

CALIFORNIA COASTAL COMMISSION

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W11b

ADDENDUM

DATE: April 10, 2023

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM Th15b, APPLICATION NO. A-5-LGB-22-0025 FOR THE COMMISSION MEETING ON WEDNESDAY, APRIL 12, 2023.**

The purpose of this addendum is to respond to issues raised in recent correspondence and make changes to the recommended findings in the staff report dated March 30, 2023. All letters are included in the "Correspondence" file for this item.

I. RESPONSE TO CORRESPONDENCE

Since publication of the staff report on March 30, 2023, the Commission has received an email from the appellants on April 6, 2023, a comment letter from the appellants on April 7, 2023, a comment letter from the Sierra Club, Orange County Conservation Committee on April 7, 2023, and a comment letter from the applicant's attorney on April 7, 2023. All letters are included in the "Correspondence" file for this item, along with all correspondence the Commission received prior to a previously scheduled March, 2023 hearing on the application that was postponed. The following responses to the comments are added to the staff report recommended findings in subsection D. Coastal Hazards, along with additional recommended findings included in this addendum.

Appellant Correspondence:

The appellants' email and comment letter raise issues with the proposed retention of the retaining walls on the site, arguing that the redevelopment of the subject site requires removal of the retaining walls and that the neighboring structure at 1021 Gaviota Drive does not maintain its right to the shoreline armoring as it has undergone a major remodel, and in doing so, has become a new development. They argue that the requirement of Special Condition 2 for the applicant to remove the retaining walls in the future when the adjacent development is no longer reliant on them is inadequate, and the walls should be removed concurrent with the subject redevelopment. In support of their claims regarding the extent of the remodeling of the structure on the 1021 Gaviota Drive property, the

appellants reference City-issued CDPs and other local permits issued for development there in 1977, 1988, 2005, and 2022, most notably the 2005 permit, CDP 05-48, which references alterations of more than 50 percent in the City's file records.

However, as shown in City records, the alterations approved as part of CDP 05-48 include an 82 square-foot addition to the existing two-family dwelling, with no indication of 50% redevelopment taking place. Within the City's Design Review Board standard language, it is noted that design review is required for aggregate additions exceeding 50%, but the file does not indicate that the project at hand exceeded an addition of 50%, as an 82 square-foot addition would not have met this threshold on the home. The City further indicates that the project was in conformance with all applicable provisions of the General plan, including the Certified LCP and the public access and public recreation policies of the Coastal Act. The project on the adjacent property did not adversely impact public access since existing public vertical and lateral access exists nearby and the project did not result in any further seaward encroachments of any structures. Additionally, a lateral beach access easement was dedicated from the mean high tide line to the toe of the bluff in conjunction with a Commission-issued CDP from 1980-81 and was also referenced in the City-approved 2005 CDP.

Furthermore, when the City of Laguna Beach approved remodels and additions on the neighboring property between 1977 and 2005, the City's certified LCP did not include policy 7.3.8 which explicitly requires the removal of obsolete protective devices from oceanfront bluff sites, where applicable, which the Commission generally concludes is appropriate upon redevelopment of a home. Per the LCP, which was the standard of review at the time, the home additions would not be entitled to shoreline protection, but removal of the shoreline protection at the site or the neighboring site would not be required until the home was redeveloped (which the Commission has generally interpreted to mean 50% removal or replacement of the roof, exterior walls, floor, or foundation). As such, Special Condition 2 includes requirements to remove the existing retaining walls when no longer required to protect adjacent blufftop structures with rights to shoreline armoring under Public Resources Code Section 30235 or under the certified Laguna Beach LCP, but does not compel immediate removal of structures that were legally permitted by the City of Laguna Beach.

Applicant Correspondence:

The issues raised by the applicants' attorney were analyzed in the staff report dated March 30, 2023. The applicants object to Special Condition 1 and Special Condition 2, because from their perspective Commission staff are improperly redetermining the location of the bluff edge and requiring future removal of the bluff retaining wall system. The applicants' attorney further states that the required setbacks listed in Special Condition 2 would destroy the proposed residence by making it unbuildable.

This contention is discussed in the Coastal Hazards subsection of the staff report on. Specifically, the applicants purchased their home in November, 2013. The policies of the certified LCP, including the LUE, which determines how to locate a bluff edge and stipulates required setbacks, were certified and accepted by the City in February 2012, more than a year and a half before the applicants purchased the property. Therefore, any financial or development expectations the applicants had when purchasing the property should have, at a minimum, accounted for the development standards in the certified LCP at the time of purchase, including any site constraints associated with the property.

The findings include an analysis on the bluff edge location identified pursuant to the certified LCP, based on which the project site yields a building pad area of approximately 1,184 square feet. If the applicant chose to build within the maximum allowable envelope of this site, the resulting home would be approximately 2,000-2,500 square feet. Which is comparable in size to other homes in the area and only slightly smaller than the pre-existing 2,746 square foot structure that was demolished by the applicants without a CDP. The applicant's attorney contends that the average square footage of homes that are more representative of the proposed project home, the average square footage is 3,285 square feet. However, in the chart included in the attorney's response letter, the attorney has omitted the older homes, the multi family structures, and homes with large setbacks within their calculated averages, only showing the average square footage of homes similar to the home the applicant hopes to develop.

The applicant's attorney further takes issue with the determined bluff edge location pursuant to the certified LCP, stating that the determined location would repudiate the 1980 Commission determination. As explained in the staff report, within the Coastal Hazards subsection, the bluff edge determination submitted by the applicants does not adhere to the LCP definition included in the certified LUE. The applicants identified the bluff edge in the approximate location of a retaining wall permitted by the Commission in its approval of CDP A-80-7442 and claim that, through that action, the Commission identified the bluff edge to be located in line with the upper-most retaining wall. However, no such determination was made by the Commission at that time.

