

**CALIFORNIA COASTAL COMMISSION**

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# W15b

## ADDENDUM

July 12, 2022

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM W15b, APPEAL NO. A-5-LGB-22-0025 (GRAY)  
FOR THE COMMISSION MEETING OF WEDNESDAY, JULY 13, 2022.**

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### I. Correspondence Received

On July 8, 2022, the Commission received two letters in support of staff's recommendation that the appeal raises a substantial issue from the appellants and the local chapter of the Surfrider Foundation. Also on July 8, the Commission received one letter in opposition to staff's recommendation from the applicant's representative and an additional letter in opposition from a Laguna Beach resident on July 9.

The two letters in support of staff's recommendation state that the City-approved CDP does not address many of the previous appeal's contentions including that the City-approved CDP does not adequately calculate the bluff edge setback, the project is new development and thus all existing shoreline armoring must be removed to facilitate natural coastal processes and sediment replenishment to the beach, and that the City-approved CDP restricts coastal access by encroaching onto approximately 2,000 square feet of the public right of way, an encroachment which has persisted for many years. The previous appeal, A-5-LGB-21-0043, was scheduled for the August 2021 Commission meeting. However, the applicants elected to withdraw their application prior to the Commission meeting and work with the City on the issues raised in the Commission's staff report recommending substantial issue. It appears that the previous issues have not been fully resolved.

The two letters in opposition assert that the bluff edge was accurately applied by the applicant and City, that the retaining walls are permitted and not obsolete, that the patio deck complies with setback requirements, that the approved project complies with the public access requirements of the Coastal Act, that fencing is no longer in the public right-of-way, that the public access stairway is not relevant to the property owner, that the proposed public amenity improvements are significant not minor, that the removal of the retaining walls would result in the destabilization of the blufftop and negate the granted

easement at the toe of the bluff, and that the proposed house is a single-family residence not a duplex.

## II. Response to Correspondence

Commission staff responds to comments received as indicated below and recommends that the Commission incorporate these responses into its findings. Commission staff hereby revises its recommended findings to incorporate these responses, so that adoption of the staff recommendation will include adoption of these findings.

Commission staff note that the staff report fully addresses the concerns raised in the correspondence received, both in support and in opposition to the staff recommendation. The applicant's bluff edge determinations inadequately relied on either the LUE Glossary Entry 102 for the definition of a bluff, the California Code of Regulations, Title 14, Section 13577(h)(2), and the Commission's 1980 administrative permit to determine the location of the bluff edge. Opponents suggest that the project description in the 1980 Commission-issued permit for development at 1007 Gaviota defined the "top of the bluff" as the location of the uppermost retaining wall, and that this is binding per "administrative res judicata." The reference to the retaining wall at "the top of the bluff" is imprecise and can't be relied on as mapping of the bluff edge. Looking at the context of the entire development description, the 1980 administrative permit refers to a retaining wall at the "top of the bluff", a retaining wall with an unknown location, and the third wall as "the most seaward." These are imprecise and should not be used forty-plus years later to mean that "top of the bluff" equates to a precise bluff edge determination, let alone that it meets the certified LCP definition of bluff edge. The applicant argues that only the one bluff edge should apply, but that is not the case, as any bluff edge is subject to movement, and should be applied appropriately when considering new development. The geotechnical reports do not analyze the location of the bluff edge based on current conditions or the current standard of review and therefore, further analysis using the appropriate Land Use Element definition of a bluff edge and other elements of the LCP, as the standard of review, is needed to evaluate the appropriate blufftop requirements for the site.

On page 12 of the staff report, staff addresses the comments regarding the retaining walls. Staff would note that LUE Actions 7.3.8 and 7.3.9 requires obsolete structures be removed and that major remodels on oceanfront bluff sites do not rely on existing bluff protection devices to establish geologic stability or protection from coastal hazards. However, the City relied on an unsubstantiated comment in the geotechnical report that the retaining walls support the nearby public access stairway and adjacent property<sup>1</sup>. The geotechnical report did not provide an analysis of the adjacent home and access stairway in its evaluation of the retaining walls. Even in the case that the retaining walls do support nearby structures, to be consistent with the LCP the residence must be designed without relying on the retaining walls such that the walls could be safely removed in the future. Additionally, the City did not make findings or require that the retaining walls be removed once the adjacent structures no longer rely on them. The plans and analysis should include a design of the patio deck that does not rely on the retaining wall, even if the 10-foot deck setback from a bluff edge, as required by the CDP, is satisfied. As approved, the new residence and patio could extend the need for the retaining walls, inconsistent

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<sup>1</sup> "Removal of any one component would alter the performance of the system, threaten the repair slope, and would be likely to adversely impact adjoining property and improvements to the southeast and northwest, including the Anita Street beach access stairs." – Page 3, Geofirm report dated, October 22, 2021.

with the LCP. Furthermore, opponents of the staff recommendation suggest that development removal would terminate a deed-restricted public access easement. Staff would note that further analysis of the approved development subject to this appeal, is needed prior to addressing the associated public access easement and consequences of removing the retaining walls and authorizing new development.

On page 14 of the staff report, staff addresses the comments regarding public access. Staff would note that public improvements that improve coastal access are welcomed, and projects should assure that maximum public access to the coast and public recreation areas is provided. In this case, the public improvements in the right-of-way may not compensate for the remaining private encroachment without an analysis of the project's impacts on public access by permitting the remaining encroachment and extension of the yard for continued private enjoyment, or an alternatives analysis that includes additional public access and recreation benefits and/or uses. The analysis need not include the benefits of the existing adjacent public access stairway unless it is a beneficial alternative that can be conceptualized for the purposes of ensuring maximum public access. Furthermore, without proper signage, hardscape and landscape to match adjacent public areas, or conditions for maintenance of the area, the proposed public gathering area may appear to be private given that most of the encroachment area would remain unavailable for public use. As such, travelers or visitors from outside the area may not be aware of the proposed public amenities available. Additionally, the letter asserts that a fence is no longer present in the right-of-way, which is contrary to the site photos and email communication on June 21, 2022 with Steve Kaufmann, the applicant's agent, indicating that the "could easily be removed now or after CDP issuance." It appears that perhaps the fence was removed at a point between June 21, 2022 and the opposition letter dated July 7, 2022. However, staff was not made aware of the fence removal until after the staff report was published.

On page 15 of the staff report, staff addresses the site history regarding onsite density. The evidence available would suggest that there were two units at one point in time and more information is needed to determine whether there would be a loss of one unit onsite.

Therefore, staff recommends the Commission find substantial issue with respect to the grounds on which the appeal has been filed.