

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: APPEAL – DE NOVO

Appeal No.: **A-5-LGB-20-0055**

Applicant: **Robert and Lucy Donahue**

Agent: Morris Skenderian

Local Government: City of Laguna Beach

Local Decision: Approval with Conditions

Appellants: Mark & Sharon Fudge

Project Location: 1225 Cliff Drive, Laguna Beach, Orange County
(APN: 053-161-05)

Project Description: Remodel of an existing two-level, 15-ft. high (from curb), 3,122 sq. ft. single-family residence, which includes: 1) 1,101 sq. ft. of additions greater than 15 feet in height, 2) tandem parking, 3) 372 sq. ft. of new elevated decks, 4) new skylights, 5) grading to create a new pool/spa, 6) a new pedestrian entry feature, and 7) new landscaping.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The applicant is proposing 1,101 sq. ft. of net additions and improvements to an existing single-family residence, including tandem parking, 372 sq. ft. of elevated decks, skylights, a new pool and spa, a new pedestrian entry feature, landscaping, and the maintenance of a walkway and lighting within an unimproved portion of the public right-of-way.

The project site consists of an 8,156 sq. ft. ocean-fronting blufftop lot that is developed with a three-story, 3,122 sq. ft. single-family residence. The residence was constructed in 1916, prior to passage of the Coastal Act ([Exhibit 1](#)). The residence is listed on the City's Historic Resources Inventory. Several projects which constitute development also took place on site after passage of the Coastal Act, including a re-roof of the residence and detached garage, a 300 sq. ft. addition to the residence, a new canopy, a new trellis, and a new window. The re-roof and the 300 sq. ft. addition received building permits, but no CDPs.

The City's approval of a CDP for this subject development was appealed to the Commission on September 29, 2020. The Commission held a hearing for the City-approved project on December 9, 2020 and determined that the project raised a substantial issue with respect to conformity with the certified Local Coastal Program (LCP) for Laguna Beach and the public access policies found in Chapter 3 of the Coastal Act. Of note, the Commission found that the City did not adequately determine the bluff edge for the project, did not adequately determine whether the project was a major or minor remodel, and did not require a waiver of rights to shoreline protection for the proposed new development (the areas of addition, new pool/spa, and landscape/hardscape). Following the substantial issue hearing, the applicant modified the project plans to re-orient the proposed pool and spa to sit behind the project stringline.

The primary issue raised is the locally approved CDP's consistency with LCP policies regarding development on an oceanfront and oceanfront bluff site. The proposed residential additions would be set back more than 40 ft. from the bluff edge as identified by the applicant and confirmed by the Commission's staff geologist and would conform to the minimum 25-ft. oceanfront and oceanfront bluff edge setback for principal structures required by the LCP. Likewise, the proposed new pool and spa would be set back more than 25 ft. from the bluff edge and behind the building stringline. This is consistent with the minimum 10-ft. oceanfront and oceanfront bluff edge setback for accessory structures required by the LCP. A geotechnical survey conducted by Geofirm on April 11, 2019 concluded that the site is grossly stable, that the project will be safe for the life of the project, and that no shoreline or bluff protection devices that would substantially alter natural landforms along bluffs and cliffs are needed now or in the future.

Additionally, the proposed development does not appear to meet the definition of a major remodel – defined as 50 percent or more demolition of any major structural element – which would trigger the requirement that pre-existing nonconforming oceanfront or oceanfront bluff structures be brought into conformity with the LCP pursuant to Action 7.3.10 of the certified LUP.

Staff recommends **approval** of the de novo permit with **14 special conditions** that require the applicant to: 1) conformance with approved plans; 2) conform to erosion control requirements and geotechnical recommendations; 3) implement construction best management practices; 4) conform to landscape recommendations; 5) submit a drainage and runoff plan; 6) adhere to best management practices for the pool and spa to prevent leakage onto the bluff; 7) provide a City job card to verify the extent of demolition, removal, and/or replacement completed onsite; 8) submit a construction staging plan; 9) Submit a

Cultural Resources and Treatment Monitoring Plan; 10) comply with the conditions imposed by the local government; 11) waive any rights to construct a future bluff/shoreline protective device to protect the development authorized by this permit; 12) assume the risks of development in a geologically hazardous area, waive any claim of damage or liability against the Commission, and indemnify the Commission against future claims; 13) acknowledge that any future improvements to the structure authorized by this permit shall require a permit amendment or a new permit; and 14) record a deed restriction against the property incorporating the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property.

The motion and resolution are on Page 5 of the staff report.

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EXHIBITS

[Exhibit 1 – Vicinity Map and Project Site](#)

[Exhibit 2 – Project Plans](#)

I. MOTION AND RESOLUTION – DE NOVO PERMIT

Motion: I move that the Commission **approve** Coastal Development Permit No. A-5-LGB-20-0055 pursuant to the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby approves Coastal Development Permit Application No. A-5-LGB-20-0055 and adopts the findings set forth below on grounds that the development, as conditioned, will be in conformity with the Certified Local Coastal Plan and the public access and recreation policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that will substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Conformance with Approved Plans.** The applicant shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
2. **Conformance with Geotechnical Recommendations.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director's review and approval, along with two (2) sets of final plans, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans to be submitted pursuant to **Special Condition 1** including foundation and grading/drainage plans, and has certified that each of those final plans are consistent with the recommendations contained in the Preliminary Geotechnical Investigation prepared by Geofirm dated April 11, 2019 (supplemented July 5, 2019 and November 9, 2020), with the exception of any recommendations to install caissons.

The applicant shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. **Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.** The applicant shall comply with the following construction-related requirements:
 - A. No demolition or construction materials, debris, equipment or waste shall be placed or stored in any location where it may enter or impact sensitive habitat areas, streams, wetlands, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
 - B. The permittees shall employ Best Management Practices (BMPs) to ensure that erosion is minimized and the sea is protected from sedimentation.
 - C. Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
 - D. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
 - E. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
 - F. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.

- G. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
 - H. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
 - I. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
 - J. The discharge of any hazardous materials into any receiving waters shall be prohibited.
 - K. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
 - L. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity
 - M. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.
- 4. Landscaping – Drought Tolerant, Non-Invasive Plants.**
- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, in a form and content acceptable to the Executive Director, two (2) full size sets of final revised landscaping plans, which shall include and be consistent with the following:
 - 1. Vegetated landscaped areas shall consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>).
 - 2. Use of reclaimed water for irrigation is encouraged. If using potable water for

irrigation, only drip or microspray irrigation systems may be used. Other water conservation measures shall be considered, such as weather based irrigation controllers.