The applicants' attorney states that Commission staff's recommendation proposes a redetermined and bizarrely configured "bluff edge," which is fundamentally flawed for several reasons and not supported by the LCP or the facts, and then arbitrarily creates an irregular 25-foot setback line. As mentioned in the Coastal Hazards subsection of the staff report discussing the bluff edge determination, the applicants' initial bluff edge determination was not made pursuant with the LCP definition pursuant to LUE Policy 10.2.6, which is required because the project has been determined to be a major remodel. The Commission's staff geologist, Dr. Joseph Street, has determined that pursuant to the LUE definition, the current bluff edge at the site is approximately 10 - 24 ft landward of the applicant's determination, depending on the specific location on the bluff. Dr. Street's analysis identifies the coastal bluff edge as defined in the certified LUE as the seaward edge of the natural upper bluff terrace deposits, which would exclude the added fill and rely explicitly on the natural bluff edge.

Public Correspondence:

The Sierra Club, Orange County Conservation Committee submitted comments arguing that the 1007 Gaviota Drive property owner should not be allowed and cannot be trusted to provide and maintain public access amenities along public property adjacent to the proposed home. This contention is addressed within the findings regarding public access and recreation on pages 31 - 32 of the staff report. The City's Design Review Board approved the Revocable Encroachment Permit with the purpose not to grant private access to public land, but to allow the homeowners of 1007 Gaviota to construct public amenities on public property. Should the Revocable Encroachment Permit be revoked or voided, all improvements within the right of way could be removed or demolished and new improvements constructed. However, the public amenities along Gaviota are proposed to improve the public experience at the Anita Street Beach. The proposed amenities will not conflict with continued public access to the beach or reduce the ability for the City to

continue to operate and maintain the critical sewer facilities within the neighboring project area. Should the applicants elect not to provide the proposed public benefits, Special Condition 1.f requires the applicants to remove all private encroachments from the unpermitted encroachment area.

The contentions regarding the ADA compliance of the proposed public accessway adjacent to the subject site (buffered by the proposed public drop off area, drinking fountain, mature trees, and native landscaping in the encroachment area) have been addressed in the staff report for item W12a (Appeal No. A-5-LGB-22-0025) on pages 10-15 of the findings. In summary, the City's project is a substantial improvement over the current stairway, includes an ADA accessible viewpoint, and will be accessible to more people because it is wider and more gradual than the current design, and utilizes more of the right-of-way than the current design. The City states that the sewer lift station project is an urgent need that will improve the safety and stability of the sewer system and prevent future spills, and that the location of the proposed lift station near the top of the bluff is a constraint upon a potential additional public viewpoint or wider stairway. The City states that an ADA compliant ramp is not technically feasible at the site and notes that ADA accessible facilities are provided at other public beaches in the City wherever they are feasible. The City states that the design of the project is not impacted by the adjacent private development and that the proposed private improvements to the public right-of-way will complement the project.

The Sierra Club further contends that the staff report does not address the history of development at the adjacent property. As stated above, this issue is addressed by the findings within this addendum.

II. REVISIONS TO THE STAFF REPORT

Language to be added is shown in underlined text, and language to be deleted is identified by ~~strikethrough~~.

Correct the 3rd and 4th paragraphs on page 12 as follows:

The subject property is a 5,181-square-foot rectangular ocean-fronting bluff lot at 1007 Gaviota Drive in the City of Laguna Beach, Orange County ([Exhibit 1](#)). The subject lot is located at the southwest corner of Gaviota Drive and Anita Street, between the first public road (South Coast Highway) and the sea (Anita Street Beach). There is a public beach access stairway at the seaward terminus of Anita Street approximately 30 feet north of the site. The site is zoned R-2 (Residential Medium Density) and is surrounded by a mix of single-family residences and duplexes.

The site is currently developed with a partially demolished 2,737-square-foot, 30-foot-high structure with a two-car garage built circa 1924. Seaward of the site, there is a series of retaining walls consisting of a masonry wall at the bluff toe and two upper bluff retaining walls laterally crossing beachfront properties 1007 Gaviota Drive and 1021 Gaviota Drive, built pursuant to Commission-issued CDP A-80-7442 in 1980-81. The applicants propose a major remodel consisting of the demolition of the residential structure and addition of a two-story, 3,552-square-foot, 30-foot-high single-family dwelling with an attached 489-square-foot two-car garage, and construction of public amenities, including a public vehicle

drop off area and public bike racks within the Anita Street and Gaviota Drive public rights-of-way, pursuant to a revocable encroachment permit.

Correct the 1st, 2nd, and 3rd paragraphs on page 13 as follows:

...and will be complimented by the proposed public vehicle drop off area and existing landscaping in the area currently partially covered by the non-conforming private driveway.

