

**CALIFORNIA COASTAL COMMISSION**

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# F14b

Filed: 09/06/2017  
SI Found: 09/11/2019  
Staff: M. Alvarado-LB  
Staff Report: 03/25/2021  
Hearing Date: 04/16/2021

**STAFF REPORT: APPEAL – DE NOVO**

**Appeal No.:** A-5-LGB-19-0011

**Applicant:** Bluebird #24, LLC

**Agents:** Lance Polster & Carter Mudge

**Local Government:** City of Laguna Beach

**Local Decision:** Approval with Conditions

**Appellant:** Mark Fudge

**Project Location:** 1585 South Coast Highway, Unit 24, Laguna Beach, Orange County (APN: 895-200-08)

**Project Description:** Request for after-the-fact approval of an addition to an existing residential unit of a 32-unit condominium complex. The addition consists of converting 235 sq. ft. of deck area into internal floor area, adding living space to an existing 1,318 sq. ft. residential unit (Unit 24) on an ocean-fronting property.

**Staff Recommendation:** Denial

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**SUMMARY OF STAFF RECOMMENDATION**

The subject property is 26,845-square-foot oceanfront and oceanfront bluff lot located at 1585 South Coast Highway in the City of Laguna Beach, Orange County. The subject site is developed with an approximately 61,554-square-foot, six-level 32-unit condominium complex (consists of condominium building, parking garage, and storage/mechanical space). The applicant is requesting after-of-fact approval of a

235-square-foot addition to an existing 1,318-square-foot residential unit (Unit 24). Based on historical aerials/photographs of the project site, the subject addition was constructed sometime between 1979 and 1987, and therefore, does not appear to pre-date the Coastal Act (effective date January 1, 1977).

The existing 32-unit condominium complex is comprised of one large step-like building that transitions down the bluff from South Coast Highway to the public beach below. Although it is difficult to assess the exact location of the existing building in relation to natural landforms, much of the 32-unit condominium building appears to be located on the beach, on the face of the coastal bluff and in the mouth of Bluebird Canyon.

The primary issues raised by the proposed development are consistency with LCP policies regarding on non-conforming oceanfront and oceanfront bluff properties. Land Use Element (LUE) Action 7.3.5 prohibits development on bluff faces, while Action 10.2.7, OSCE 1-I, and Section 25.50.004(B) require a minimum 25-foot setback from the bluff edge for principal and major accessory structures (including additions). The addition consists of converting existing deck space into internal floor area, adding 235 square feet of living space to one of the residential units of the condominium complex. However, because the existing deck at Unit 24 (and possibly the entire condominium complex) is nonconforming as to the LCP's oceanfront bluff edge setback requirement, the proposed addition would also be nonconforming to these setbacks, inconsistent with certified LCP policies.

LUE Action 7.3.10 allows improvements to oceanfront and oceanfront bluff principal structures that are legally nonconforming as to the oceanfront and/or oceanfront bluff edge setbacks unless they increase the size or degree of the non-conformity, in which case, the improvements constitute "new development" and the entire structure must comply with the certified LCP, including the setbacks required by LUE Action 10.2.7, OSCE Policy 1-I, and Section 25.50.004(B). The proposed addition, though modest, would increase the size of the non-conformity of Unit 24 and of the entire condominium complex by increasing the size of a condominium that is nonconforming to the minimum required setback requirements of the certified LCP (by increasing internal habitable footprint). The proposed improvements constitute new development under LUE Action 7.3.10, and the project cannot be approved because the addition would not comply with the LCP-required bluff edge setbacks. In addition, the increase in size of the non-conformity as to the oceanfront bluff edge setbacks would constitute new development under Action 7.3.10 and would trigger the requirement that the entire principal structure (in this case the condominium building) be brought into compliance with the certified LCP, including setbacks, which is not being proposed at this time.

There is an alternative that would allow the applicant to continue to enjoy reasonable use of the residence. Although LUE Action 7.3.10 prohibits improvements that constitute new development (e.g., improvements that would increase the size or degree of nonconformity or major remodels) on a beach or coastal bluff face, it allows oceanfront and oceanfront buildings that are legally nonconforming as to the oceanfront bluff edge setback to be repaired and maintained; however, this is not proposed at this time.

The applicant has indicated that the purpose of the project is to provide safety, with a physical wall and enclosure to prevent intruders from entering the unit. To address safety concerns, an alternative to the proposed addition could be an outdoor wood privacy screen on the southeasterly side of the deck/balcony that is immediately adjacent to the public ramp. This would not be considered an addition of living space and would be consistent with the certified LCP.

On April 11, 2019, the Commission found that the appeal raised a substantial issue because the City's decision that the development is consistent with the provisions of the LCP was not supported by the Local CDP's findings, particularly with the provisions of the LCP that relate that to additions on the oceanfront and/or coastal bluffs or bluff faces.

Because the proposed development cannot be found consistent with the LCP and could set a precedent for other new development on bluff faces in Laguna Beach, Commission staff recommends that, after a public hearing, the Commission **deny the de novo permit** application.

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### **EXHIBITS**

[Exhibit 1 – Project Location and Aerials of Project Site](#)

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – Dr. Street’s Memorandum dated March 25, 2021](#)

## I. MOTIONS AND RESOLUTIONS

**Motion:** I move that the Commission **approve** Coastal Development Permit No. A-5-LGB-19-0011 as proposed by the applicant.

