

**CALIFORNIA COASTAL COMMISSION**

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# W20a

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Staff: A. Spencer-LB  
Staff Report: 04/22/22  
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## STAFF REPORT: APPEAL – DE NOVO

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

**Applicants:** Peter Harle and Lori Olvera

**Agent:** McCabe and Company

**Appellant:** Sharon Fudge

**Local Government:** City of Laguna Beach

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

**Project Description:** On the seaward side of a beachfront single-family residence, remove a damaged retaining wall and an unpermitted, hardscaped patio; and install a 36 sq. ft. paver adjacent to the entryway of the seaward door and a 9 sq. ft. paver adjacent to the existing seaward stairway, for a total of 45 sq. ft. of pavers.

**Staff Recommendation:** Approval with conditions.

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## SUMMARY OF STAFF RECOMMENDATION

The applicants are proposing to demolish an approximately 50-ft. long retaining wall that was destroyed during winter storms in 2017, as well as an approximately 2150 sq. ft. existing hardscape patio (approximately 50 ft. by 43 ft.) that was constructed in 2014

without the benefit of a coastal development permit. In place of the patio, the applicants are proposing to install a 36 sq. ft. paver adjacent to the entryway of the seaward door and a 9 sq. ft. paver adjacent to the existing seaward stairway (**Exhibit 2**). The landings are required under the California Building Code (CBC) for all exterior ingress/egress points. The proposed landings would be set back approximately 40 ft. from the seaward property line. The remainder of former patio area (2,105 sq. ft.) would be left as an open sand area.

The project site is a 5,984 sq. ft. lot located approximately 100 ft. north of the mouth of Aliso Creek in Laguna Beach (**Exhibit 1**). The lot is developed with a single-family residence (permitted pursuant to CDP No. 5-82-368), an unpermitted hardscape patio, and a damaged retaining wall (permitted under Local CDP No. 86-74z) located on the beach at the applicants' oceanfront property line.

The City of Laguna Beach approved local CDP No. 17-2097 to construct a replacement retaining wall on February 22, 2018, which was appealed to the Coastal Commission on March 26, 2018. On May 11, 2018, the Commission found substantial issue with the local CDP, and accepted the appeal for a full de novo review of the CDP application. Following the substantial issue hearing, the applicants submitted revised project plans to reflect a retaining wall supported on shallower footings. On October 3, 2019, Commission staff prepared a De Novo staff report recommending denial of the modified project with the rationale that the revised wall would still likely act as a shoreline protective device, inconsistent with the LCP coastal hazards policies. During the De Novo hearing for the project, the appellant (Sharon Fudge) brought forward the information that the hardscape patio was unpermitted, resulting in a continuation of the project. Following the October 2019 hearing, the seaward hardscape patio was confirmed through a review of Commission records, City records, and historical images to have been constructed without a CDP. Accordingly, the applicants further modified the project description as described above.

The standard of review for projects heard on appeal by the Coastal Commission that are located between the first public road and the sea, like this one, is the City's certified Local Coastal Program and the public access and public recreation policies of the Coastal Act. Open Space Conservation Element Policy I-E prohibits the construction of buildings and other manmade structures on the sandy portion of the beach. Therefore, a new retaining wall would not be consistent with the certified LCP. In order to resolve the onsite violation, the applicants are proposing to remove the entire hardscape patio. In this case, a new patio cannot be permitted on the project site under Open Space Conservation Element Policy 1-E because the patio constitutes a manmade structure, and therefore cannot be constructed on the sandy beach. Moreover, Land Use Element Policy 7.3 requires new development to minimize natural landform alteration. Given the project site's location adjacent to a sandy beach, a natural sand area – as was indicated on the 1982 project plans – is more consistent with the certified LCP policies.