Project History

The pre-existing single-family-residence was converted to a duplex in the late 1960's based on records of a two-family occupancy provided in the Orange County Directory in 1968. In August 2014, the City issued a permit for a minor remodel of the structure, however, the City discovered that the applicant exceeded the scope of work authorized by the City-issued permit and on December 18, 2014, the City Code Enforcement issued a stop-work order for unpermitted construction that was taking place (Exhibit 7). The work involved the removal of the majority of the structural elements of the building, resulting in a structure that can no longer be fairly characterized as a continuation of the pre-existing structure. See, e.g., 14 C.C.R. § 13252(b) (establishing that replacement of 50 percent or more of an existing structure results in what must be viewed as a replacement structure). As such, the unpermitted demolition of the existing structure caused the applicants to forfeit the opportunity to repair and maintain their existing structure. Based on the available evidence, the proposed development constitutes a major remodel, and would result in a replacement structure. Thus, the resulting structure must be brought into conformity with current standards within the LCP

On April 28, 2022, the City of Laguna Beach Design Review Board ("DRB") held a public hearing for consideration and subsequent conditional approval of a local CDP (No. 22-0121), Design Review No. 22-0120, Variance No. 22-0122, Revocable Encroachment Permit No. 22-0123, and a Mitigated Negative Declaration pursuant to CEQA. The DRB approved all of these items, authorizing the applicant's request to construct a new 3,552 square-foot single-family dwelling and attached 489 square-foot two-car garage; granting a variance to encroach into the front setback and additional building setback; and granting a revocable encroachment permit to construct public amenities, including a public vehicle drop off area, public bike racks, hardscape, and landscape, within the public right-of-way along Anita Street and Gaviota Drive.

Correct the 2nd paragraph on page 14 as follows:

On July 13, 2022, the Commission held a hearing and found that the appeal raised a substantial issue because the City’s findings that the development is consistent with the provisions of the certified LCP regarding new development on a bluff were not adequately supported by documents in the record or the local CDP’s findings. In addition, ~~there were~~ the Commission found substantial issues as to whether the bluff edge was accurately identified and consequently whether the bluff edge setbacks were appropriately applied; the perpetuation of potentially obsolete bluff retention structures onsite; the encroachment of private yard area into the public right-of-way, and the potential reduction in residential density onsite. Furthermore, insufficient information was provided regarding the proposed development’s compliance with relevant development and public access policies of the LCP and the Coastal Act.

Correct the 2nd paragraph on page 15 as follows:

Both the City’s certified LCP and the Coastal Act require a CDP for new development. The IP portion of the City’s certified LCP ~~IP~~ Title 25 Zoning, and specifically Municipal Code Section 25.07.006(D), which basically tracks the Coastal Act definition of development, defines “development” as follows:

Reverse the order of Sections C and D, Development and Coastal Hazards, and replace the entirety of the findings on pages 16-30 with the following findings:

C. Development

Major/Minor Remodel

Where proposed development is undertaken under the auspice of ‘repair and maintenance,’ a ‘remodel’ or ‘remodel-addition’, it is important to determine the nature and extent of work that is occurring on the existing structure. This assessment is necessary in order to determine the nature of the work, including whether the extent of the development is such that it goes beyond repair and maintenance and the resulting structure actually constitutes a replacement structure, which requires the applicants to resolve all heretofore existing non-conformities with the certified LCP, such as inadequate or absent bluff edge setbacks, and, for projects between the sea and the first public road, non-conformities with the public access policies of the Coastal Act, to ensure that the entire proposed development complies with the certified LCP and the applicable Coastal Act policies. “New development” or redevelopment requires a permit and must comply with all of the certified LCP policies—and, hence, include sufficient setbacks from the bluff edge.

While the dividing line between an improvement (or repair and maintenance) and “redevelopment” is not always clear, at a certain point, substantial alterations to a home can no longer be considered minor improvements, but instead must be considered to have resulted in a new structure. Laguna Beach LCP Action 7.3.10 says that:

“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.”

The City’s certified LUE defines “major remodel” as:

“Alteration of or an addition to an existing building or structure that increases the square footage of the existing building or structure by 50% or more; or demolition, removal, replacement and/or reconstruction of 50% or more of the existing structure; greater specificity shall be provided in the Laguna Beach Municipal Code.”

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

Here, the applicants have submitted information regarding the extent of proposed alterations to the existing residence. The proposed plans indicate that the project consists of alterations to major structural components of the primary structure. The square footage of livable area would be increased by approximately 815 square feet. Alteration percentages include demolition of 100% of the roof area, 59% of the main level area, 100% of the upper-level area, and 80% of the total exterior walls.

Based on the available evidence, the proposed development constitutes a major remodel, and would result in replacement structure(s). The proposed work would also increase the size and degree of the existing onsite nonconformities and therefore would be considered new development that would require the entire structure to come into conformity with the LCP pursuant to LUE Policy 7.3.10. This includes relevant setback requirements, height, density, and other development standards of the LCP.

As detailed below, the applicants previously installed a fence and other improvements within the public right-of-way adjacent to the north side of their property without a CDP. In conformance with LUE Action 7.3.8, the applicant’s improvements will no longer encroach into the right-of-way as the unpermitted fence within the public right-of-way will be removed. In the same area of the public right-of-way where the private driveway and fencing will be removed, the City will grant the applicant a revocable encroachment permit to enable the applicant to construct public improvements for public use within the public right-of-way. The City is currently developing an expanded public stairway just north of the site and landings to support an improved sewer lift station, which increases the footprint of

public infrastructure adjacent to the home, and will be complimented by the aforementioned improvements in the area currently covered by the non-conforming private driveway that would be removed.

Residential Density and Unpermitted Demolition

The appellants contend that unpermitted demolition of a preexisting duplex has taken place at the project site, which is inconsistent with the housing density policies of the LCP and State law due to the replacement of an existing duplex with a single family residence. However, the City of Laguna Beach found that a legal duplex did not exist at the site, even though the site had been marketed as having two units in the past.

Separate from the density issue, in August 2014, the City issued a permit for a minor remodel of the structure; however, soon thereafter, the City discovered that the applicant exceeded the scope of work authorized by the City-issued permit, and on December 18, 2014, the City Code Enforcement issued a stop-work order for unpermitted construction that was taking place ([Exhibit 7](#)). The unpermitted demolition of the existing structure (which the City currently characterizes as a single-family home not a duplex) caused the applicant to forfeit the opportunity to repair and maintain the pre-existing structure, as is explained at the beginning of the Project History section. For this reason as well, the proposed development constitutes a major remodel, and would result in a replacement structure.