- B. The permittees shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. **Drainage and Runoff Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, in a form and content acceptable to the Executive Director, two (2) sets of a final drainage plan prepared by an appropriately licensed professional that has been reviewed and approved by the City of Laguna Beach. The plan shall incorporate the following criteria:

- A. Runoff from all roofs, patios, driveways and other impervious surfaces and slopes on the site shall be directed to dry wells, trench drains or vegetated/landscaped areas to the maximum extent practicable within the constraints of City requirements and geotechnical recommendations;

- B. Where City code prohibits on-site infiltration, runoff shall be collected and discharged via pipe or other non-erosive conveyance to the frontage street to the maximum extent practicable. Runoff from impervious surfaces that cannot feasibly be directed to the street shall be discharged via pipe or other non-erosive conveyance to a designated outlet point to avoid ponding or erosion either on- or off-site;

- C. Runoff shall not be allowed to pond adjacent to the structure or sheet flow directly over the coastal bluff to the beach below; and

- D. The functionality of the approved drainage and runoff control plan shall be maintained throughout the life of the development.

6. **Best Management Practices- Proposed Spa.** Best Management Practices (BMPs) designed by the applicant's subject matter expert to mitigate the potential for leakage from the proposed spa shall be implemented prior to the onset of such activity. The spa 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 and post-construction maintenance:

- A. The spa shall contain an interior waterproof surface lining or coating to be applied to surface of the concrete structure and the proposed tile finished surfacing. Secondary protection should be obtained by the use of a concrete mix design for the spa structure in accordance with the American Concrete Institute (ACI) publication 218-08, Table 4.3.1, Requirements for Special Exposure conditions for "Concrete intended to have low permeability when exposed to water:

In accordance with ACI Table 4.3.1 it is recommended that the concrete mix used for the referenced spa be formulated with a maximum water cementitious materials ratio of 0.45 and a minimum 28 day concrete compressive strength of 4500 psi. Experience has shown this concrete mix has been successful in attaining low permeability for concrete structures such swimming pools and spas. The ACI has considerable documentation on attainment of low permeability when using this type of concrete mix.

B. The spa shall have a sub-drain system installed below the spa in accordance with recommendations by the project geotechnical engineer. The sub drain system shall be connected to the proposed sump pump drain system designed by the project civil engineer.

C. The proposed BMPs described above are intended to satisfy requirements to prevent water exfiltration from the spa onto adjacent properties including the existing slope located towards the rear of the subject site.

D. Expected water consumption of the spa is based upon yearly temperature, and will likely be within normal limits during summer months. Typical Southern California temperatures during summer months should result in an evaporation rate of approximately two inches of water in a seven-day period of time. This evaporation rate is less in coastal climate areas such as the project site. Volumetric consumption may be assumed to be two inches of water the exposed surface of the spa.

E. The spa water fill system shall be provided with an automatic cut-off switch programmed such that the cut-off of water is activated if water usage in a three hour period exceeds the normal and expected flow. The cut-off shall have an override control of up to two hours to allow for the maintenance and cleaning of the spa.

F. All recommendations included herein as well as any additional provisions intended for leakage prevention should be inspected and verified during the constructions process of the spa.

7. **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.

8. **Construction Staging Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the written review and approval

of the Executive Director, two copies of a construction staging plan. The construction staging plan shall incorporate the following:

- A. The plan shall specify where construction equipment is proposed to be stored during construction in order to maintain slope stability, control erosion, and maintain public access along South Coast Highway.
 - 1) All construction equipment to be stored overnight shall be stored on-site, outside the street travelway.
 - 2) Placement of the on-site dumpster shall incorporate use of a flagman to direct traffic during placement.
 - 3) No staging shall occur on the beach below the project site.
- B. The plan shall also identify a disposal site outside of the Coastal Zone for waste materials and recyclable materials.

9. **Protection of Archaeological and Tribal Cultural Resources.** The permittee shall undertake development in compliance with the following mitigation measures to protect archaeological, including tribal cultural resources:

- A. AT LEAST TWO WEEKS PRIOR TO COMMENCEMENT OF ANY GROUND-DISTURBING CONSTRUCTION ACTIVITIES, the permittee shall (i) notify the representatives of Native American Tribes listed on an updated Native American Heritage Commission (NAHC) contact list; (ii) invite Tribal representatives to be present and to monitor ground-disturbing activities; and (iii) arrange for any invited Tribal representative that requests to monitor and/or a qualified archaeological monitor to be present to observe project activities with the potential to impact archeological and/or tribal cultural resources. The monitor(s) shall have experience monitoring for archaeological resources of the local area during excavation projects, be competent to identify significant resource types, and be aware of recommended Tribal procedures for the inadvertent discovery of archaeological resources and human remains.
- B. If an area of archaeological resources is discovered during ground-disturbing activities, all construction shall cease and shall not recommence except as provided in subsection (C) hereof, and the permittee shall retain a qualified archaeologist and/or tribal cultural resource specialist to analyze the significance of the find in consultation with the Native American Tribes listed on the NAHC list. The archaeologist shall immediately notify the Tribes on the NAHC list. An “exclusion zone” where unauthorized equipment and personnel are not permitted shall be established (e.g., taped off) around the discovery area that includes a reasonable buffer zone recommended by the monitor(s). Project activities may continue outside of the exclusion zone.
- C. A permittee seeking to recommence construction within the exclusion zone following discovery of the archaeological resources shall submit a Supplementary Archaeological Plan (SAP) prepared by the project archaeologist in consultation with

the Native American Tribes listed on the NAHC list for the review and written approval of the Executive Director. If the Executive Director approves the SAP and determines that the SAP's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction may recommence after this determination is made by the Executive Director in writing. If the Executive Director approves the SAP but determines that the changes therein are not de minimis, construction may not recommence until after an amendment to this permit is approved by the Commission.

10. Conditions Imposed By Local Government. This action has no effect on conditions imposed by the City of Laguna Beach pursuant to an authority other than the Coastal Act, except as provided in the last sentence of this condition. The permittees are responsible for compliance with all terms and conditions of this coastal development permit in addition to any other requirements imposed by other local government permit conditions pursuant to the local government's non-Coastal Act authority. In the event of conflicts between terms and conditions imposed by the local government and those of this coastal development permit, the terms and conditions of this coastal development permit shall prevail.

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.