The applicants have proposed a 36 sq. ft. paver landing at their home's exterior door and 9 sq. ft. paver landing at an exterior staircase (**Exhibit 2**). The proposed landings are the minimum size necessary to meet the CBC standards and have been designed

to be easily removable in the event that the property is threatened by erosion and flooding associated with coastal hazards including sea level rise. Furthermore, the proposed pavers are designed as a landscape feature, not a structure, and can be found consistent with the LCP's development policies. In order to ensure that the development is undertaken as proposed, Staff recommends the Commission impose **Special Condition 1**. This condition requires final plans to be submitted for the review and approval by the Commission's Executive Director.

The project site is located on an oceanfront lot and within 300 ft. of the Aliso Creek River mouth, and is therefore vulnerable to erosion, flooding, wave runup, and storm hazards. These hazard risks are exacerbated by sea-level rise that is expected to occur over the coming decades. In this geographic area, the main concerns raised by beach fronting development are impacts to public access and recreation, and whether hazardous conditions might eventually lead to a request to build a shoreline protection device to protect the proposed development. In this case, the applicants are not proposing to construct a seawall or other protective device on the subject property. The applicants are proposing to remove the damaged retaining wall and patio and install two paver landings totaling 45 sq. ft. adjacent to a seaward door and exterior stairway. **Special Condition 3** would require an amendment to Coastal Development Permit (CDP) No. A-5-LGB-18-0014, or an additional CDP, for any future development on the site that would otherwise be exempt from permit conditions.

The project also raises an issue as whether the proposed demolition activity would adversely impact public access to and along Aliso Beach or cause biological impacts during a lengthy construction period on the sandy beach. The applicants provided an analysis of different methods to remove the retaining wall and the patio, including removal by hand, removal with a crane, and removal with other mechanized equipment. The preferred alternative outlined in the alternatives analysis involves the use of an excavator and a loader to demolish and remove the material to a dump truck temporarily located in two non-ADA parking spaces in the downcoast Aliso Beach parking lot. This alternative would impede public access through the loss of two public beach parking spaces and the repeated trips by the excavator across the public beach and Aliso Creek, which could occur during prime summer beach-use hours. To ensure that public resources remain accessible, Commission staff recommends **Special Condition 1**, requiring the applicant to submit a staging plan for review and approval by the Executive Director. The staging plan shall not use public resources (including public parking lots, the public sandy beach, and public streets) for staging purposes. Use of the excavator is limited to removal and breakup of the retaining wall and patio and must be removed upon completion. In addition, the excavator is only permitted one round trip to and from the project site; the excavator shall not make multiple trips through Aliso Beach to haul away debris. All debris shall be removed to the street through the applicants' property.

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain or wind could result in adverse impacts upon the marine environment that could reduce the biological productivity of coastal waters. To avoid adverse construction-related impacts

upon marine resources, Commission staff recommends **Special Condition 2**, which outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris.

Commission staff recommends that the Commission **APPROVE** coastal development permit application A-5-LGB-18-0014, as conditioned. The motion is on page 6.

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## EXHIBITS

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

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – Site Plan Approved Under CDP No. 5-82-368](#)

## I. MOTION AND RESOLUTION

### Motion:

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

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

### Resolution:

The Commission hereby approves CDP No. A-5-LGB-18-0014 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the Laguna Beach LCP policies and the public access and recreation policies of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

## II. STANDARD CONDITIONS

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the applicants 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 applicants to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

**1. Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for the review and written approval of the Executive Director, two full-size sets of the following final plans:

**A.** Site Plan that conforms with the plans submitted to the Commission, titled Revised Conceptual Back Yard Plan dated April 14, 2022.

**B.** Construction Staging Plan that does not utilize any public sidewalks, sandy beach, parking lots, or streets for construction staging areas. The only mechanized equipment authorized by this permit is an excavator to remove and break up the retaining wall and patio. The debris shall not be stored on the public beach. The debris shall be removed on the subject property. The construction staging for the mechanized equipment must take place within the subject property lines.