As a proposed new structure, the LCP allows for single-family homes as well as duplexes in the subject R-2 zone (Residential Medium Density); thus, the proposed single-family home is consistent with the density standards of the LCP which is the standard of review for the coastal development permit application.

D. Coastal Hazards

The proposed development is located atop a coastal bluff that has experienced erosion in the past and can reasonably be expected to experience additional erosion caused by sea level rise, storms, and natural processes. Given the dynamic nature of coastal bluffs and beaches, it is important to ensure that the risks of developing on these lots are acknowledged and borne by the applicant. The LCP prohibits new development that would require construction of a protective device that would substantially alter natural landforms along bluffs or cliffs.

The City's certified LCP includes the following policies regarding development on coastal bluffs (emphasis added):

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

Action 7.3.10 of the LUE states: Allow oceanfront and oceanfront bluff homes, commercial structures, or other principal structures, that are legally nonconforming as to the oceanfront and/or oceanfront bluff edge setback, to be maintained and repaired; however, improvements that increase the size or degree of nonconformity,

including but not limited to development that is classified as a major remodel pursuant to the definition in the Land Use Element Glossary, shall constitute new development and cause the pre-existing nonconforming oceanfront or oceanfront bluff structure to be brought into conformity with the LCP.

Action 10.2.6 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.

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

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

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

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

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

Bluff Edge Determination

Determination of the correct location of the bluff edge is required by the certified LCP and is critical to identifying the developable area of the property, in order to determine where one may place a new home and accessory structures. The bluff edge determination informs the determination of the developable area of the site because LUE Actions 10.2.7 and 10.2.8 require bluff top residences to observe a 25-foot minimum setback from the bluff edge and require a 10-foot minimum setback be observed for accessory structures that do not require foundations (such as decks and landscaping). Action 10.2.6 also

requires a setback from the bluff edge that is sufficient to ensure stability, to ensure that the new development will not be endangered by erosion, and to avoid the need for protective devices. Moreover, as indicated above, given that this is a major remodel, those setback requirements will apply even to the pre-existing portions of the resulting structure.

A preliminary geotechnical investigation report was prepared for the proposed development by Geofirm., dated July 17, 2019. Following the appeal and finding of substantial issue, the applicants also submitted a revised slope stability analysis by Geofirm, dated October 3, 2022.

The applicants' bluff edge determination did not adhere to the LCP definition included in the certified LUE, which serves as the standard of review. The applicants assert that the bluff edge is in the location of an existing retaining wall permitted by the Commission in 1980 in its approval of CDP A-80-7442. In approving that CDP, the Commission authorized the installation of three retaining walls. The applicants claim that the Commission's 1980 action included a formal determination regarding the location of the bluff edge, placing it in the location of the upper-most retaining wall. Moreover, they claim that determination cannot now be altered because it constitutes administrative *res judicata*. This is inaccurate for multiple reasons.

However, when the Commission acted in 1980, no determination was made as to the location of the bluff edge. The applicants' claim to the contrary is based on a single reference to the location of one of the proposed retaining walls as being at the "top of the bluff." This reference occurs in the caption of the 1980 staff report under "Development Description." Such a general reference to the location of proposed development does not constitute an analysis of a complex geomorphological feature. The "top of bluff" language in the CDP is descriptive in a straightforward but not definitive or exact way, as in "the upper wall would be installed near the top of the slope", not "the top of the upper wall is hereby declared to be the legal bluff edge for all time going forward".

The 1980 staff report reference to the "top of the bluff" in the Commission's description does not refer to the bluff "edge." The Commission's findings and exhibits did not identify the top of the bluff or require the upper retaining wall to be at the bluff edge and did not identify a bluff edge in that action in any way. The applicants' attorney's April 7 letter says that the reference to the top of the bluff in the 1980 staff report was "critical in identifying the location of the bluff edge," but there is no evidence that it was relevant to anything other than a general description of the location of the development, much less that it was in any way "critical." Nor was there any discussion of any policy that would have made the identification of the bluff edge critical to that approval. In sum, there is no indication that the location of the bluff edge was relevant to any finding in the 1980 report or that the Commission considered the issue. As such, at most, it would be *dicta*, and more likely, it was merely a way of describing where the development was proposed to occur, not of defining the bluff edge.

Even if the reference were intended as an identification of the bluff edge, that would still, at most, only constitute administrative *res judicata* as to the question of the location of the bluff edge *at that time*. The applicants' lawyer acknowledges staff's emphasis of the fact that bluffs are dynamic landforms that change over time in response to natural conditions and human intervention. As a dynamic feature, even a finding as to its location could not possibly count as *res judicata* for all times in the future. The finding that would become unassailable as administrative *res judicata* would at most be the determination as to where

the bluff edge was located at that time. This is very different from cases holding that a Commission action on a permit application becomes unassailable.

The Commission received additional comments from the applicants' geologist, stating that the current position of the natural bluff edge is a result of a temporary grading cut necessary to construct the upper retaining wall previously approved by the Commission in 1980. Specifically, the cut was needed in order to install the wall footing. Once wall construction was complete, the cut area was then backfilled with artificial fill. The applicant's geologist argues that fill is allowed under the LUE, that the backfill restored the bluff to its previous position, and that the temporary cut should not be used as the determining factor in the current bluff edge determination. However, the LUE bluff edge definition expressly recognizes cuts as an erosional process that affect the position of the bluff edge, stating that "[b]luff edges typically retreat over time because of erosional processes, landslides, development of gullies, or by grading (cut)", and does not draw any distinction between cuts that remain open and cuts that are later backfilled. In fact, the LUE definition clearly indicates that fill placed near or over the bluff edge does not alter (or, as in this case, restore) the bluff edge position ("...the original bluff edge, even if buried beneath fill, shall be taken to be the bluff edge."). Taken together, these provisions of the LUE bluff edge definition lead to the conclusion that (i) the 1980 grading cuts caused the bluff edge to retreat, (ii) the artificial fill placed subsequently did not modify the position of the bluff edge, and (iii) the LUE bluff edge at present, across much of the site, is located at the upper edge of the natural marine terrace deposits (the edge of the buried cut) as shown in [Exhibit 4](#). This delineation of the bluff edge is based on the detailed analysis by the Commission's geologist, contained in [Exhibit 5](#).