11. No Future Bluff/Shoreline Protective Device.

- A. By acceptance of this permit, the permittees agree, on behalf of themselves and all successors and assigns, that as new development, the project is not entitled to bluff/shoreline protection, and to waive any rights to construct a bluff/shoreline protective device to protect the development approved pursuant to Coastal Development Permit No. A-5-LGB-20-0055 – and any future improvements – that may exist under applicable law, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, sea level rise, or other natural hazards in the future.
- B. By acceptance of this permit, the permittees further agree, on behalf of themselves and all successors and assigns, that the permittees shall remove the development authorized by this permit, including the residential additions, landscaping, hardscape, and accessory structures/improvements if: (a) the City or any

government agency with legal jurisdiction has issued a final order that the structures are currently and permanently unsafe for occupancy or use due to coastal hazards and that there are no measures that could make the structures suitable for habitation or use without the use of a shoreline or bluff protective device; (b) essential services to the site can no longer feasibly be maintained (e.g., utilities, roads); (c) removal is required by the certified LCP; (d) the development becomes located on public trust lands due to a shifting public trust boundary as a result of sea level rise, or (e) the development would require a shoreline protective device to prevent (a)-(d) above.

- C. In the event that portions of the development fall to the beach before they are removed, the permittees shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit unless the Executive Director determines that no CDP is legally required.

12. Assumption of Risk, Waiver of Liability, and Indemnity. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from bluff and slope instability, sea level rise, erosion, landslides and wave uprush or other tidal induced erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

13. Future Improvements. This permit is only for the development described in Coastal Development Permit A-5-LGB-20-0055. Pursuant to Title 14 of the California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to this development governed by the Coastal Development Permit A-5-LGB-20-0055. Accordingly, any future improvements to the structures authorized by this permit, including but not limited to, repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 of the California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit A-5-LGB-20-0055 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

14. 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.

IV. FINDINGS AND DECLARATIONS – DE NOVO

A. PROJECT DESCRIPTION

The applicant is proposing 1,101 sq. ft. of net additions and improvements to an existing single-family residence, including tandem parking, 372 sq. ft. of elevated decks, skylights, a new pool and spa, a new pedestrian entry feature, landscaping, and the maintenance of a walkway and lighting within an unimproved portion of the public right-of-way. The additions would span the three existing levels, and would accommodate a new living room, bathroom, laundry room, and powder room. A 350 sq. ft. mechanical yard is proposed below the existing outdoor patio to store pool equipment and three air-conditioning units. The tandem parking would be created through a remodel of the detached garage [\(Exhibit 2\)](#).

The project site consists of an 8,156 sq. ft. ocean-fronting blufftop lot that is developed with a three-story, 3,122 sq. ft. single-family residence. The residence was constructed in 1916, prior to passage of the Coastal Act [\(Exhibit 1\)](#). The residence is listed on the City’s Historic Resources Inventory with a K rating.¹ However, as stated in an August 2016 Historic Resources Assessment conducted for the site, the residence is ineligible for a state or national listing due to the extent of alterations conducted onsite over the years. The project site is located adjacent to Crescent Bay Beach, and public coastal access is available via Barranca Street, located approximately 200 feet north of the project site. Single-family residences on ocean-fronting bluffs characterize the surrounding area. The project site is designated Village Low Density, which permits single-family residences to be developed.

Project Site History

The project site was originally developed with two single-family residences prior to 1931; the subject residence was constructed in 1916, and a second residence was constructed seaward of the residence at an unknown date. The seaward residence was demolished in 1960, leaving the subject residence and some foundation remnants from the demolished second residence. Several building permits were issued for minor alterations to the subject residence prior to January 1, 1977, the effective date of the Coastal Act, but based on the

¹ The City defines K-rated Historic structures as “very good historical architectural examples which strongly retain their original integrity. These buildings have significant architectural, historical, and/or aesthetic value and are find period examples.”

City's property records history there was only one residence and no swimming pool authorized as of the effective date of the Coastal Act.

Several projects also took place on site after passage of the Coastal Act. In 1988, the residence and detached garage were re-roofed pursuant to Building Permit 88-434.² In 2000, Building Permit 00-0368 was issued to remodel the residence. However, a CDP was not issued for this work. In 2001, CDP 01-022 was issued for a 300 sq. ft. addition to the residence and a variance to exceed the maximum building height. In 2003, CDP 02-003 approved the demolition and reconstruction of the detached garage. Finally, in 2004, Design Review Permit No. 04-821 was approved to construct a new entry canopy, a trellis, and insert a new window on the residence.³

Appeal History for Current Project

On February 27, 2020, the City of Laguna Beach Design Review Board (DRB) held a public hearing for the coastal development permit application and other discretionary approval for the current project. The DRB conditionally approved Local CDP No. 19-5311 and Design Review 19-5310. The DRB also approved Revocable Encroachment Permit 19-5312 in order to allow the maintenance of a walkway and lighting associated with the single-family residence within the public right-of-way.

On September 15, 2020, the Coastal Commission's South Coast District Office received a valid Notice of Final Action (NOFA) for Local CDP No. 19-5311 approving the project. On September 29, 2020, Mark and Sharon Fudge filed an appeal of the City-approved project.

The Commission held a hearing for the City-approved project on December 9, 2020, and determined that the project raised a substantial issue with respect to conformity with the certified LCP and the public access policies found in Chapter 3 of the Coastal Act. Of note, the Commission found that the City did not adequately determine the bluff edge for the project, did not adequately determine whether the project was a major or minor remodel, and did not require a waiver of rights to shoreline protection for the proposed new development (the areas of addition, new pool/spa, and landscape/hardscape).

Following the substantial issue hearing, the applicant modified the project plans to re-orient the proposed pool spa to sit behind the project stringline.

B. STANDARD OF REVIEW

Section 30604(b) of the Coastal Act states:

² Although the re-roofing received a City building permit, there does not appear to be a CDP in the Commission's records for the work.

³ Although a Design Review Permit was issued, it does not appear that a CDP in the Commission's records for this work.

(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 Local Coastal Program was certified by the Commission on January 13, 1993 (except for the areas of deferred certification: Three Arch Bay, Hobo Canyon, and Irvine Cove). The subject site falls within the City's certified LCP jurisdiction. The City's LCP Land Use Plan portion is comprised of a variety of planning documents including the Land Use Element (LUE), Open Space/Conservation Element (OSCE), and the Coastal Technical Appendix. The Implementation Plan portion of the LCP is comprised of a number of documents including Title 25, Zoning.

C. DEVELOPMENT

LUE Policy 2.1: 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.