Staff recommends a **NO** vote. Following Staff's recommendation will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**Resolution:**

The Commission hereby denies Coastal Development Permit No. A-5-LGB-19-0011 for the proposed development and adopts the findings set forth below on grounds that the development would not be in conformity with the certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

## II. FINDINGS AND DECLARATIONS

### A. PROJECT LOCATION AND DESCRIPTION

The subject property is a 26,845-square-foot oceanfront and oceanfront bluff lot located at 1585 South Coast Highway in the city of Laguna Beach, Orange County ([Exhibit 1](#)). The property is currently developed with a condominium complex comprised of a 41,394-square-foot, six-level 32-unit condominium building (c. 1961), an attached 18,360-square-foot garage (60 onsite parking spaces), 1,800 square feet of storage/mechanical space, and deck space. The 32-unit condominium building descends approximately 200 feet seaward partially down a coastal bluff slope to the public beach below. Although it is difficult to assess the exact location of the existing building in relation to natural landforms, much of the 32-unit condominium building appears to be located on the beach, on the face of the coastal bluff, and/or in the mouth of Bluebird Canyon. The property is adjacent to Bluebird Beach, a public beach, and is located between the first public road (Coast Highway) and the sea. No other work is proposed as part of this coastal development permit application.

The applicant is requesting after-the-fact approval of a 235-square-foot addition to a 1,318-square-foot residential unit, Unit 24, in a 32-unit condominium complex. The addition consists of converting most of the south-facing deck into internal floor area, adding 235 square feet of living space to the residential unit ([Exhibit 2](#)). According to the applicant's representative, the unpermitted addition has existed since 1964. However, based on historical aerials/photographs of the site, the addition was constructed sometime between 1979 and 1987 ([see Exhibit 2](#)). Before the subject addition, it appears that an outdoor wood privacy screen (not a total enclosure) may have been installed on top of the original block wall across only a portion of the south-facing deck; however, this is not indicative of an addition of living space. Moreover, the siting of the previous screen only partially coincides with the location of the addition presently at issue. In other terms,

if there was an addition to Unit 24 around 1964, it is not the same addition presently before the Coastal Commission. Therefore, the addition at issue does not appear to pre-date the Coastal Act (effective date January 1, 1977). Consequently, the applicant is required to obtain all the necessary approvals, including a local building permit and coastal development permit for the proposed addition.

## **B. STANDARD OF REVIEW**

Section 30604(b) of the Coastal Act states:

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

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

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

The standard of review for projects heard on appeal by the Coastal Commission that are located between the first public road and the sea, like this one, are the City's certified Local Coastal Program and the public access and public recreation policies of the Coastal Act. The City of Laguna Beach 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.” [Emphasis added.]

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 addition, which will result in construction and alteration of the size of a structure 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. PROJECT HISTORY**

On November 29, 2018, the City of Laguna Beach Design Review Board (DRB) held a public hearing for the coastal development permit application and other discretionary after-the-fact approvals for the project. Public testimony related to issues concerning development on the bluff face and CEQA compliance. Following the public testimony and the board’s deliberations, the DRB approved Local Coastal Development Permit (CDP) No. 18-0775, Design Review 18-0774, and Variance 18-0776. The City approved Variance 18-0776 to allow new construction where nonconforming density exists, new construction to encroach into the side setback, and to not require the applicant to provide the required parking and the required open space.

The project description of the Resolution CDP 18.49 approving Local CDP No. 18-0775 reads as follows: “Construction of a 235 square-foot living area addition by enclosing a deck area in the R-3 (Residential High Density) zone.” The City’s approval does not include any special conditions. Furthermore, a CEQA Categorical Exemption was adopted by the Design Review Board.

The Coastal Commission’s South Coast District Office received the Notice of Final Action (NOFA) on January 30, 2019. The Commission issued a Notification of Appeal Period on February 6, 2019. On February 13, 2019, the appeal was filed by Mr. Mark Fudge during the ten (10) working day appeal period. No other appeals were received. Commission staff issued a letter notifying the City and the applicant of the appeal on February 14, 2019.

The contentions in Mr. Fudge’s appeal are summarized as follows:

- 1) A bluff edge determination was not made. The approved development is likely sited on the bluff face inconsistent with the LCP policy relating to new development on a coastal bluff and/or bluff face; a bluff edge determination is necessary.
- 2) City’s approval would result in the expansion of a building that is nonconforming to oceanfront and/or oceanfront bluff setbacks and is not consistent with the

certified LCP.

- 3) Non-conformities at the site must be eliminated if the project is “new development” as defined by LUE 7.3.10.
- 4) The City did not adequately condition the permit to ensure protection of coastal resources.
- 5) Public views may be negatively impacted by the City-approved development.
- 6) The 32-unit building at issue was potentially converted from an apartment building to condominiums without the benefit of a coastal development permit.

On April 11, 2019, the Commission found that a substantial issue exists with respect to the grounds on which Appeal No. A-5-LGB-19-0011 had been filed because the City’s decision that the development is consistent with the provisions of the LCP was not supported by the Local CDP’s findings, particularly with the provisions of the LCP that relate that to additions on the oceanfront and/or coastal bluffs or bluff faces.

Because the Commission found that a substantial issue existed based on the grounds on which the appeal was filed in 2019, the local government action on the local CDP is stayed and the Commission is required to conduct a de novo review on the merits of the project subject to this CDP application (No. A-5-LGB-19-0011).

#### **D. DEVELOPMENT**

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

Laguna Beach Land Use Element:

Goal 2 states:

Preserve, enhance and respect the unique character and identity of Laguna’s residential neighborhoods.