**C.** Landscape Plan for the 800 sq. ft. sandy beach area between the single-family residence and the seaward property line that only incorporates plants native to Southern California beaches. 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> and <http://ucanr.edu/sites/WUCOLS/files/183488.pdf>). In addition, no soil placement or temporary or permanent irrigation is proposed or authorized by this permit.

The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

**2. Storage of Construction Materials, Mechanized Equipment, and Removal of Construction Debris.** The permittees shall comply with the following construction related requirements:

**A.** No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion;

- B.** No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers;
- C.** 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 applicants 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 stockpiles 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 is 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; and



**M.** All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

- 3. Future Development.** This permit is only for the development described in CDP No. A-5-LGB-18-0014. Pursuant to Title 14 California Code of Regulations (CCR) Section 13250(b) and Laguna Beach Municipal Code Section 25.07.008, the exemptions that would otherwise be provided in Public Resources Code (PRC) Section 30610(a) and Laguna Beach Municipal Code Section 25.07.008 shall not apply to the development governed by CDP A-5-LGB-18-0014. Accordingly, any future improvements on the subject site authorized by this permit shall require an amendment to CDP A-5-LGB-18-0014 from the Commission or shall require an additional CDP from the Commission or from the applicable certified local government.

## IV. FINDINGS AND DECLARATIONS

### A. Project Description and Background

The applicants are proposing to demolish and remove an approximately 50-ft. long retaining wall on the sandy beach that was destroyed during winter storms in 2017, as well as an approximately 2,150 sq. ft. existing hardscape patio (approximately 50 ft. by 43 ft.) that was constructed in 2014 without the benefit of a coastal development permit. In place of the patio, the applicants are proposing to insert a 36 sq. ft. paver adjacent to the entryway of the seaward door and a 9 sq. ft. paver adjacent to the existing seaward stairway, for a total of 45 sq. ft. of pavers ([Exhibit 2](#)). The landings are required under the California Building Code for all exterior ingress/egress points. The proposed landings would be set back approximately 40 ft. from the seaward property line. The remainder of the unpermitted patio area would be returned to open sand area (approximately 2,105 sq. ft.).

The project site is a 5,984 sq. ft. lot located approximately 100 ft. north of the mouth of Aliso Creek in Laguna Beach ([Exhibit 1](#)). The lot is developed with a single-family residence, an unpermitted hardscape patio, and a damaged retaining wall located on the beach at the applicants' oceanfront property line. The Commission permitted the single-family residence in 1982 under CDP No. 5-82-368. The County of Orange permitted the five ft. six in. tall cinderblock and wrought iron retaining wall in 1987 under Local CDP No. 86-74Z, prior to the certification of the Laguna Beach LCP. As stated in the record of County of Orange Local CDP No. 86-74Z, the former wall was not permitted as a shoreline protective device, or as a retaining wall; the wall was described as an "accessory use to an existing single-family residence" (it was likely approved as a privacy barrier).

The retaining wall was destroyed during a March 2017 winter storm, during which Aliso Creek flooded, temporarily changed direction, and flowed northwest toward the project site. The beach sand in front of the property eroded, resulting in the collapse of the retaining wall and subsequent damage to the applicants' hardscaped patio landward of the wall. On March 24, 2017, the Coastal Commission issued Emergency Coastal

Development Permit G-5-17-0019 to authorize a temporary chain link fence in order to close off the collapsed wall for public safety purposes. The applicants applied to the City of Laguna Beach for a local CDP to construct a replacement wall because the property is within the City's LCP permitting jurisdiction.

The City of Laguna Beach approved local CDP No. 17-2097 on February 22, 2018, which was appealed to the Coastal Commission on March 26, 2018. On May 11, 2018, the Commission found substantial issue with the local CDP, and accepted the appeal for a full de novo review of the CDP application. Following the substantial issue hearing, the applicants submitted revised project plans to reflect a retaining wall supported on shallower footings (the original wall design featured soldier piles that would have been embedded approximately 10 ft. into competent bedrock). On October 3, 2019, Commission staff prepared a De Novo staff report recommending denial of the modified project with the rationale that the revised wall would still likely act as a shoreline protective device, inconsistent with the LCP coastal hazards policies. During the De Novo hearing for the project, the appellant (Sharon Fudge) brought forward an additional complaint that the hardscape patio was unpermitted. The Commission voted to continue the hearing in order for Commission staff to investigate the new information presented at the hearing.