LUE Policy 2.8: 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.

LUE Action 7.3.10: 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 10.2.7: 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.

LUE Action 10.2.8: 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.

The proposed project is located within an existing developed area and the proposed development is compatible with the character and scale of the surrounding area, which consists of two- to three-story single-family residences. In addition, as described in greater detail in the Hazards section below, all new improvements and additions will conform with the bluff edge setbacks required by the LCP. In addition, the proposed development will be landward of the existing line of development, in character with the existing line of development of the residence and the surrounding residences. Thus, the project is consistent with the identified relevant LUP policies.

Major vs. Minor Remodel

Where proposed development is undertaken under the auspice of 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, under Land Use Plan Policy 7.3.10, would be required to conform with all of the relevant LCP policies, including inadequate or absent bluff edge setbacks. “New development” or substantial redevelopment must comply with all of the certified LCP—and, hence, include sufficient setbacks from the bluff edge. (See Land Use Element policies 10.2.7 and 10.2.8, cited above.) To the maximum extent possible, it is also important to avoid creating new nonconformities, especially where they may interfere with bringing the structure into conformity in the future.

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 certified LCP, in LUE Glossary Entry 89, defines a “Major Remodel” as follows:

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 [...]

Furthermore, Laguna Beach Municipal Code Section 25.10.008 of the certified Implementation Plan (IP) states:

A major remodel is a structural renovation and/or addition, which equals or exceeds fifty percent of the original gross floor area of the structure on the lot.

Here, the applicant has submitted information regarding the extent of proposed alterations to the existing residence. The applicant's alteration calculations account for the work proposed under this permit application and the 300 sq. ft. addition which was approved pursuant to Local CDP 01-002. The proposed plans indicate that less than 50 percent of the existing structure (including any major structural components) will be altered, and the square footage of the existing structure will not be increased by 50 percent or more. The overall square footage of the residence is being increased by 48 percent, the roof structure is being altered by 9 percent, the exterior walls are being altered by 45 percent, and the foundation is being altered by 48 percent. As analyzed by Commission staff, the proposed project in this case does not constitute a major remodel, will not result in a replacement structure, and is therefore not considered as new development that would require the entire structure to conform with the certified LCP policies pursuant to Land Use Element 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. In this case, CDP No. A-5-LGB-20-0055 would authorize a 1,101 sq. ft addition to the single-family residence. As described above, the project plans indicate that the project will not alter more than 50 percent of the primary elements of the structure. Although this project can be considered a minor remodel, 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 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 Coastal Act and does not prejudice the LCP, the Commission imposes **Special Condition 13**. 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 a minor remodel, and not redevelopment, 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 1**, 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 7**, which requires that the applicant submit a copy of the City Building Department's 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.

Therefore, the proposed development, as proposed and conditioned, is consistent with the applicable policies of the certified LCP for new development.

D. HAZARDS

LUE Policy 7.3: 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.

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

LUE Action 7.3.4: 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.

LUE Action 7.3.5: 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.

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

LUE Action 7.3.8: 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.

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

LUE Action 7.3.10: 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 7.3.12: 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).

LUE Action 7.3.13: 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.

LUE Policy 10.2: Design and site new development to protect natural and environmentally sensitive resources such as areas of unique scenic quality, public views, and visual compatibility with surrounding uses and to minimize landform alterations. (Same as Policy 7.3)

Action 10.2.5: 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.

LUE Action 10.2.6: 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.

LUE Action 10.2.7: 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.

LUE Action 10.2.8: 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.

OSCE Policy 10-C: 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.

OSCE Policy 10-E: Development in the areas designated “Residential/Hillside Protection” on the Land Use Plan Map or within potential geologic hazard areas identified on the Geological Conditions Map of the Open Space/Conservation Element shall not be permitted unless a comprehensive geological and soils report is prepared pursuant to Title 22 of the City’s Municipal Code, and adequate mitigation measures have been approved and implemented by the City’s geologist. For projects located in areas subject to hazards as identified on the Geologic Conditions Map or subject to erosion, landslide or mudslide, earthquake, flooding or wave damage hazards confirmed by a geologic assessment, as a condition of approval or new development a waiver of liability shall be required through a deed restriction.

The proposed project will occur on an ocean-fronting, bluff-top lot. The Commission has consistently found that development on a bluff site that is adjacent to the sea, like the project site, is inherently subject to hazards from erosional forces imposed against the bluff material from wave energy, wind and rain. 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 that would substantially alter natural landforms along bluffs and cliffs. In addition, the LCP policies cited above require applications on bluff sites to include a geology and soils study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contain statements that the project site is suitable for the proposed development and that the development will be safe from geologic hazards for its economic life.

Sea Level Rise

Many of the coastal hazards issues described above will be affected by expected sea level rise. Sea level has been rising for many years. Several different approaches have been used to analyze the global tide gauge records in order to assess the spatial and temporal

variations, and these efforts have yielded sea level rise rates ranging from about 1.2 mm/year to 1.7 mm/year (about 0.5 to 0.7 inches/decade) for the 20th century, but since 1990 the rate has more than doubled, and the rate of sea level rise continues to accelerate. Since the advent of satellite altimetry in 1993, measurements of absolute sea level from space indicate an average global rate of sea level rise of 3.4 mm/year or 1.3 inches/decade – more than twice the average rate over the 20th century and greater than any time over the past one thousand years.⁴ Recent observations of sea level along parts of the California coast have shown some anomalous trends; however, the best available science demonstrates that the climate is warming, and such warming is expected to cause sea levels to rise at an accelerating rate throughout this century.

The State of California has undertaken significant research to understand how much sea level rise to expect over this century and to anticipate the likely impacts of such sea level rise. 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.⁵ 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. This science synthesis was integrated into the OPC's State of California Sea-Level Rise Guidance 2018 Update.⁶ This Guidance document provides high-level, statewide recommendations for state agencies and other stakeholders to follow when analyzing sea level rise. Notably, it provides a set of projections that OPC recommends using when assessing potential sea level rise vulnerabilities for various projects. Taken together, the Rising Seas science report and updated State Guidance account for the current best available science on sea level rise for the State of California. The updated projections in the 2017 Rising Seas report and the 2018 OPC Guidance suggest sea levels could rise between 2.1 and 6.7 feet by 2100 at the Los Angeles tide gauge,⁷ 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. These projections and recommendations are incorporated into the 2018 update of the Coastal Commission Sea Level Rise Policy Guidance.⁸

⁴ <http://www.opc.ca.gov/webmaster/ftp/pdf/docs/rising-seas-in-california-an-update-on-sea-level-rise-science.pdf>

⁵ Griggs, G, Árvai, J, Cayan, D, DeConto, R, Fox, J, Fricker, HA, Kopp, RE, Tebaldi, C, Whiteman, EA (California Ocean Protection Council Science Advisory Team Working Group). Rising Seas in California: An Update on Sea-Level Rise Science. California Ocean Science Trust, April 2017.