Policy 2.1 states:

Maintain the diversity and uniqueness of individual neighborhoods. Development standards and design review guidelines shall minimize the scale and bulk of new construction and/or renovation and require development to be compatible with the surrounding residences.

Policy 2.2 states:

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

Policy 2.8 states:

Require building design and siting to be compatible and integrated with natural topographic features, minimize significant alteration of natural topography and/or other significant onsite resources, and protect public views as specified in the Design Guidelines and the Landscape and Scenic Highways Resource Document.

Policy 10.2 states:

Design and site new development to protect natural and environmentally sensitive



resources such as areas of unique scenic quality, public views, and visual compatibility with surrounding uses and to minimize landform alterations. (Same as Policy 7.3)

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

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

#### Open Space/Conservation Element Policies:

Policy 1-I states:

The City shall impose a 25-foot minimum setback or a distance ascertained by stringline measurements for all blufftop development, notwithstanding the fact that ecological and environmental constraints may require an additional setback.

#### Title 25 of the certified Implementation Plan (IP):

Section 25.50.004(B) states:

(B) Building Setbacks on or Adjacent to the Pacific Ocean and Beaches. There is established building setback lines along the ocean frontage of all property within the city fronting up and adjacent to the Pacific Ocean and its beaches, as provided in this subsection, and no building, structure or improvements shall be erected or constructed after the effective date of the ordinance codified in this section on the sandy portion of any beach except that which is determined by the city council to be necessary for the public health, safety and welfare. In addition, no building, structure or improvement shall be erected or constructed after the effective date of the ordinance codified in this section on the oceanward side of the following building setback lines:

(1) Except as provided in subdivisions (2), (3) and (5) of this subsection, the oceanfront building setback line on all oceanfront property within the city is fixed and established as the line drawn through the points where the plane of elevation twelve feet above the mean sea level touches the land mass (other than beach sand) of the particular parcel involved.

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

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

(4) In addition to (1), (2) and (3) above, no new building, additions to existing buildings, or structures or improvements shall encroach beyond the applicable building stringline or shall be closer than twenty-five feet to the top of an oceanfront bluff; the more restrictive shall apply. Greater setback may be required by the city engineer or building official in order to protect the public health, safety or welfare. Pools and spas shall be no closer than twenty-five feet to the top of bluff. Public accessways shall be exempt from this provision.

(a) An “oceanfront bluff” is an oceanfront landform having a slope of forty-five degrees or greater from horizontal whose top is ten or more feet above mean sea level.

(i) In cases where an oceanfront bluff possesses an irregular or multiple slope condition, the setback will be taken from the most inland forty-five degree or greater slope.

(ii) In cases where the landform constitutes an oceanfront bluff whose slope is less than forty-five degrees, a determination as to whether or not the specific landform is subject to this provision shall be made by the director of community development.

(b) The building stringline averages the setback of oceanfront buildings on both adjacent sides of coastal lots and is defined as follows: The stringline setback shall be depicted as a line across a parcel that connects the oceanward ends of the nearest adjacent walls of the main buildings on adjacent lots. Posts or columns that extend to grade from upper story decks, balconies, stairways and other types of similar features shall not be used to define the building stringline criteria.

(i) In the event that there is no applicable stringline on adjacent oceanfront lots, the setback shall be at least twenty-five feet from the top of an oceanfront bluff.

(ii) Only in such cases where the design review board determines that the stringline is significantly more restrictive than the twenty-five foot setback may the board modify the required building setback, provided it determines that unique conditions relating to landform, lot orientation or excessive building setbacks on an adjacent property prevent or severely restrict residential development that otherwise meets the intent of the zoning code.

(c) A deck stringline may be used to establish a setback for decks. The deck stringline setback shall be depicted as a line across a parcel that connects the oceanward ends of the decks on main buildings on adjacent lots.

(d) Building Projection Setback.

(i) Balconies, patios or decks in excess of thirty inches above the finished grade, including patio deck covers, and other similar architectural features may project a maximum of five feet beyond the

applicable building setback or to the applicable deck stringline, whichever is least restrictive. In no case shall such projections be closer than ten feet to the top of an oceanfront bluff.

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

(5) Permitted projections into required yards as specified in Section 25.50.008 are not allowed within the required oceanfront setback areas.

#### SETBACKS

LUE Policies 2.1, 2.2, 2.8, and 10.2 require, among other things, that new development be compatible with the surrounding residences and neighborhoods and natural topographic features. One way to ensure that new development does not set a negative precedent and is compatible with the surrounding neighborhoods is by providing clear standards such as building and development setbacks.

LUE Action 10.2.7, OSCE Policy 1-I, and Section 25.50.004(B) of the IP require a minimum 25-foot setback from the bluff edge for principal and major accessory structures (including additions). As described in greater detail below, the proposed addition would be sited on the face of the coastal bluff and would not be consistent with this LCP prescribed minimum bluff edge setback.

#### *Coastal Bluff Edge Setback:*

Entry 101 of the Land Use Element (LUE) Glossary, a component of the City of Laguna Beach certified LCP, contains the following definition of Oceanfront Bluff Edge or Coastal Bluff Edge:

The California Coastal Act and Regulations define the oceanfront bluff edge as the upper termination of a bluff, cliff, or seacliff. In cases where the top edge of the bluff is rounded away from the face of the bluff, the bluff edge shall be defined as that point nearest the bluff face beyond which a downward gradient is maintained continuously to the base of the bluff. In a case where there is a step like feature at the top of the bluff, the landward edge of the topmost riser shall be considered the bluff edge. Bluff edges typically retreat over time as a result of erosional processes, landslides, development of gullies, or by grading (cut). In areas where fill has been placed near or over the bluff edge, the original bluff edge, even if buried beneath fill, shall be taken to be the bluff edge.