The applicants' interpretation of the LUE bluff edge definition is not consistent with how the Commission has typically determined bluff edges where the natural landform has been modified by human actions; specifically, the Commission has typically treated cuts as erosion, moving the bluff edge inland, and ignored fill, in prior bluff edge determinations (5-19-1284, Sommerville; A-5-LGB-20-0050, Dig Coast Inn; 5-21-0392, Boyd; A-5-LGB-18-0071, Hale). The Laguna Beach LUE bluff edge definition is also similar to the bluff edge definition contained in a number of other LCPs. For example, for the City of San Clemente and Marin County, the certified LUPs provide the following definition of a bluff edge:

"Bluff edges typically retreat landward due to coastal erosion, landslides, development of gullies, or by grading (cut). In areas where the bluff top or bluff face has been cut or notched by grading, the bluff edge shall be the most landward position of either the current or historic bluff edge. In areas where fill has been placed near or over the historic bluff edge, the original natural bluff edge, even if buried beneath fill, shall be taken to be the bluff edge."^{1,2}

Similarly, the City of Solana Beach certified LUP defines the coastal bluff edge in the following manner:

"The bluff edge may change over time as the result of erosional processes, landslide, or artificial cut. Artificial fill placed near the bluff edge, or extending over the bluff edge does not alter the position of the bluff edge."³

¹ City of San Clemente LUP, 1982, Chapter 7.

² Marin County LCP, 1981-1982, LCP IP Definitions, Page 146.

³ Solana Beach LUP, 2013, Chapter 8.

In the case of the project site, a portion of the bluff has been cut, thereby altering the bluff edge. It would be inconsistent with the City's certified LUE and past Commission actions to acknowledge alteration and removal of the bluff edge, yet still consider the bluff edge unchanged.

The Commission's staff geologist, Dr. Joseph Street, has reviewed all submitted reports, confirmed the statements discussed herein, and identified the bluff edge consistent with the certified LCP ([Exhibit 4](#)). Dr. Street's more detailed review of the bluff edge and coastal hazards issues, supporting these findings, can be found in [Exhibit 5](#).

Bluff Edge Setbacks

In addition to requiring that new principal development on bluff tops be set back a minimum of 25 feet from the bluff edge, the LCP requires that this setback be increased where necessary to ensure geologic stability, and that the setback be sufficiently large to ensure stability and avoid endangerment by erosion, without the need for protective devices, over a 75-year economic life. As a standard of stability, Action 10.2.6 further specifies that development must maintain a 1.5 (static) factor of safety against landsliding, and requires that assessments of bluff erosion potential consider the effects of sea level rise. Thus, it is also necessary to evaluate whether the minimum 25-foot bluff edge setback must be increased at the project site to address the potential for instability and erosion hazards over the next 75 years, without relying on shoreline protective devices.

The applicants' revised slope stability analysis indicates that, if the effects of the existing retaining walls are discounted, a 1.5 (static) factor of safety against landsliding is achieved approximately 14 feet landward of the top of the upper retaining wall, which under present conditions represents the edge of the landform (i.e., the edge of the artificial fill placed on the bluff face in 1980), though not the LUE bluff edge. As described in greater detail in [Exhibit 5](#), Dr. Street has reviewed this analysis and concurs with its conclusions.

The applicants' coastal hazards report indicated that the proposed new development would be safe from wave runup hazards over the next 75 years, including the effects of SLR. However, in Dr. Street's estimation, the applicants' report did not provide an adequate analysis of the potential for bluff erosion and retreat in the absence of shoreline protection or include the potential effects of SLR, and thus did not support a conclusion that the proposed setback would ensure stability and protect against bluff erosion for 75 years, consistent with LCP standards. The applicant's geologic reports provided some information about infrequent bluff erosion episodes in the years prior to the installation of the walls in 1980-81; drawing on this and other, outside information, Dr. Street concluded that the bluff at the project site would likely be subject to erosion and future retreat in the absence of shoreline armoring ([Exhibit 5](#)).

Combined with the 14 foot setback needed to achieve a 1.5 factor of safety against landsliding, and making some allowance for accelerated erosion in the future due to sea level rise, Dr. Street estimates that a total setback of approximately 30 feet from the current top of the wall (edge of fill slope) would be likely to ensure the stability of new development for 75 years without relying on shoreline protection, but acknowledges the high level of uncertainty embedded in this estimate.

The Commission finds that Dr. Street's analysis correctly applies the approach required by the LCP. As such, **Special Condition 1** requires the applicants to provide revised final plans that identify the bluff edge pursuant to the definition in the certified LCP, locate the proposed home a minimum of 25 feet landward of the LUE bluff edge, and locate all accessory development a minimum of 10 feet landward of the LUE bluff edge. The revised plans are necessary for the proposed development to be consistent with the certified LCP and, as discussed further below, would ensure stability and account for future erosion of the bluff seaward of the home over the economic life of the proposed development, consistent with the certified LCP.