Following the October 2019 hearing, the seaward hardscape patio was confirmed to have been constructed without a CDP, through a review of Commission records, City records, and historical images. Accordingly, the applicants further modified the project description to remove both the damaged wall and the unpermitted patio. The applicants are not seeking to replace either the wall or the patio, but are instead proposing to place two small landings totaling 45 sq. ft. in front of two existing egress points to safely guide foot traffic from the residence to the beach sand. The pavers are necessary to comply with the California Building Code standards.

## **B. Standard of Review**

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

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

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

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

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

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

The proposed project involves the removal of a retaining wall, removal of a hardscape patio, and installation of pavers on land located within the coastal zone. Therefore, the project constitutes development and requires a coastal development permit.

## **C. Development**

Open Space Conservation Element Policy I-E states:

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

Land Use Element Policy 7.3 states:

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

Land Use Element Policy 7.7.1 states:

Continue to evaluate and update criteria to minimize nonpermeable hardscape improvements.

The applicants are proposing to demolish a damaged cinderblock retaining wall and an 2,150 sq. ft. patio that is located on the sandy portion of a residential, beach-fronting lot. Both developments were damaged during an Aliso Creek flooding event in 2017. As

described above, the applicants originally proposed to construct a replacement retaining wall in approximately the same location as the former wall. However, Open Space Conservation Element Policy I-E prohibits the construction of buildings and other manmade structures on the sandy portion of the beach. Therefore, a new retaining wall would not be consistent with the certified LCP.

At the October 2019 hearing, the Commission continued the project in order to determine whether the current hardscape patio was permitted. A subsequent analysis of the property permitting history revealed that no CDP was obtained for the hardscape patio. This is explained in more detail in Section F (Unpermitted Development) of this staff report. In order to resolve the onsite violation, the applicants are proposing to remove the entire hardscape patio.

In this case, a new patio cannot be permitted on the project site under Open Space Conservation Element Policy 1-E because the patio constitutes a man-made structure, and therefore cannot be constructed on the sandy beach. Moreover, Land Use Element Policy 7.3 requires new development to minimize natural landform alteration. Given the project site's location adjacent to a sandy beach, preservation of a natural sand area – as was indicated on the 1982 project plans – is more consistent with the certified LCP policies than a hardscaped deck.

Instead of proposing a new patio, the applicants have proposed a 36 sq. ft. paver landing at an exterior door and 9 sq. ft. paver landing at one exterior staircase ([Exhibit 2](#)). These landings are required at all egress points under the California Building Code (CBC). The proposed landings are the minimum size necessary to meet the CBC standards and have been designed to be easily removable in the event that the property is threatened by sea level rise impacts. Furthermore, the proposed pavers are designed as a landscape feature, not a structure (such as a wall, patio, or building). Therefore, the proposed pavers can be found to be consistent with the LCP's development policies listed above.

In order to ensure that the development is undertaken as proposed, the Commission imposes **Special Condition 1**. This condition requires final site plans to be submitted for the review and approval by the Commission's Executive Director. The approved development must be undertaken in accordance with the approved plans; any changes to the plans must receive an amendment to this permit, unless the Executive Director determines that no amendment is necessary.

As proposed by the applicants and conditioned by the Commission, the proposed project can be found to be consistent with the certified LCP's development policies.

## D. Coastal Hazards

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

Land Use Element Policy 7.3.2 states:

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

Land Use Element Policy 7.3.3 states:

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

Land Use Element Policy 7.3.13 states:

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

OSCE Policy 1-F states:

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

The project site is located on an oceanfront lot, and previously permitted and proposed development is therefore vulnerable to erosion, flooding, wave runup, and storm hazards. These hazard risks are exacerbated by sea-level rise that is expected to occur over the coming decades. In this geographic area, the main concerns raised by beach fronting development are impacts to public access and recreation, and whether hazardous conditions might eventually lead to a request to build a shoreline protection device to protect the proposed development.

