public locations (e.g., roads, bluff-top trails, visitor-serving facilities, etc.).

Policy 7.3 states:

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

Action 7.3.5 states: Prohibit development on oceanfront bluff faces, except public

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

Policy 10.2 states:

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

Open Space/Conservation Element:

Policy 7-A states:

Preserve to the maximum extent feasible the quality of public views from the hillsides and along the city's shoreline.

Policy 7-M states:

New development along Pacific Coast Highway shall preserve existing views where feasible and, where topography allows, new development shall be terraced below the grad[e] of Pacific Coast Highway. [sic]

LUE Policy 2.10, and OSCE Policies 7-A and 7-K require that public scenic and visual qualities of coastal areas be preserved to the maximum extent feasible as resources of public importance, including views of coastal bluffs and canyons from along the City's shoreline. In addition, LUE Policies 2.8, 2.9, 3.10, 7.3, 10.2, and Action 7.3.5 and OSCE Policy 7-M require, in part, that development be designed and sited in a manner that is visually compatibility with surrounding uses and is protective of natural resources including public visual resources and to minimize natural landform alterations.

The project site is highly visible from the public beach. However, the coastal bluff on which the subject duplex is built is marked with the development of multiple single-family and multi-family residences. The proposed repair and maintenance actions would not significantly or adversely affect the natural character of the bluff face and beach because the addition would not change the size, height, or scale of the existing duplex or any of its accessory structures. In addition, the proposed addition would not impede public coastal views from Coast Highway because the subject duplex is not visible from PCH.

In this case, the proposed project is not anticipated to have negative impacts on the public coastal views and visual resources and is consistent with the visual resources policies of the LCP.

F. Marine Resources and Water Quality

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

Policy 7.7 states:

Protect marine resources by implementing methods to minimize runoff from building sites and streets to the City's storm drain system (e.g., on-site water retention). (Same as Policy 10.7.)

Open Space/Conservation Element:

Policy 1-C states:

Require the installation of rain gutters and other water transport devices as a condition of approval on blufftop development, in order to convey water to the street (away from the bluff side). When this is impractical, all water shall be piped to the base of the bluff.

Policy 4-A states:

Development Planning and Design Best Management Practices (BMPs) Ensure that development plans and designs incorporate appropriate Site Design, Source Control and Structural Treatment Control Best Management Practices (BMPs), where feasible, to reduce to the maximum extent practicable, pollutants and runoff from the proposed development. Structural Treatment Control BMPs shall be implemented when a combination of Site Design and Source Control BMPs are not sufficient to protect water quality.

Policy 4-B states:

Ensure that development minimizes the creation of impervious surfaces, especially contiguously connected impervious areas, or minimizes the area of existing impervious surfaces where feasible.

Policy 4-C states:

Ensure that development is designed and managed to minimize the volume and velocity of runoff (including both stormwater and dry weather runoff) to the maximum extent practicable, to avoid excessive erosion and sedimentation.

Policy 4-D states:

Ensure that development and existing land uses and associated operational practices minimize the introduction of pollutants into coastal waters (including the ocean, estuaries, wetlands, rivers and lakes) to the maximum extent practicable.

Policy 4-E states:

Ensure that development is sited and designed to limit disturbances and to preserve the infiltration, purification, retention and conveyance functions of natural drainage systems that exist on the site to the maximum extent practicable.

Policy 4-I states:

Promote the protection and restoration of offshore, coastal, lake, stream or wetland waters and habitats and preserve them to the maximum extent practicable in their natural state. Oppose activities that may degrade the quality of offshore, coastal, lake, stream or wetland waters and habitat and promote the rehabilitation of impaired waters and habitat

Policy 4-J states:

Promote infiltration of both storm water and dry weather runoff, as feasible, to protect natural hydrologic conditions.

Policy 7-K states:

Preserve as much as possible the natural character of the landscape (including coastal bluffs, hillsides and ridgelines) by requiring proposed development plans to preserve and enhance scenic and conservation values to the maximum extent possible, to minimize impacts on soil mantle, vegetation cover, water resources, physiographic features, erosion problems, and require re-contouring and replanting where the natural landscape has been disturbed.

Policy 9-I states:

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

Policy 9-K states:

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

Title 25 of the certified Implementation Plan (IP):

Section 25.07.012 (F) states, in relevant part:

Review Criteria. To ensure compliance with the Certified Local Coastal Program, the following criteria shall be incorporated into the review of all applications for coastal development permits: ...

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

...

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

LUE Policy 7.7 and OSCE Polices 4-A, 4-D, 4-E, 4-I, 4-J, 7-K, and 9-K require the protection of marine resources and other water resources, and OSCE Policies 1-B, 1-C, 1-D, 4-B, 4-C, and 9-I require that measures be implemented to reduce onsite runoff. Section 25.07.012(F) of the certified IP also requires that the proposed development not adversely affect marine resources and that adequate drainage be provided onsite.

Although the proposed development is not anticipated to adversely affect marine resources or other water resources, since the subject site is adjacent to the ocean, the proposed development still has the potential to discharge polluted runoff from the project site into a geologically sensitive coastal bluff, and/or beach, and into coastal waters, either directly or via the community's storm drains, which ultimately flows to the sea. Furthermore, storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain or wind would result in adverse impacts upon the marine environment that could reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species' ability to see food in the water column.

In order to avoid adverse construction-related impacts upon marine resources, the Commission imposes **Special Condition 4**, which outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. This condition requires the applicant to remove any and all debris resulting from construction activities within 24 hours of completion of the project. In addition, 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.

Therefore, the Commission finds that the proposed development, as conditioned, is consistent with the certified LCP regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

G. Deed Restriction

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition 5** requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing

them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

H. Local Coastal Program (LCP)

Section 30604 (a) of the Coastal Act states:

Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section

30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

The City of Laguna Beach Local Coastal Program (LCP) was certified with suggested modifications, except for the areas of deferred certification, in July 1992. In February 1993 the Commission concurred with the Executive Director's determination that the suggested modification had been properly accepted and the City assumed permit issuing authority at that time. The Land Use Plan of the LCP consists of the Coastal Land Use Element, 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 (CDP No. A-5-LGB-20-0003) is located within the City of Laguna Beach's certified jurisdiction. As discussed above, the proposed development, as conditioned, will not adversely impact coastal resources and public access. Therefore the Commission finds that approval of this project, as conditioned, is consistent with the City's certified LCP and would 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. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect which the activity may have on the environment.

The City of Laguna Beach is the lead agency responsible for certifying that the proposed project is in conformance with the California Environmental Quality Act (CEQA). The City's Design Review Board determined that in accordance with CEQA, the project is Exempt from Provisions of CEQA citing Section 15301, Class 1(a) (existing facilities) and Section 15303, Class 3 (New Construction), which "allows repair, maintenance, permitting, or minor alteration of existing public or private structures, mechanical equipment involving negligible or no expansion of use beyond that existing at the time of determination." 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 the California Environmental Quality Act (CEQA).

The proposed project has been conditioned in order to be found consistent with the certified LCP and the Coastal Act Chapter 3 public access and recreation policies. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and complies with the applicable requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

Appeal No. A-5-LGB-20-0003 and associated file documents.