Defining the bluff edge can be complicated by the presence of irregularities in the bluff edge, a rounded bluff edge, a sloping bluff top, presence of a canyon, or previous grading or development near the bluff edge or on the bluff face, as is the case here; the subject bluff *property* is located within a canyon mouth, on a beach, and on a bluff and has been modified through previous grading and development.

Prior to the filing of the appeal related to this de novo application, according to the City's record the applicant provided project plans with a hand drawn line intended to represent the applicant's approximate "25' bluff top setback" line. In addition, during the local public

hearing, the applicant's representative indicated that the condominium building is 80 feet back from the bluff. In a letter dated May 13, 2019, Laguna Sands' (the incorporated owner's association for the condominium complex) representative also alludes to the site as being on a bluff. However, the applicant has not provided an analysis to substantiate that an adequate bluff edge determination has been made consistent with the LUE definition, then and now. Instead, the applicant has submitted a report by GeoSoils dated August 12, 2019, which argues that the property is sited within the limits of a canyon mouth and not on a bluff.

Portions of the 32-unit condominium building appear to be located on the beach, but the majority of the structure is sited on the face of the coastal bluff and in the mouth of Bluebird Canyon. Whether some of the bluff at this particular site is a "canyon bluff" versus "oceanfront bluff" is not relevant under the LUE definitions because the site overlooks a beach and is subject to marine erosion.

Entry 102 of the LUE Glossary, a component of the certified LCP, contains the following definition of 'Oceanfront Bluff/Coastal bluff':

...A bluff overlooking a beach or shoreline or that is subject to marine erosion. Many oceanfront bluffs consist of a gently sloping upper bluff and a steeper lower bluff or sea cliff. The term "oceanfront bluff" or "coastal bluff" refers to the entire slope between a marine terrace or upland area and the sea. The term "sea cliff" refers to the lower, near vertical portion of an oceanfront bluff.

Pursuant to the LUE's definition, an 'oceanfront bluff/coastal bluff' is a bluff that overlooks a beach or shoreline, or a bluff that is subject to marine erosion. The subject site overlooks the beach and shoreline and is subject to marine erosion, and therefore is a coastal bluff under the operative standard of review (the Laguna Beach certified LCP).

The information provided to the Commission is not sufficient to formally determine the bluff edge of the site at this time. However, based on aeriels and photographs and observable topography and based on the limited information provided by the applicant and in the City's record, Dr. Joseph Street, the Commission's staff geologist, has determined that the 32-unit condominium building straddles both a beach and a coastal bluff and, more specifically, the proposed addition would be entirely on the bluff face.

The six-level 32-unit condominium complex is primarily comprised of one large step-like building that descends down the bluff slope from Coast Highway to the beach and continues onto the beach. The project site is shown on **Image 1** below.

**Image 1:** Aerial view of subject property and existing development (condo building outlined in blue)



(Source: Google, LLC.)

As explained in greater detail in Dr. Street’s Memorandum dated March 25, 2021 ([Exhibit 3](#)), although it is difficult to reconstruct the exact location of the existing building in relation to natural landforms, much of the 32-unit condominium building appears to be located on the face of the coastal bluff. The proposal is for the enclosure and conversion of approximately 235 square feet of a deck into habitable space (an addition to Unit 24). Because the existing deck (and possibly the entire condominium complex) is nonconforming as to the LCP’s oceanfront and oceanfront bluff edge setback requirement, the proposed addition would also be nonconforming to these setbacks, inconsistent with certified LCP policies.

Regarding improvements to nonconforming oceanfront and oceanfront principal structures, LUE Action 7.3.10 states:

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

LUE Action 7.3.10 allows improvements to oceanfront and oceanfront bluff principal structures that are legally nonconforming as to the oceanfront and oceanfront bluff edge setbacks unless they increase the size or degree of the non-conformity, in which case, the improvements constitute “new development” and the entire structure must comply with the certified LCP, including bluff edge setbacks required by Actions 10.2.7, OSCE 1-I, and Section 25.50.004, as well as other applicable setbacks including those for minor access structures (e.g. 10-foot bluff edge setback pursuant to Action 10.2.8).

The proposed improvements would not increase the degree of non-conformity because the

proposal would not extend further seaward than other existing condominium units nor extend further horizontally where there is not already development (i.e., Unit 24 is located under a larger unit (Unit 34)). The applicant states that portions of the south-facing deck for Unit 34 were converted into habitable space in the 1960s prior to the effective date of the Coastal Act (1977). The proposed addition would be in-fill addition. However, the proposed addition would nevertheless increase the size of a non-conforming condominium building in a manner that is not consistent with the certified LCP.

The project would result in approximately 235 new square feet of habitable space, increasing the total area of the condominium building that would encroach onto the bluff face and within the bluff edge setback required by the LCP policies. Therefore, the increase in size of the non-conformity as to the oceanfront bluff edge setbacks would constitute new development under Action 7.3.10 and would trigger the requirement that the entire principal structure be brought into compliance with the certified LCP, including bluff edge setbacks, which is not being proposed at this time.