Buildable Area

Given the development constraints of the site, with the application of the 25-foot bluff edge setback required by the LCP, the applicants could not construct the home as proposed. However, they could build an approximately 2,000 – 2,500 square foot home on the site, which would conform to the LCP setback policies, assure stability for 75 years without relying on new bluff or shoreline protection measures, would be consistent with the hazards policies of the LCP, and would be consistent with the size range of other homes in the area.

With the setback required by the LCP, four-foot side yard setbacks required by the City's zoning code, and a reduced front yard (street-side) setback, which the City has applied, the applicants could construct the home on an approximately 1,184 square foot portion of the property. This would allow for approximately 2,368 square feet of home and garage area as part of a two story home or 3,552 square feet of home and garage area as part of a three story home. The applicants' attorney contests that the remaining buildable area for the home would be approximately 2,000 square feet. However, the applicants provided insufficient information for their description of buildable area, simply stating that "it is entirely unclear what could be built, if anything, and what habitable square footage would be left. For argument's sake, we assume approximately 2,000 square feet would remain." The applicant also did not account for a potential third story, which City staff have indicated is feasible since the relevant height limit along Anita Street is 30 feet.

The LUE-defined bluff edge setback identified in [Exhibit 6](#), shows the proposed new home in relation to the area of the property that can be developed on approximately 42 by 32 foot area (reduced to 28 feet in depth at the southern edge based on the curvature of the natural bluff edge). Some gradient deviations may affect the final dimensions, and the City's variance may allow for additional development within the front setback adjacent to Gaviota. Additionally, the City review could reduce the developable area of a potential third story, depending on view impacts and interpretation of the height limit along Anita Street vs Gaviota Street (the site is a corner lot fronting two streets).

Claims of a Taking

The applicants' attorney asserts that the bluff edge and setback identified by the Commission through its review of the subject permit would be a repudiation of the Commission's 1980 action authorizing three retaining walls. The attorney further claims that the setback would reduce the building footprint to such a degree that it would destroy the proposed residence by making the proposed home unbuildable, resulting in a de facto denial. In relation, the applicants' attorney claimed that Special Condition 1.a, and 1.g would improperly move the bluff edge and treat the homeowners differently than other

neighboring residents on Gaviota Drive, upcoast and downcoast, leaving the applicants with an inability to provide the public benefits proposed in the encroachment area.

The applicants purchased their home in November 2013. The policies of the certified LCP, including the LUE, which dictate how to identify the location of a bluff edge and establish required setbacks, were certified, and accepted by the City in February 2012. The applicants purchased the home more than a year and a half after the current development standards were in place. Therefore, any financial or development expectations the applicants had when purchasing the property should have, at a minimum, accounted for the development standards in the certified LCP at the time of purchase, including any site constraints associated with the property.

There are other homes in the vicinity of the project which are two stories or three stories. As referenced in Appendix B, the average (mean) square footage for single-family residences one block upcoast and one block downcoast of the proposed project is 2,513 square feet. The smallest home in the survey area is 1,012 square feet and the largest is 4,486 square feet. There are five homes within the survey area that are smaller than the potential 2,368 square foot home that could be developed on the subject site with just two stories (excluding area for a garage) and six homes within the survey area that are larger than 2,368 sq. ft. Therefore, the contention that the reduced buildable area would treat the homeowners differently than other neighboring residents on Gaviota Dr., upcoast and downcoast is not supported by the evidence. If the applicant were to construct an approximately 3,500 sq. ft. home and garage over three stories, it would be one of the largest structures within two blocks. Because the mean size of homes within one block of the subject side is approximately 2,500 sq. Ft., the developable area of the Commission-approved home would be consistent with other homes in the vicinity and would be consistent with a reasonable investment backed decision based on the land use rules in place at the time the applicant purchased the property.

Since publication of the staff report, the applicant's attorney has submitted an additional analysis of adjacent development with the applicant's estimates of surrounding development lot size, habitable area, and number of stories. The applicant's estimates and average floor area and height are different from those identified by the Commission through its review of all available City and Commission records on adjacent development – because the applicant omits older homes, multi-unit structures, and the home with the biggest setback from the analysis. The applicant's analysis compares their proposed project to newer, large homes similar to the proposed development. Even so, the applicant's analysis demonstrates that a 2,000-3,000 square foot home (or potentially up to 3,500 square feet with a full third story) would be consistent with the surrounding pattern of development.

The applicants' attorney also argues that the Commission and the City have not consistently applied a 25 foot bluff edge setback. This is not true. There are several homes in the vicinity which appear to be developed on the bluff face, but those homes were developed prior to the effective date of the City's certified LCP. A review of adjacent development approved by the Coastal Commission and the City of Laguna Beach (Appendix B) demonstrates that the 25 foot bluff edge setback has been consistently applied. While each bluff edge is identified based on site specific conditions and geotechnical analysis, once the bluff edge is identified, the Commission and the City have consistently applied a 25 foot setback as required by the certified LCP. The applicants' request to deviate from the required 25 foot bluff edge setback in order to develop a larger

home would be inconsistent with prior decisions made by the Commission and the City of Laguna Beach.

The applicants' attorney also states that the Commission's discretion to not consider the Commission's 1980 permit decision would constitute a "taking" or, alternatively, a forfeiture of the deed-restricted public access over the sandy beach. The applicant also raises res judicata claims in insisting the Commission only consider the 1980 permit decision. However, this argument is derivative of the applicant's disagreement with Commission's location of the bluff edge. Staff's bluff edge determination does not repudiate the Commission's 1980 action.