The Coastal Act discourages shoreline protection devices because they generally cause adverse impacts to coastal resources and can constrain the ability of the shoreline to respond to dynamic coastal processes. As a sandy beach erodes, the shoreline will generally migrate landward toward the structure, resulting in a reduction and/or loss of public beach area with no increase of the landward extent of the beach. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines, which narrows the beach area available for public access. Shoreline protective devices also result in a progressive loss of sand because shore material is not available to nourish the nearshore sand bar. The lack of an effective sand bar can allow such

high wave energy on the shoreline that materials may be lost offshore, where it is no longer available to nourish the beach. This also affects public access through a loss of beach area. Shoreline protection devices such as revetments, seawalls, and bulkheads cumulatively affect shoreline sand supply and public access by causing accelerated and increased erosion on adjacent public beaches. Such a protective structure is often placed on public land rather than on the private property it is intended to protect, resulting in a physical loss of beach area formerly available to the general public. In general, shoreline protection devices are not attractive, can detract from a natural beach experience, and adversely impact public views. Shoreline protective devices, by their very nature, tend to conflict with various LCP and Chapter 3 policies because shoreline structures can have a variety of adverse impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach.

The USGS Coastal Storm Modeling System (CoSMoS) has been referenced to analyze the project site's vulnerability to coastal hazards associated with up to 6.8 ft. of sea level rise, which may occur by 2100 (6.8 ft. represents the amount of sea level rise that would occur using the medium-high risk aversion scenario for residential development in the Commission's sea level rise guidance). Based on the site conditions, beach erosion and wave uprush events will not significantly impact the single-family residence given the current width of the public beach. The unpermitted patio, however, is sited at the beach sand level. According to the CoSMoS model, flooding impacts will reach the patio under the medium-high risk scenario; wave uprush might stop just short of the patio, but would erode virtually all of the public beach sand in front of the project site.

Action 7.3.13 of the Land Use Element limits the use of shoreline and/or bluff protective devices to the minimum protection required to protect existing development from erosion. "Existing development" in this policy is defined as a principal structure, which includes a residential structure, a required garage, or a second unit constructed prior to the Coastal Act. Decks, patios, pools, tennis courts, cabanas, stairs, and landscaping are considered accessory structures; and Action 7.3.13 provides that no shoreline protection device shall be permitted for the sole purpose of protecting accessory structures. Open Space/Conservation Element Policy 1-F provides that shoreline protective devices that adversely affect shoreline sand supply or shoreline processes shall not be approved unless there is "clear evidence" that existing structures are in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

The City-approved project consisted of two elements: the removal of the damaged retaining wall and construction of a replacement retaining wall supported on three deepened piles embedded approximately ten ft. into bedrock under the sandy beach. In its May 18, 2018 substantial issue determination, the Commission found that the City-approved replacement retaining wall would likely function as a shoreline protective device for the unpermitted patio. Following the substantial issue determination, the applicants modified the project description to include a wall that is of the same length as the original wall (50 ft. in length) and shallower pile foundations (1 ft. embedment under

beach sand as opposed to a ten ft. embedment into bedrock). However, on October 3, 2019, Commission staff recommended that the Commission deny the modified project, noting that:

“The revised wall design, with the shallower footings, is not likely to function as a traditional seawall in the sense that it would not be effective at protecting the project site against wave energy. However, according to the project plans, the wall appears to hold back an approximately 5 ft. high beach scarp and would prevent natural beach sand flow in front of the project site. Ultimately, the wall would fix the beach in place as a six- ft. tall vertical element, with approximately 18 in. diameter concrete footings buried one ft. under the sandy beach, and a subdrain system that would deposit groundwater under the wall onto the sandy beach. The proposed wall is indeed a retaining wall that would alter natural sand flow processes.<sup>1</sup>”

As explained earlier, the Commission voted to continue the project during the October 2019 hearing in order to investigate new information that was presented to the Commission at the hearing. Following the October 2019 hearing, the applicants further modified the project scope to remove the damaged wall and unpermitted patio without constructing a replacement wall or patio.