In addition, with regard to adding to or enlarging a nonconforming structure, Section 25.56.008 of the certified IP states:

A legal nonconforming structure may be enlarged or expanded if:

(A) The enlargement or expansion complies in every respect with all applicable provisions of this Title 25 Laguna Beach Zoning Code; and

(B) When Design Review is required, the approval authority finds that the proposed enlargement or expansion and the project as a whole complies with the Design Review Ordinance Intent and Purpose Section 25.05.040(A) and Design Review Criteria as set forth in Section 25.05.040(H). (The existing nonconformities shall be identified in the public hearing notice.); and

(C) The required number of parking spaces is provided per Chapter 25.52, Parking Requirements. However, existing single-family dwellings that have a nonconforming number of required parking spaces may be enlarged or expanded without complying with the required number of spaces, if the total gross floor area of the residential structure, including the proposed enlargement or addition, does not exceed fifteen hundred square feet and at least one parking space is provided on the property.

The condominium building is a legal nonconforming structure. The condominium building is nonconforming to a number of standards, including but not limited to the bluff edge setback and the vehicle parking standards.<sup>1</sup> However, the building cannot be enlarged or

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<sup>1</sup> The project site is zoned R-3 (Residential High Density) zone and has an LUP designation of VHD (Village High Density). For lots zoned R-3, the certified IP requires that there be a minimum of 2,000 square feet of net lot area for each dwelling unit (Section 25.14.008). The subject lot is 26,845 square feet. Therefore, density of 13 residential units are allowed onsite. The condominium building consists of 32 units, and therefore, does not currently conform to the LCP's density restriction. Regarding height, Section 25.14.008(D) of the certified IP limits the maximum height measured above the curb elevation to 20 feet for R-3-zoned lots with an average slope greater than 10 percent (as is the case here). Section 25.14.008(D) also limits the maximum height above grade for this project site to 30 or 31 feet. The subject lot has an average lot slope of 15.9 percent; however, the condominium building measures 31.1 feet above the curb elevation and is therefore, non-conforming to the height limit required above the curb elevation. In addition, the

expanded because the proposed project does not satisfy Section 25.56.008(a). The proposed addition is not consistent with the minimum required bluff edge setback, and therefore, the proposed expansion does not comply in every respect with all applicable provisions of Title 25 of the certified IP.

*Oceanfront Setback based on Plane of Elevation:*

LCP Section 25.50.004(B)(2) states that for all oceanfront properties situated between Thalia Street and Bluebird Canyon Drive (such as the project site), the oceanfront building setback line is fixed and established as the line drawn through the points where the plane of elevation thirteen feet above mean sea level touches the land mass (other than beach sand) of the particular parcel involved. Based on photos of the site, Dr. Street estimates that the natural bluff face and/or non-sand ground surface is no further seaward than the existing line of development at the project site. Therefore, the proposed addition appears would be consistent with this plane-of-elevation setback line.

Because the condominium building straddles the beach and the bluff and because the project site is situated between Thalia Street and Bluebird Canyon, Section 25.50.004(B)(2) is also applicable. However, this plane-of-elevation-based setback is applicable in addition to the bluff edge setbacks, and not in lieu of them. Section 25.50.004(B)(4) states, in relevant part: “In addition to... (2)...no new building, additions to existing buildings or structures or improvements shall encroach beyond the applicable building stringline or shall be closer than twenty-five feet to the top of an oceanfront bluff; the more restrictive shall apply.” As explained above, the proposed addition would not conform to the minimum 25-foot bluff edge setback because the proposed addition will be entirely sited on a bluff face.

LEGALITY OF CONDOMINIUM CONVERSION

The appellant asserts that the 32-unit condominium building was originally constructed as an “Own-Your-Own” (OYO), or cooperative, apartment building, and that in 2003 the cooperative apartment building was converted to a condominium complex without the benefit of a coastal development permit.

Development is broadly defined by Section 25.07.006(D), which states:

“Development” means the 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; 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 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

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condominium building has maximum height of approximately 60 feet above grade, which is not consistent with the 30-31 height limit. Section 25.14.008 also requires not less than a 20-foot front yard (street side) setback and 12-foot-wide side yard setbacks, both of which the condominium building does not currently comply.

removal or harvesting of major vegetation other than for agricultural purposes; and kelp harvesting.

Section 25.05.050 of the IP requires approval of a coastal development permit for any development within the coastal zone that constitutes development as defined in Section 25.07.006(D).

Change in intensity of use of land or land divisions are considered development that requires a coastal development permit. Here, however, the conversion from Own-Your-Own” (OYO) cooperative apartments (multiple owners) were a community apartment project. Converting an OYO into a condominium complex (multiple owners) is not considered a change in use of land that would constitute non-exempt development. Both the OYO cooperative apartments (or community apartment project) and the condominium project are considered “residential condominiums” pursuant to Section 25.47.020(A)(1) of the certified IP. Therefore, the conversion from one type of residential condominium to another type of residential condominium is not considered development that requires a coastal development permit.

#### NOXIOUS ODORS:

The applicant’s agent states that since the construction of the condominium complex, a second sewer lift station has been installed immediately adjacent to Unit 24 and asserts that in the absence of the addition, which would enclose the side deck, this lift station would allow noxious odors into the units and would compromise the health and quiet enjoyment of the occupants.

However, Unit 24 as it *legally* exists today is already an enclosed condominium with a side deck that provides essentially a side yard setback. The Commission does not recognize any validity in the assertion that the proposed addition is necessary to address the noxious odors, in part because the proposed addition would bring the unit closer to the lift station. The Commission recognizes the inherent conflicts likely to arise when private property abuts public use areas. For this reason, it is critical that new private development be adequately set back from public areas.