⁶ OPC State of California Sea-Level Rise Guidance, 2018 Update: http://www.opc.ca.gov/webmaster/ftp/pdf/agenda_items/20180314/Item3_Exhibit-A_OPC_SLR_Guidance-rd3.pdf

⁷ The OPC Guidance provides sea level rise projections for 12 California tide gauges, and recommends using the projections from the tide gauge closest to the project site. The projections for the LA tide gauge can be found on page 72 of the OPC Guidance.

⁸ <https://www.coastal.ca.gov/climate/slrguidance.html>

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.

APPLICATION TO THIS PROJECT

A preliminary geotechnical investigation report was prepared for the proposed development by Geofirm dated April 11, 2019 (supplemented July 5, 2019 and November 9, 2020). One of the supplementing documents included a slope stability analysis. The geologic reports present results and recommendations regarding the proposed development at the subject site. Preparation of the reports included research of readily available geotechnical records for the site and environs, identification of the site's subsurface soil and bedrock conditions by observation and exploration, collection of soil and bedrock samples, geotechnical laboratory testing of selected soil and bedrock samples obtained from exploratory work for the project, engineering analyses of the data obtained from the exploration, establishing the location of the bluff edge, slope stability analysis, and an assessment of expected long term bluff retreat.

The applicant has also provided a coastal hazards analysis (sea level rise, wave runup and bluff/shoreline erosion analysis) prepared by GeoSoils, Inc. dated November 28, 2016, and supplemented on August 6, 2018.

Bluff Edge Setbacks

As stated above, Policy 7.3 and Actions 7.3.3, 7.3.5, 10.2.7, 10.2.8 of the Laguna Beach Land Use Element (LUE) of the certified LUP require that new development minimize the alteration of natural land forms and not contribute to geologic instability. Setting development back from the edge of the bluff can substantially decrease risk to life and property; the farther from the 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 geologic instability. The added weight of development, irrigation, and human activity closer to the bluff edge all could increase the rate of erosion and bluff retreat.

In addition, Policy 7-A of the certified Land Use Plan requires that the quality of public views from the hillsides and along the city's shoreline be preserved to the maximum extent feasible. Setting development farther back from the edge of the coastal bluff decreases the project's visibility from the beach below, which the public may access below the mean high tide line. For these reasons, the Commission typically imposes a bluff edge (or top of the bluff) setback as a condition of approval for development on bluff sites.

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.

The applicant's consultant, Geofirm, locates the bluff edge at approximately the 42-ft. MSL⁹ contour, as shown in **Exhibit 2**.

The Commission staff's geologist, Dr. Joseph Street, has reviewed the applicant's geotechnical analyses, bluff edge determination, topographic survey, cross-sections, coastal hazard analyses and proposed architectural plans.

Dr. Street notes that the project site is located on an inclined coastal bluff top, the slope of which increases gradually moving seaward, eventually transitioning to a steeper seacliff (~1:1 horizontal to vertical, or 45 degrees) below an elevation of approximately 42 feet above mean sea level (MSL). As shown on modern topographic maps, the plans provided by the applicant, and in the historical photographs submitted by the appellants, there is a significant amount of topographic relief (about 20 feet) between the front of the subject lot at Cliff Drive (located at approximately 65 feet MSL) and the edge of the seacliff. However, this change in elevation is spread over a relatively large horizontal distance of more than 200 feet. Thus, the average slope of the bluff top is relatively gentle (approx. 10:1 to 12:1 h:v, locally up to 4:1 h:v). About half of the bluff top elevation change occurs in a single step, likely a cut associated with construction of the existing residence, located near the front (landward side) of the house (approx. 100 – 110 feet inland of the edge of the seacliff). The appellants have suggested that this step represents the present bluff edge under the LUE definition, which specifically acknowledges that cuts are an erosional process that can alter the position of the bluff edge. While Dr. Street concurs with the appellants' interpretation of the LUE definition, he did not determine that this step change in the bluff top represents the LUE bluff edge. Based on the present-day bluff morphology, and on available historical maps and photos, Dr. Street concludes that this likely cut would have occurred well inland of the natural bluff edge prior to the development of the site, and thus that the cut did not change the position of the bluff edge.

Dr. Street further notes that identifying the exact position of LUE bluff edge at the site is difficult because the area forming the rear yard of the existing residence has been extensively altered by past development. These alterations appear to include numerous, minor removals of bluff material (cuts) as well as placement of fill associated with

⁹ MSL= Mean Sea Level Rise. This is a datum used to measure elevation and is frequently used when determining the bluff edge location.

landscaping features and the creation of a level building pad for the existing home. The fill appears to have increased the steepness of the rear yard slope behind the existing residence. However, as directed by the LUE bluff edge definition, the fill is to be discounted when identifying the bluff edge. These prior modifications of the bluff topography, combined with the lack of a distinct natural slope break (i.e., not associated with fill) on the upper bluff, make it impossible to identify with confidence a single bluff edge line that meets the LUE definition. In this situation, and given the relatively low level of geologic and coastal hazards at this location (as documented in the applicant's geologic reports), Dr. Street concurs with the applicant's bluff edge line (or "Geologic Bluff Edge" as noted on **Exhibit 2**), occurring at approximately the 42 foot elevation contour, for purposes of measuring development setbacks.

Actions 10.2.7 and 10.2.8 of the LUE (cited above) require a minimum bluff edge setback of 25 feet from the edge of the coastal bluff for primary structures (i.e. single-family residence) and major accessory structure that require structural foundation, and a 10-ft. setback for minor accessory structures (e.g. landscaping, decks and patios) that do not require structural foundations. In addition, Action 7.3.5 of the LUE prohibits development on oceanfront bluff faces (with a few exceptions for public improvements).

The single-family residence is primarily setback approximately 40 feet from the bluff edge at its most landward point. The proposed additions to the residential structure are all located on the landward side of the residence, and would thus be set back even further away from the bluff edge line. Therefore, the additions to the single-family residence will not encroach into the revised 25-ft. setback line consistent with the LCP bluff edge setback requirements.