In this case, the applicants are not proposing to construct a seawall or other protective device on the subject property. The applicants are instead proposing to remove the damaged retaining wall and patio and install two paver landings totaling 45 sq. ft. adjacent to a seaward door and exterior stairway. The new pavers constitute new development and are not entitled to shoreline protection now or in the future. The proposed pavers may be approved because they are a temporary landscape feature placed on the sand and are required to meet the California Building Code. However, any potential changes to the proposed project may result in adverse impacts to coastal resources. In further consideration of the hazardous project location, **Special Condition 3** requires an amendment to Coastal Development Permit (CDP) No. A-5-LGB-18-0014, or an additional CDP, for any future development on the site that would otherwise be exempt from permit conditions.

In summary, the project as proposed by the applicants and conditioned by the Commission is consistent with the certified LCP policies, including Land Use Element Policy 7.3.9, Land Use Element Policy 7.3.13, and Open Space Conservation Element Policy 1-F.

## **E. Public Access**

Section 30210 of the Coastal Act states:

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<sup>1</sup> Refer to Page 9 of the staff report published for the October 18, 2019 hearing (Item F18a)

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

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30220 of the Coastal Act states:

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

The project site is a beach fronting residential lot that abuts Aliso Beach in the South Laguna region. The subject lot extends 43 ft. onto the beach sand, and the sandy portion of the lot is developed with an unpermitted hardscape patio and a retaining wall. As stated above, the project proposes to remove the hardscape patio and the retaining wall and install 45 sq. ft. of pavers at two egress points on the seaward side of the existing residence. The proposed demolition activity has the potential to adversely impact public access to and along Aliso Beach.

The applicants provided an analysis of different methods to remove the retaining wall and the patio, including removal by hand, removal with a crane, and removal with other mechanized equipment. The applicants deemed the crane method infeasible because the crane could damage the existing residence and the crane would interrupt traffic flow along PCH -- a primary coastal access corridor. The applicants deemed the removal by hand method infeasible because the material to be demolished (a thick, concrete patio slab and a cinderblock retaining) is difficult to demolish and transport by hand offsite in a timely manner. The preferred alternative outlined in the alternatives analysis involves the use of an excavator and a loader to demolish and remove the material. Debris would be transported along Aliso Beach to a dump truck temporarily located in two non-ADA parking spaces in the downcoast Aliso Beach parking lot. Any overnight staging or storage would occur entirely on the applicants' property, not on the public beach. The removal operation would take approximately two weeks.

The applicants' preferred alternative would impede public access through the loss of two public beach parking spaces and the repeated trips by the excavator across the public beach and Aliso Creek during prime summer beach-use hours. Photos of the project site and a narrative from the engineer demonstrate the need for some mechanized equipment to remove and break apart the heavy concrete and cinderblock material. However, the material can be broken up to small enough pieces that could be transported offsite without the use of public resources. For instance, the patio and



retaining wall could be broken up into smaller pieces, and then transported through the applicants' property adjacent to the residence to disposal trucks located on the applicants' driveway. In order to ensure that public resources remain accessible, the Commission imposes **Special Condition 1(B)**, which prohibits the use of public resources (including public parking lots, the public sandy beach, and public streets) for staging purposes. Use of the excavator is limited to removal and breakup of the retaining wall and patio and must be removed upon completion; the excavator shall not make multiple trips through Aliso Beach to haul away debris. All debris shall be removed through the applicants' property. Only as conditioned can the project be found consistent with the public access and recreation policies of the Coastal Act.