#### CONCLUSION

The proposed addition consists of converting existing deck space into internal floor area, adding 235 square feet of living space to one of the residential units of the condominium complex. However, the proposed addition to Unit 24 would not conform to the LCP’s minimum bluff edge setbacks and is inconsistent with certified LCP policies.

In addition, the proposed project would increase the size of the nonconformity of the condominium buildings as to the oceanfront bluff edge setbacks by increasing the total area of the building that would encroach into the LCP required bluff setbacks, which would constitute new development and would trigger the requirement that the condominium buildings be brought into conformity with the certified LCP (Action 7.3.10). Because the proposed development cannot be found consistent with the LCP and could set a precedent



for other new development on bluff faces in Laguna Beach, the permit application must be denied.<sup>2</sup>

There is an alternative that would allow the applicant to continue to enjoy reasonable use of Unit 24. Although LUE Action 7.3.10 prohibits improvements that constitute new development (e.g., improvements that would increase the size or degree of nonconformity or major remodels) on a beach or coastal bluff face, it allows oceanfront and oceanfront buildings that are legally nonconforming as to the oceanfront bluff edge setback to be repaired and maintained; however, this is not proposed at this time.

## **E. HAZARDS**

The City's certified LCP includes the following hazards policies:

Laguna Beach Land Use Element:

Policy 7.3 states:

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

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

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

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

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

Action 7.3.6 states: Require new development on oceanfront blufftop lots to incorporate drainage improvements, removal of and/or revisions to irrigation

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<sup>2</sup> LUE 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." Although this proposal involves unpermitted development, the requirement that the unpermitted structure be removed cannot be imposed through a special condition of a coastal development permit because Action 7.3.8 is not fully applicable in this case as the project site is not being substantially redeveloped unlike in Application No. A-5-LGB-19-0023 (Kinslter).

systems, and/or use of native or drought-tolerant vegetation into the design to minimize threats to oceanfront bluff recession.

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

Action 7.3.12 states: Site and design new structures to avoid the need for shoreline and/or oceanfront bluff protective devices during the economic life of the structure (75 years).

Action 7.3.13 states: Limit the use of shoreline/bluff protective devices to the minimum required to protect existing development in danger of erosion. Site and design any such protective devices as far landward as possible. "Existing development" for purposes of this policy shall consist only of a principal structure, e.g. residential dwelling, required garage, or second residential unit, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping etc. No shoreline/bluff protective device shall be allowed for the sole purpose of protecting an accessory structure.

Policy 10.2 states:

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

Action 10.2.1 states: Adopt standards that require new development and related improvements to be located on the most suitable areas of the site so as to maximize safety and the preservation of sensitive resources.

Action 10.2.5 states: On bluff sites, requires applications where applicable, to include a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contain statements that the project site is suitable for the proposed development and that the development will be safe from geologic hazard for its economic life. For development on oceanfront bluffs, such reports shall include slope stability analyses and estimates of the long-term average bluff retreat/erosion rate over the expected life of the development. Reports are to be prepared/signed by a licensed professional Engineering Geologist or Geotechnical Engineer.

Action 10.2.6 states: Require all new development located on an oceanfront bluff top to be setback from the oceanfront bluff edge a sufficient distance to ensure stability, ensure that it will not be endangered by erosion, and to avoid the need for

protective devices during the economic life of the structure (75 years). Such setbacks must take into consideration expected long-term bluff retreat over the next 75 years, as well as slope stability. The predicted bluff retreat shall be evaluated considering not only historical bluff retreat data, but also acceleration of bluff retreat made possible by continued and accelerated sea level rise, future increase in storm or El Nino events, and any known site-specific conditions. To assure stability, the development must maintain a minimum factor of safety against landsliding of 1.5 (static) or 1.2 (pseudostatic,  $k=0.15$  or determined through analysis by the geotechnical engineer) for the economic life of the structure.

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

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

#### Open Space/Conservation Element Policies:

Policy 7-K states:

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

Policy 10-C states:

Require projects located in geological hazard areas to be designed to avoid the hazards, where feasible. Stabilization of hazard areas for purposes of development shall only be permitted where there is no other alternative location or where such stabilization is necessary for public safety. The more unstable areas should be left ungraded and undeveloped, utilizing land use designations such as Open Space.

Policy 10-E states:

Development in the areas designated "Residential/Hillside Protection" on the Land Use Plan Map or within potential geologic hazard areas identified on the Geological Conditions Map of the Open Space/Conservation Element shall not be permitted unless a comprehensive geological and soils report is prepared pursuant to Title 22 of the City's Municipal Code, and adequate mitigation measures have been approved and implemented by the City's geologist. For projects located in areas subject to hazards as identified on the Geologic Conditions Map or subject to erosion, landslide or mudslide,

earthquake, flooding or wave damage hazards confirmed by a geologic assessment, as a condition of approval or new development a waiver of liability shall be required through a deed restriction.

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: ...

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

The proposed development would occur on an oceanfront and ocean-fronting bluff lot (the condominium building straddles a beach and a bluff). The Commission has consistently found that development on the beach and on a bluff site that is adjacent to the sea, like the project site, is inherently subject to coastal hazards including erosional forces imposed against the beach and bluff material from wave energy, wind and rain. Some of these hazards will be affected by expected sea level rise. The hazards policies of the LCP require, among other things, that all new development be (per the policies cited above): adequately evaluated to ascertain potential negative impacts on natural resources and on existing adjacent development; designed and sited to avoid hazardous areas and minimize risks to life and property from coastal and other hazards; and assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices on the beach or a bluff face that would substantially alter natural landforms along the shoreline and bluffs and cliffs. In addition, the LCP policies cited above require specific setbacks for development on oceanfront and oceanfront bluff properties.