The applicant is also proposing a new pool and spa to be located on the existing developed patio. The pool and spa would not require a caisson foundation system, and have been sited more than 25 ft. from the blufftop setback and behind the building stringline. Moreover, the pool and spa will include leak detection measures to ensure that runoff does not destabilize the bluff.

Proper grading, soil removal and/or implementation of standard construction best management practices (BMPs) are recommended for controlling runoff and erosion during removal of the non-conforming structures to prevent any significant destabilization of the globally-stable coastal bluff at the project site. Therefore, the Commission imposes **Special Condition 3**, which requires the applicant to implement construction best management practices.

Geologic Stability

The subject site is located on San Onofre Breccia, which is a highly stable geologic formation. Therefore, the geotechnical analyses prepared by Geofirm state that the proposed development is geotechnically feasible. The report further states that the site is anticipated to remain grossly stable based on its historic performance, favorable geology, and stability and analyses performed to establish the "factor of safety" lines on the

property. Action 10.2.6 of the certified LUP¹⁰ requires that this analysis be guided by the industry-accepted standards for artificial slopes (codified in many local grading ordinances), which require that a particular minimum “factor of safety” against landsliding be attained. Pursuant to Action 10.2.6 of the LCP, development must maintain a minimum factor of safety against landsliding is 1.5 for static conditions or 1.2 for pseudostatic conditions to assure stability. In this case, the geotechnical consultant’s slope stability analysis indicates that the bluff at the subject site meets these stability requirements.

The applicant’s geotechnical consultant concluded that the proposed new development would not be threatened or destroyed based on the expected 2-4 ft. of bluff retreat (erosion) over the next 75 years, and concluded that the 10-ft. accessory structure setback and the 25-ft. structural setback from the bluff edge line proposed for the new development is satisfactory and will minimize risk to life and property, consistent with hazards policies of the certified LCP.

In addition, the coastal hazards analyses prepared by GeoSoils Inc. indicate that the retreat of the cliff face in this location will be the same as it has historically been, even with the predicted rise in sea level (using the 0.5% probability SLR for the 75-year design life of the proposed development as recommended by the OPC’s 2018 update). The analyses conclude that the site is grossly stable and that the rate of erosion is sufficiently low.

In addition, the coastal bluff in this location is about +40 feet NAVD88 above the beach, and wave runup is not anticipated to reach the proposed development in the next 75 years. Wave runup may contribute to episodic collapse or erosion, although this may occur at a relatively slow rate due to the erosion-resistant bedrock underlying the development.

The geotechnical consultant has found that the subject site is suitable for the proposed development, provided the recommendations contained in the geotechnical investigation prepared by the consultant are implemented in design and construction of the project. The applicant’s geotechnical consultant indicated that the caissons are not necessary for the proposed project. Adherence to the recommendations contained in the geotechnical investigation is necessary to ensure that the proposed project assures stability and structural integrity, and neither creates nor contributes significantly to erosion, geologic instability, or destruction of the site or surrounding area. Therefore, **Special Condition 2** requires that the applicant conform to the geotechnical recommendations in the above-mentioned geotechnical investigation and supplemental material, as summarized above.

Future Shoreline or Bluff Protective Devices

Numerous LCP policies cited above require that new development not rely on existing or future bluff/shoreline protection devices to establish geologic stability or protection from coastal hazards and require that landform alteration be minimized. The certified LCP limits

¹⁰ Action 10.2.6 of the certified Laguna Beach Land Use Plan states, in relevant part: 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)...To assure stability, the development must maintain a minimum factor of safety against landsliding of 1.5 (static) or 1.2 (pseudostatic...) for the economic life of the structure.

construction of protection devices because they can have a variety of negative impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach. In addition, the construction of a bluff or shoreline protective device to protect new development would conflict with Policies 7.3 and 10.2, and Actions 7.3.4 and 7.3.5 of the certified LUE that state that permitted development shall minimize the alteration of natural land forms.

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 applicant has submitted evidence demonstrating that the property is not currently threatened by coastal hazards and is unlikely to be in the future as a result of sea level rise. Accordingly, the applicant has not proposed a bluff/shoreline protective device to support the proposed development. Therefore, no bluff/shoreline protective devices are proposed as part of this application.

However, development on coastal bluffs is inherently hazardous and the applicant may decide at some point in the future to request shoreline protection for the proposed development. Accordingly, it is necessary for the applicant to acknowledge that the additions of new habitable space and accessory development are not entitled to shoreline protection, and for the applicant to waive any rights to bluff/shoreline protection that might exist under applicable law. To ensure that the proposed project does not result in future adverse effects to coastal processes, the Commission imposes **Special Condition 11**, which requires the applicant to acknowledge the project is not entitled to bluff or shoreline protection, and to waive any rights they may have to construct such a device under applicable law.

- A. By acceptance of this permit, the permittees agree, on behalf of themselves and all successors and assigns, that as new development, the project is not entitled to bluff/shoreline protection, and to waive any rights to construct a bluff/shoreline protective device to protect the development approved pursuant to Coastal Development Permit No. A-5-LGB-20-0055 – and any future improvements – that may exist under applicable law, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, sea level rise, or other natural hazards in the future.
- B. By acceptance of this permit, the permittees further agree, on behalf of themselves and all successors and assigns, that the permittees shall remove the development authorized by this permit, including the residential additions, landscaping, hardscape, and accessory structures/improvements if: (a) the City or any

government agency with legal jurisdiction has issued a final order that the structures are currently and permanently unsafe for occupancy or use due to coastal hazards and that there are no measures that could make the structures suitable for habitation or use without the use of a shoreline or bluff protective device; (b) essential services to the site can no longer feasibly be maintained (e.g., utilities, roads); (c) removal is required by the certified LCP; (d) the development becomes located on public trust lands due to a shifting public trust boundary as a result of sea level rise, or (e) the development would require a shoreline protective device to prevent (a)-(d) above.

The Commission also requires that the applicant remove the development authorized by this permit, including the residential additions, landscaping, hardscape, and accessory structures/improvements if any of the following scenarios occur¹¹:

- (a) The City or any government agency with legal jurisdiction issues a final order that the structures are currently and permanently unsafe for occupancy or use due to coastal hazards and that there are no measures that could make the structures suitable for habitation or use without the use of a shoreline or bluff protective device.
- (b) Essential services to the site can no longer feasibly be maintained (e.g., utilities, roads).
- (c) Removal is required by the certified LCP.
- (d) The development becomes located on public trust lands due to a shifting public trust boundary as a result of sea level rise.
- (e) The development would require a shoreline protective device to prevent (a)-(d) above. Such removal would require a coastal development permit.