## F. Water Quality

Policy 1-B of the Open Space Conservation Element states:

Require the use of drought-resistant plantings and natural vegetation to reduce irrigation practices.

Policy 4D of the Open Space Conservation Element 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 possible.

Policy 4F of the Open Space Conservation Element states:

Ensure that development encourages water conservation, efficient irrigation practices, and the use of native or drought tolerant non-invasive plants appropriate to the local habitat to minimize the need for fertilizer, pesticides, herbicides, and excessive irrigation. Prohibit the use of invasive plants, and require native plants appropriate to the local habitat where the property is in or adjacent to Environmentally Sensitive Areas (ESAs).

Policy 4G of the Open Space Conservation Element 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 4H of the Open Space Conservation Element 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 pollution, including appropriate construction related erosion and sediment control measures.

The referenced LCP policies require protection of marine resources, including the protection of coastal waters by controlling runoff and preventing spillage of hazardous materials. Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain or wind could result in adverse impacts upon the marine environment that could reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. Sediment discharged into coastal waters may cause turbidity, which can inhibit light penetration and reduce habitat quality and foraging success for avian and marine species. To avoid adverse construction-related impacts upon marine resources, the Commission imposes **Special Condition 2**, which outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. This condition requires the applicants to remove all debris resulting from construction activities within 24 hours of completion of the project. In addition, all construction materials shall be covered, and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

The applicants are proposing new plants on the beach sand within their property lines. Although a detailed list of plants were not included in the project plans, the applicants have indicated that the plants would be native plants that would naturally occur in this region. Given that project site is a beach lot that abuts the public beach, **Special Condition 1** requires the applicants to submit a landscape plan for the review and approval from the Executive Director. The plan shall only utilize native, non-invasive and drought-tolerant plant species (low water use) that would naturally occur on the beach sand. No soil systems or water irrigation systems are authorized under this permit.

The Commission finds that the proposed development, as conditioned, conforms with Laguna Beach LCP policies regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

## G. Unpermitted Development

A violation of the Coastal Act has occurred on the subject parcel, including the installation of an approximately 800 sq. ft. hardscape patio on the sandy beach portion of the property. CDP No. 5-82-368 approved the construction of a single-family residence with no developed yard area. The area between the approved residence and the seaward property line was designated as “beach sand ([Exhibit 3](#)).” However, aerial records indicate that the beach sand area within the subject property was converted to a landscape yard in the early 1990s without the benefit of a CDP. In 2014, the landscape yard was converted into a hardscape patio, also without the benefit of a CDP. All development within the coastal zone requires a CDP unless the requested action is determined to be exempt from permit requirements. The development listed above is not exempt from permit requirements pursuant to Section 30610 of the Coastal Act and Title 14, Section 13250(b) of the California Code of Regulations.

The applicants are requesting to remove the entire hardscape patio. No new hardscape area is proposed in its place. This conversion would remove the unpermitted uses from the site.

Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Laguna Beach LCP and relevant policies of the Coastal Act. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations, nor does it constitute an implied statement of the Commission's position regarding the legality of development, other than the development addressed herein, undertaken on the subject site without a coastal permit.

## **H. California Environmental Quality Act**

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, 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 CEQA purposes. In its February 22, 2018 staff report, the City determined the project to be categorically exempt under CEQA Section 15301, Class 1 (existing facilities) because the project involved the reconstruction of an accessory structure associated with a single-family residence. The project has since been modified to only include the installation of pavers at the seaward door and exterior stairway, which still classifies as an accessory use to an existing single-family residence.

As conditioned to avoid adverse impacts including a construction staging plan that does not utilize public resources, construction and water quality best practices, a landscaping plan requiring native drought-tolerant plants, and a CDP amendment requirement for future improvements, the project would not have adverse environmental impacts, and there are no feasible alternatives or mitigation measures available for the project. Moreover, proposed project described above is consistent with CEQA and the policies of the Coastal Act.

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

Coastal Development Permit Application No. A-5-LGB-18-0014 and associated file documents.