#### DEVELOPMENT ON BLUFF FACE:

As explained in greater detail in Section II.D above, the proposed addition would not be consistent with the LCP's minimum bluff edge setback (LUE Policy 10.2.7, OSCE 1-I, and IP Section 25.50.004(B)) because the proposed addition at issue would be on the bluff face.

LUE Action 10.2.7, OSCE 1-I, and Section 25.50.004(B) cited in Section II.D (Development) of this report, which prescribe the minimum bluff edge setbacks and oceanfront setbacks, are also relevant in addressing hazards because setting development back on a beach or from the edge of the bluff can substantially decrease risk to life, because the farther from the shoreline or bluff edge development is located, the less likely it is that that development will become jeopardized by erosion, landslides, and similar hazards. Likewise, setbacks decrease the likelihood of destruction of a structure caused by wave action or geologic instability.

COASTAL HAZARDS:

LUE Policy 7.3, LUE Actions 7.3.3, 7.3.5, 10.2.6, 10.2.7, 10.2.8, and OSCE Policies 7-K and 10-C of require that new development minimize risk to coastal hazards and to the alteration of natural landforms and not contribute to site instability.

A Coastal Hazards and Wave Runup study (sea level rise, wave runup and bluff/shoreline erosion analysis) prepared by GeoSoils Inc., dated September 12, 2019 has been submitted for this application. This study is not specific to the proposed improvements to Unit 24, but it was prepared for other improvements to the overall condominium complex (Laguna Sands) to which Unit 24 is a part. The applicant's coastal hazards analysis identifies potential hazards from shoreline erosion and wave runup. Many of the coastal hazard issues described herein may be affected by expected sea level rise. Sea level has been rising for many years. The State of California has undertaken significant research to understand how much sea level rise to expect over this century and to anticipate the likely impacts of such sea level rise. In April 2017, a working group of the Ocean Protection Council's (OPC) Science Advisory Team released Rising Seas in California: An Update on Sea-Level Rise Science.<sup>2</sup> This report synthesizes recent evolving research on sea level rise science, notably including a discussion of probabilistic sea level rise projections as well as the potential for rapid ice loss leading to extreme sea level rise. The updated projections in the 2017 Rising Seas report and the 2018 OPC Guidance, which are based on the current best available science on sea level rise, suggest that sea levels could rise between 2.1 and 6.7 feet by 2100 at the Los Angeles tide gauge,<sup>3</sup> depending on future greenhouse gas emissions. The OPC Guidance recommends that development of only moderate adaptive capacity, including residential development, use the high end of this range, 6.7 feet, to inform decisions regarding development. The updated Rising Seas science report and OPC Guidance also include an extreme scenario (termed the "H++" scenario) of 9.9 feet of sea level rise by 2100 based on recent modelling efforts that look at possible sea level rise associated with rapid ice sheet loss.

As our understanding of sea level rise continues to evolve, it is possible that sea level rise projections will continue to change as well (as evidenced by the recent updates to best available science). While uncertainty will remain with regard to exactly how much sea levels will rise and when, the direction of sea level change is clear and it is critical to continue to assess sea level rise vulnerabilities when planning for future development. Importantly, maintaining a precautionary approach that considers high or even extreme sea level rise rates and includes planning for future adaptation will help ensure that decisions are made that will result in a resilient coastal California.

The 32-unit condominium building descends down a bluff slope from Coast Highway to the beach and continues onto the beach. The property elevations vary from approximately +13 feet NAVD88 on the seaside to about elevation +50 feet NAVD88 at South Coast Highway. The coastal hazards analysis for Laguna Sands indicates that while the shoreline fronting the subject property is stable over the long-term, it is subject to temporary but measurable beach erosion and wave runup, which will reach the sea-front side of the condominium building. However, the analysis notes that the seaside of the site is stabilized by a vertical seawall and deepened building foundation, which also serves as a seawall. The top of the seawall is at approximately +22 feet NAVD88. Based on the highest observed water elevation in 1983 (+7.5 feet NAVD88) and allowing for sea level rise over the next 75

years, the coastal hazards analysis for Laguna Sands estimates that in 75 years the water elevation can be approximately +13 feet NAVD88. The proposed addition to Unit 24 is above +30 feet NAVD88. The analysis concludes that improvements above +22 feet NAVD88 will be reasonably safe from sea level rise related hazards (e.g., wave runup, retreat of the seacliff, and flooding).

In addition, the proposed project would be in-fill development addition that would not be more at risk to coastal hazards than the overall 32-unit condominium building because the proposed addition would not extend further seaward than other existing condominium units onsite nor would it extend further laterally where there is not already development (Unit 24 is located under a larger unit). However, the proposed addition would nevertheless increase the size of a non-conforming condominium building in a manner that is not consistent with the certified LCP. This could set a precedent for other new development or additions to non-conforming structures on bluffs and in hazardous areas.

Hazards related to geologic stability of the bluff are not known at this time because a geotechnical report was not prepared for this application.

#### SHORELINE PROTECTIVE DEVICES

Numerous LCP policies cited above (Actions 7.3.4, 7.3.9, 7.3.12, 7.3.13, and 10.2.6) require that new development not rely on existing or future bluff or shoreline protection devices to establish geologic stability and require that any landform alteration be minimized. In particular, LUE Action 7.3.9 provides that new development, major remodels, and *additions* to existing structures on oceanfront bluff sites may not rely on “existing or future bluff/shoreline protection devices to establish geologic stability or protection from coastal hazards.”