Additionally, since the majority of the structure has been demolished by the applicants without Commission approval, the applicants do not have a valid investment backed expectation of being able to develop a new home within the same buildable area. The proposed development now constitutes a major remodel. Because the applicant should have known about decisions made prior to, and after the certified LCP, applicant's expectation of the buildable size of their home should always be in accordance with the current regulations in place.

Ultimately, the applicants claim that 1980 Commission action would be repudiated is actually a derivative argument seeking their preferred location of the bluff edge. As is explained above, that action contained no such finding on the bluff edge location. As such, the current action does not repudiate the prior action.

The applicants' attorney further states that the reduction of buildable area would yield a loss of approximately \$2 million, resulting in a taking under *Penn Central*. However, as previously stated, an unpermitted demolition of the pre-existing legally non-conforming 2,746 sq. ft. structure has taken place on the property. Because of the unpermitted demolition, the applicants do not have a valid legal reason or reasonable investment backed expectation of being able to develop a new home within the same buildable area because their prior expectations were dependent on decisions made prior to the certified LCP, and the proposed development constitutes a major remodel. Applicant's investment expectations should take into account all current certified LCP policies.

The current proposal is to replace that pre-existing structure with a single-family home. Action 7.3.10, quoted above, requires that "the pre-existing nonconforming oceanfront or oceanfront bluff structure to be brought into conformity with the LCP." In other words, the portions of the home extending seaward of the required bluff edge setback line need to be removed and the structure made to conform with the LCP's current bluff edge setback standards.

Retaining Walls

As shown in [Exhibit 4](#), the LCP-required 25-foot setback from the natural bluff edge is (in part due to the irregularities in the bluff edge line) equivalent to a 40- to 50-foot setback from the edge of the fill (i.e., top of the upper retaining wall) along the seaward-facing portion of the subject lot. Dr. Street has concluded that a geologic setback of this size would ensure stability and protect against future erosion over a 75-year economic life of the project. For these reasons, the proposed development is not expected to be threatened by coastal hazards and thus is not expected to need shoreline protection over

the life of the development, and the project can be found to conform with the hazards policies of the LCP.

However, given the dynamic nature of coastal beaches, as well as the Commission's review of data indicating that the property could be impacted by sea level rise at some point in the future, it is important to ensure that the risks of developing on these inland lots are borne by the applicant, not the public at large. The LCP prohibits new development that would require construction of a protective device that would substantially alter natural landforms along bluffs or cliffs.

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 of the property as a deed restriction.

Here, the applicants have not proposed to construct a shoreline protection device and no shoreline protection would be authorized by this permit; however, the site currently contains three retaining walls on portions of the upper, middle, and lower (toe) bluff seaward side of the home that overlap the project site and the neighboring property (1021 Gaviota) to the south; the lower wall (seawall) is a single structure that spans both properties. The existing retaining walls provide support for the neighboring property and could not be removed without causing instability and potential property damage, or else requiring the construction of new, additional stabilization structures. However, because the project site is a major remodel and therefore required to comply with the certified LUE, the project site shall not rely on coastal armoring or retain coastal armoring for the protection of the proposed blufftop residence.

In recent decisions, in addition to requiring properties undergoing major remodels in the Coastal Zone to eliminate reliance on coastal armoring structures, the Commission has also required special conditions on blufftop properties to remove shared coastal armoring structures, such as seawalls, when no longer required to protect adjacent blufftop structures (6-15-1717, Mark and Felicia Barr; A-6-ENC-16-0060, Gary and Bella Martin). The appellants have contended that the existing retaining walls are obsolete as the purpose of the walls were to stabilize the existing home, prior to the proposed redevelopment that is the subject of this permit application. The appellants further contend that the neighboring home at 1021 Gaviota Drive does not rely on the retaining walls for stability as it was issued its own independent CDP (A-80-7288 approved on October 7, 1980).

The Commission's records cited as part of the approval of the subject retaining walls include a geological report provided by Geofirm for the construction of the retaining walls on May 30, 1980. The report addresses the owners of both 1007 Gaviota Drive and 1021 Gaviota Drive. The report states that both properties are impacted by a landslide and "[b]ecause the problem is mutual, [their] investigation has been directed toward a unified stabilization scheme for both properties." (Geofirm, 1980). The report includes discussion and analysis to address instability on both properties, suggesting that, even if the walls were separately permitted, they were intended and designed to function together. The report also indicates that the residence at 1021 Gaviota Drive had more severe exposure

to the landslide. Because it is likely that the 1021 Gaviota structure was entirely reliant on the underlying natural bluff for stability (i.e., no deep foundation system), it follows that the neighboring house may be the more vulnerable to the removal of the adjacent, connected seawall and retaining walls than the development area of the subject property.

As referenced in the Revised Bluff Edge and Geologic Review Memorandum prepared by Dr. Street ([Exhibit 5](#)), these conclusions are supported by the statements in the more recent geological report provided by Geofirm on October 22, 2021, similarly noting that landsliding occurred on both properties, that the lower seawall is contiguous on both sites, and that the three retaining walls were designed as a single, interdependent stabilization system. Based on the given information and on the close proximity of the 1021 Gaviota Drive residence to the natural bluff face and the upper bluff walls, the Commission's staff geologist concluded it is likely that the removal of the walls would reduce stability beneath the 1021 structure, at least to some degree, and that wall removal would result in erosional damage to the rear yard of the 1021 Gaviota property.