In addition, if all or portions of the development fall to the beach before they are removed, the permittees shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit unless the Executive Director determines that no CDP is legally required.

Assumption of Risk

The proposed development is located on a bluff-top oceanfront lot. It is the nature of bluffs, and especially ocean bluffs, to erode. Bluff failure can be episodic, and bluffs that seem stable now may not be so in the future. Even when a thorough professional geotechnical analysis of a site has concluded that a proposed development is expected to be safe from bluff retreat hazards for the life of the project, it has been the experience of the Commission that in some instances, unexpected bluff retreat episodes that threaten

¹¹ In any of the scenarios listed, a CDP would be required to remove the approved development.

development during the life of a structure sometimes do occur. In the Commission's experience, geologists cannot predict with absolute certainty if or when bluff failure on a particular site may take place and cannot predict if or when a residence or property may become endangered.

Here, the applicant's technical consultants have indicated that the site is grossly stable, that the project will be safe for the life of the project, and that no shoreline or bluff protection devices that would substantially alter natural landforms along bluffs and cliffs are needed now or in the future. The conclusions of the applicant's technical consultants are critical to the Commission's ability to approve the project as consistent with the LCP policies regarding coastal hazards given its location on a coastal bluff, which are generally subject to erosion, landslides, and bluff retreat that could threaten development.

However, as stated above, geologic conditions change over time and predictions based upon the geologic sciences are inexact. In addition, although adherence to the geotechnical consultant's recommendations will minimize the risk of damage from erosion, the risk is not eliminated entirely. Given that the applicant has chosen to implement the project despite potential risks from bluff and slope instability, sea level rise, erosion, landslides and wave uprush or other tidal induced erosion, the applicant must assume the risks of developing in a vulnerable area. Therefore, the Commission imposes **Special Condition 12**, requiring the applicant to assume the risk of developing in a geologically hazardous area. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand the hazards. In addition, the condition ensures that future owners of the property will be informed of the risks and the Commission's immunity from liability.

Landscaping

The installation of in-ground irrigation systems and landscaping that requires intensive watering are potential contributors to accelerated weakening of some geologic formations; increasing the lubrication along geologic contacts and increasing the possibility of failure, landslides, and sloughing, which could necessitate protective devices. Use of non-native vegetation that is invasive can have an adverse impact on the existence of native vegetation. Drought-tolerant native plants require less water than other types of vegetation, thereby minimizing the amount of water introduced into the bluff top. Drought resistant plantings and minimal irrigation encourage root penetration which increases bluff stability. New landscaping is proposed as part of this project, but is restricted to areas landward of the bluff edge line. No new landscaping is proposed on the bluff face; therefore, **Special Condition 4** requires that the applicant accept that no invasive or facultative vegetation will be planted on the site and that water conservative irrigation systems for any new landscaping will be utilized.

CONCLUSION

Commission technical staff have reviewed the proposed plans and geotechnical reports and concur that a 25-ft. setback from the identified bluff edge will adequately address both slope stability and erosion and that the proposed development setback for the primary

structure is adequate to minimize hazards from bluff erosion and instability over the next 75 years. The Commission finds that the proposed development, as conditioned, meets the minimum bluff setback requirements and is consistent with all the applicable policies of the certified LCP, which require that landform alteration be minimized, development not rely on shoreline or bluff protective devices, and geologic stability is assured.

E. Water Quality

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

Land Use Element:

Policy 7.7 states:

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

Open Space/Conservation Element:

Policy 4-A states:

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

Policy 4-C states:

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

Policy 4-D states:

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

Policy 4-G states:

Ensure that all development minimizes erosion, sedimentation and other pollutants in runoff from construction-related activities to the maximum extent practicable. Ensure that development minimizes land disturbance activities during construction (e.g., clearing, grading and cut-and-fill), especially in erosive areas (including steep slopes, unstable areas and erosive soils), to minimize the impacts on water quality.

Policy 4-H states:

Require the property owner, homeowner's association or local government, as applicable, to continue the application and maintenance of Source Control and/or

Structural Treatment Control BMPs as necessary to reduce runoff pollution, including appropriate construction related erosion and sediment control measures.

Since the subject site is adjacent to the ocean, the proposed development has the potential to discharge polluted runoff from the project site into geologically sensitive coastal bluffs and into coastal waters. Therefore, the Commission imposes **Special Condition 3**, which requires the applicant to implement construction best management practices.

In addition, the applicant is proposing drought-tolerant, non-invasive landscaping outside of the bluff setback areas. **Special Condition 4** requires the installation of non-invasive, drought-tolerant vegetation and water-conservative irrigation systems.

The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the coastal bluff and marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, the use of non-invasive drought-tolerant vegetation and water conservative irrigation systems to reduce and treat the runoff discharged from the site, and for the use of post-construction best management practices to minimize the project's adverse impact on coastal waters.

The project proposes a new pool and spa that would be located within the developed building pad and would be adequately set back from the bluff edge and the building string line. The applicant's project engineer provided a list of best management practices to mitigate the potential for leakage from the proposed spa. Such measures include an interior waterproof surface lining and a sub-drain system that connects to the sump pump drain system to direct water flow away from the bluff edge. Nevertheless, the Commission imposes **Special Condition 5** to require the applicant to adhere to the best practices recommended by the project engineer. Therefore, the Commission finds that the proposed development, as conditioned, conforms to LCP water quality protection policies that require protection of marine resources, reduction of pollutants and runoff from the proposed development, minimization of the volume and velocity of runoff, minimization of the introduction of pollutants into coastal waters, and minimization of erosion, sedimentation and other pollutants in runoff from construction-related activities.

F. Public Access

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

LUE Policy 4.3 states:

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

LUE Action 4.3.1 states: Continue to pursue dedication and acceptance of beach access and other offers-to-dedicate throughout the City. The City shall maintain an inventory of public access and open space dedication or offers-to-dedicate to ensure

such areas are known to the public and are protected through the coastal development permit process. (Same as Action 6.9.1)

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

Coastal Land Use Plan Technical Appendix states:

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

OSCE Policy 3-A: Retain and improve existing public beach accessways in the City, and protect and enhance the public rights to use the dry sand beaches of the City. Also, projects located between the sea and the first public road paralleling the sea, such as the subject site, must be consistent with the public access and recreation policies of the Coastal Act.