Bluff/shoreline protective devices can result in a number of adverse effects on the dynamic shoreline system and the public's beach ownership interests. These protective devices can cause changes in the shoreline profile, particularly changes in the slope of the profile resulting from a reduced beach berm width. This may alter the usable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area in which the public can pass on public property, inconsistent with the public access policies of the Coastal Act.

Here, the seaside of the condominium building is stabilized by a seawall and deepened foundation, which also serves as a seawall. If approved, the addition would rely on this same seawall, which would be inconsistent with Actions 7.3.4, 7.3.9, 7.3.12, 7.3.13, and 10.2.6.

#### CONCERNS OF SAFETY AND SECURITY:

The applicant's agent asserts the proposed addition is necessary to address the concerns of safety and security because without the balcony enclosure at Unit 24, trespassers might easily jump over the railing.

However, there is an alternative that would help address safety and security concerns and would be consistent with the certified LCP. The applicant could install an outdoor wood privacy screen/trellis on the southeasterly side of the deck/balcony that is immediately adjacent to the public ramp. This would ensure that no trespassers jump onto the deck at Unit 24 and would not be considered an addition of living space. Based on historical imagery, it appears such a screen may have been present in the past.

#### CONCLUSION

The addition is inconsistent with Actions 7.3.4, 7.3.9, 7.3.12, 7.3.13, and 10.2.6. In addition, the proposed addition is inconsistent with the LCP policies, as explained in the Sections II.D findings above, and therefore must be denied.

#### **F. 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.

Setting development further back from the beach or from the edge of the coastal bluff decreases the project's visibility from the beach, which the public may access below the mean high tide line.

The property and the existing condominium building are highly visible from the public beach and Coast Highway. However, the coastal bluff and the beach in the former canyon mouth at the project site has been significantly altered by the development of the condominium complex prior to the effective date of the Coastal Act. The proposed addition (conversion of deck space into internal living space) would not significantly or adversely affect the natural character of the bluff face and beach because the addition would be infill development. In addition, the proposed addition would not impede public coastal views from Coast Highway because views of the shoreline are already obstructed by the existing condominium building.

In this case, the proposed project is not anticipated to have negative impacts on the public coastal views and visual resources and could be found consistent with the visual resources policies of the LCP. However, as explained in the Sections II.D and II.E findings above, the



proposed development is inconsistent with the LCP standards, approval could set a precedent for other development on bluff faces which would have adverse visual impacts, and therefore the CDP application must be denied.

## **G. Public Access/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 Bluebird Beach and is located between the first public road (Coast Highway) and the sea. The property fronts Coast Highway and extends approximately 200 feet seaward down a bluff slope to the sandy beach. Vertical public access from Coast Highway to the beach is available via a public access ramp that abuts 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 negative impacts on the nearby access ways or public beach below and could be found consistent with the access and recreation policies of Chapter 3, however it is inconsistent with the LCP policies, as explained in the Sections II.D and II.E findings above, and therefore must be denied.

## **H. 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. Mitigation measures can be required through special conditions to ensure water quality adequately protected. However, in this case, the project is inconsistent with the LCP policies, as explained in the previous findings above, and therefore must be denied.

### **I. LOCAL COASTAL PROGRAM**

The City of Laguna Beach Local Coastal Program (LCP) was certified with suggested modifications, except for the areas of deferred certification, in July 1992. In February 1993 the Commission concurred with the Executive Director's determination that the suggested modification had been properly accepted and the City assumed permit-issuing authority at that time. The Land Use Plan of the LCP consists of the Coastal Land Use Element, the Open Space/Conservation Element, and the Coastal Technical Appendix. The Coastal Land Use Element of the LCP was updated and replaced in its entirety via LCPA 1-10 in 2012. The certified Implementation Plan of the LCP is comprised of a number of different documents, but the main document is the City's Title 25 Zoning Code. The Open Space/Conservation Element and Title 25 have been amended a number of times since original certification.

As discussed, the proposed project is inconsistent with the LCP's minimum bluff edge setback requirements, would encroach into the coastal bluff face, would not be compatible with the surrounding development, landscaping, and topography. Therefore, it must be denied.

### **J. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

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

The City of Laguna Beach is the lead agency for the purposes of CEQA review. On July 25, 2017, the Laguna Beach Design Review Board adopted a Section 15301, categorical exemption pursuant to CEQA for the project.

The proposed project has been found to be inconsistent with the Chapter 3 policies of the Coastal Act and with the policies of the certified LCP. CEQA does not apply to private projects that public agencies deny or disapprove, per Pub. Res. Code § 21080(b)(5). Accordingly, because the Commission is denying the proposed project, it is not required to

adopt findings regarding mitigation measures or alternatives which would substantially lessen any significant adverse effect the project would have on the environment.

## **APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

1. Appeal No. A-5-LGB-19-0011
2. Letter titled Re: Appeal No. A-5-LGB-19-0011 by Christopher Queally, Gordon & Rees Scully Mansukhani (GRSM) Attorneys at Law, dated May 13, 2019.
3. Discussions of Landforms at Laguna Sands, 1585 S. Coast Highway, City of Laguna Beach, Orange County, California by GeoSoils, Inc., dated August 12, 2019.
4. Discussion of Coastal Hazards and Wave Runup, Laguna Sands, City of Laguna Beach, Orange County, California by GeoSoils Inc., dated September 12, 2019.