In order to feasibly and safely remove the retaining walls from the 1007 Gaviota Drive, extensive construction would need to take place with uncertain results. As concluded in a conceptual analysis provided by the applicants' geologist (Stoney Miller & Geofirm, Jan. 13, 2023), removal of the existing retaining walls would require a new lateral retaining wall to be built along the lot line between 1007 Gaviota Drive and 1021 Gaviota Drive to support the 1021 Gaviota property (Geofirm, Inc, 2021). Additionally, the bluff slope at 1007 Gaviota Drive would have to be extensively regraded to conform with building code requirements of a 2:1 slope, creating a lower elevation in the bluff face, in turn requiring construction of a lateral retaining wall along the northern lot line adjacent to the City stairway and sewer force main to prevent that development and the underlying northern slope from collapsing into the 1007 Gaviota Drive lot. The Commission's staff geologist reviewed this analysis and agreed that significant slope regrading and the construction of new lateral retaining devices would likely be required if the existing walls were removed. The City of Laguna Beach Building Department affirmed the requirement for a 2:1 slope at such time as the lot is regraded and noted that terracing would also be required, necessitating additional landform alteration. The City of Laguna Beach Public Works Department advised that their stairway and sewer force main project would have to be re-designed should the slope be regraded and retaining walls added between the public right-of-way and the subject 1007 Gaviota Drive property.

Conditions of Approval

As discussed above, with the required 25-foot setback from the bluff edge (a 40 to 50 foot setback from the edge of the fill slope), the proposed development is not expected to be threatened by coastal hazards and thus is not expected to require shoreline protection over the life of the development. Additional conditions must be imposed to ensure 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 applicants to undertake development only in accordance with the Commission-approved final plans, which apply the 25-foot bluff edge setback consistent with the LCP, based on the bluff edge identified in [Exhibit 4](#). Any changes to the approved plans would require an amendment to the CDP, unless the Executive Director finds that an amendment is not required.

As mentioned, the above construction analysis for the removal of the existing retaining walls is conceptual, as further study would be required from the applicants' geotechnical engineers. However, removing the existing retaining walls would likely require a return retaining wall along the edge of the 1021 Gaviota lot. Such a project would have its own impacts, including extensive landform alteration at the bluff edge, bluff face, and northern and southern sides of the property. Land Use Plan Action 7.3.8 requires removal of obsolete structures, while Action 7.3.10 requires removal of legal non-conforming structures. Currently, the retaining walls are not obsolete or non-conforming when considering they are required to support the neighboring property at 1021 Gaviota Dr. Therefore, the least environmentally damaging path forward that is consistent with the LCP policies and the long term goal to restore the natural bluff would be to remove the walls as part of a joint effort among the adjacent properties, likely involving regrading of the bluff face to achieve stability without wall support. As such, **Special Condition 2** requires that the existing retaining walls fronting the subject site shall not be retained to protect the applicants' blufftop development (including the residence and accessory improvements) and shall be removed when no longer required to protect adjacent blufftop structures, namely the neighboring property to the south located at 1021 Gaviota Dr. Because removal of the retaining walls would likely cause extensive regrading of the bluff edge across both properties to conform to building code requirements of a 2:1 slope, **Special Condition 2** also requires the applicants to acknowledge that their home may be required to conform to a smaller buildable area in the future, which could require removal of part of the seaward portion of the home in order to comply with the conditions of this permit and the City's building code with respect to graded slopes. Future conformance to City of Laguna Beach building code Chapter 22.06 could cause the bluff edge to change due to extensive regrading. However, conformance to the building code is not a part of the certified LCP requirements.

Should the quantity or location of alterations actually carried out as part of the subject major remodel or a future project on the property 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 5**, which requires that the applicants submit a copy of the City Building Department job card after any proposed alterations on the property are complete. The City's job card would verify the extent of work and the condition of the residence remaining. The job card will also enable the Executive Director to verify that additional work is not taking place seaward of the Commission identified building setbacks and verify that public amenities proposed on the City right of way are completed consistent with the approved plans.

The project can be found to conform with the hazards policies of the Coastal Act. However, given the dynamic nature of coastal beaches, as well as the Commission's review of data indicating that the property could be impacted by sea level rise at some point in the future, the Commission imposes **Special Condition 3**, which states that any future improvements to structures, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13253(b)(6), shall require an amendment from the Commission or shall require an additional CDP from the Commission or from the applicable certified local government. This condition ensures that any future development on this site that may affect shoreline processes, structural stability, or elevate cumulative development to a major remodel receives review under the Coastal Act (or future certified LCP) by the appropriate regulatory body.

It is important to ensure that the risks of developing on the site are borne by the applicant, not the public at large. Due to the possibility of future bluff erosion and instability hazards, if the applicants choose to build in this location despite those risks, they should assume the risks of development in a hazardous area as a condition of project approval. Because this risk of harm cannot be eliminated, the Commission requires the applicants to waive any claim of liability against the Commission for damage to life or property that may occur as a result of the permitted development. The applicants' Assumption of Risk, Waiver of Liability and Indemnity, as required by **Special Condition 7**, will ensure that the applicants are aware of and understand the nature of the hazards which exist on the site, and that may adversely affect the stability or safety of the subject development, and will effectuate the necessary assumption of those risks by the applicants.

The Coastal Act Section 30253(a) and certified LUP policies 7.3.8 and 7.3.10, prohibits approval of new development that would require armoring to be safe. Therefore, **Special Condition 8** requires that if any part of the proposed development becomes threatened by coastal hazards in the future, the threatened proposed development shall waive the right to use coastal armoring for protection and the development must be removed rather than protected in place. This condition recognizes that predictions of the future cannot be made with certainty, thereby allowing for development that is currently safe and expected to be safe for the life of the development, but ensuring that the future risks of property damage or loss arising from sea level rise or other changed circumstances are borne by the applicants enjoying the benefits of new development, and not the public.

To ensure that any prospective future owner of the property is made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition 10**, which requires the property owner record a deed restriction against the property, referencing all of the above special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

Only as proposed and conditioned can the project be found to be consistent with the hazards policies of the certified LCP.