Section 30210 of the Coastal Act states:

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

The project site is located adjacent to Crescent Bay Beach toward the northern end of Laguna Beach. A small natural cove exists along the base of the bluffs. Public access to Crescent Bay Beach is accessible via Barranca Street, which is located approximately 250 ft. north of the subject site. Public street parking to access the coast is available within the neighborhood in which the project is located.

The proposed project proposes to maintain the three existing onsite parking spaces. The project is not adding additional residential units and is not increasing the existing curb cut, so no adverse impacts to the public street parking count are anticipated for this project. In addition, the extent of development is limited to the areas landward of the bluff edge. Thus, the project is not expected to extend down the bluff face and onto the public beach. The project would not adversely impact public access to and along Crescent Bay Beach. In order to minimize construction-related impacts, however, special precautions must be taken, as outlined below.

Construction projects can adversely impact public access by displacing otherwise available on-street, public parking spaces. During construction, measures should be implemented to ensure that temporary impacts to public access be minimized. Therefore, **Special Condition 8** requires that a final construction staging plan be submitted for Commission

review and approval. All construction equipment to be stored overnight shall be stored on-site, outside the street throughway. Placement of the on-site dumpster shall incorporate use of a flagman to direct traffic during placement. No staging shall occur on the beach below the project site.

As conditioned, the proposed development will not impact existing public parking available in the area, and the proposed development will not affect the public's ability to gain access to and/or use the coast and nearby recreational facilities. The Commission finds the proposed project, as conditioned, is consistent with the LCP public access policies cited above and with the public access and recreation policies of the Coastal Act.

G. VISUAL RESOURCES

Laguna Beach Land Use Element:

LUE Policy 2.10: 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.)

Open Space/Conservation Element:

OSCE Policy 7-A: Preserve to the maximum extent feasible the quality of public views from the hillsides and along the city's shoreline.

Policy 7-K: 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.

Policies 2.10, 7-A, and 7-K of the certified LCP require that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. The project site is located between the first public road (South Coast Highway) and the sea. However, the project site is more specifically located seaward of Cliff Drive. Public coastal views from Cliff Drive are largely obstructed by other residences located on the seaward side of the street. The proposed additions would not impact the existing height of the single-family residence, so the project would not further degrade visual resources. As previously mentioned, the project site is approximately 250 ft. from the closest coastal access point. Therefore, the proposed project is not anticipated to adversely impact public views of the coast from public vantage points.

It is also important to note that the proposed project would not result in further alteration to the bluff face. The proposed residential additions would be located on the landward side of and under the residence. Thus, the additions would not be visible from the coastline. The

pool/spa would be sited within an existing hardscape patio, would not be visible from the public beach, and would not result in increased landform alteration.

Therefore, the Commission finds the project consistent with the visual resource protection policies of the certified LCP.

H. Cultural and Historic Resources

OSCE Policy 12-C: Development adjacent to a place, structure, or feature found to be of historical significance shall be designed so that the uses permitted and the architectural design will protect the visual setting of the historical site.

OSCE Policy 12-D: Preserve cultural/scientific sites, including geologically unique formations having archeological significance.

Tribal Cultural Resources

The Coastal Commission is charged with ensuring that all development is protective of archeological resources, including tribal cultural resources, to the maximum extent feasible. The Coastal Commission also adopted a Tribal Consultation Policy on August 8, 2018 that requires Commission staff to notify tribal governments of pending development applications with the potential to impact tribal cultural resources and consult with the appropriate tribal representatives, if requested.

On September 16, 2019, Dudek- on behalf of the applicant- requested a review of the Native American Heritage Commission (NAHC) Sacred Lands File. The Sacred Lands File Search came back with positive results and a contact list of Native American representatives for tribes that are culturally and geographically affiliated with the project site. However, the applicant did not conduct additional tribal consultation. Consistent with similar projects in the area, the applicant undertook an archaeological and paleontological assessment (prepared by Dudek on October 9, 2019) to identify any known or likely cultural resources that may result from proposed ground disturbance. The assessment found that, geologically, bedrock strata of the Miocene-age San Onofre formation and artificial fill underlie the site. While Miocene-aged sediment is too old to contain tribal deposits, fill has the potential to contain tribal cultural resources.

The California coastal zone has been home to native populations for thousands of years. In accordance with the Commission's Tribal Consultation procedures, staff notified all potentially affected tribal entities listed on the Native American Heritage Commission (NAHC) contact list via letter on August 24, 2022 and included a narrative description of the proposed project and maps depicting the described site. On August 24, 2022, the Juaneño Band of Mission Indians Acjachemen Nation - Belardes responded to Commission staff's request for consultation by stating that the project site is located in a culturally sensitive area and requesting a California Historic Resources Information System (CHRIS) report. On August 31, 2022, staff noted that the applicant did not provide a CHRIS report provided for the site. As a result, the Juaneño Band of Mission Indians

Acjachemen Nation - Belardes requested that a tribal monitoring condition be imposed on the project.

Currently, staff does not know the location of the identified tribal resources relative to the project site. However, given the high cultural significance of the area at large, there is a possibility that sensitive tribal resources could exist on the project site. Therefore, the Commission imposes **Special Condition 9**, which requires the applicant to notify the tribes on the NAHC list of the development and ensure that appropriate Native American monitors and archeological professionals are present during all ground-disturbing activities and that any resources found are treated in accordance with best practices, including best practices identified through consultation with the appropriate tribal government(s), including the Juaneño Band of Mission Indians Acjachemen Nation - Belardes. As conditioned, the project can be found consistent with the Coastal Act.

I. Deed Restriction

Laguna Beach Land Use Element 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 of the property as a 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 14**, which requires that the property owners 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 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.

The Commission finds the proposed project, as conditioned, is consistent with Action 7.3.9 of the certified LCP public access policies cited above.

J. LOCAL COASTAL PROGRAM

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

Space/Conservation Element and Title 25 have been amended a number of times since original certification.

As discussed in this staff report, the proposed project, as conditioned, conforms to the provisions of the City of Laguna Beach Certified LCP.

K. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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

The City of Laguna Beach is the lead agency for the purposes of CEQA review. On June 25, 2020, the Laguna Beach Design Review Board adopted a Section 15301, Class 1(e)(1) CEQA Categorical Exemption (Exemptions for Existing Facilities) for the proposed additions and improvements.

The proposed project has been conditioned to be found consistent with the certified LCP. As conditioned to minimize risks associated with natural hazards and avoid adverse impacts to water quality and natural resources, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that 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 can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

1. Appeal File No. A-5-LGB-20-0055 and associated file documents