

CALIFORNIA COASTAL COMMISSION

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W11b

A-5-LGB-22-0025 (Mike and Lori Grey)

April 10, 2023

Correspondence



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Refer To File # 504223-0001

April 7, 2023

W11b

Donne Brownsey, Chair
Coastal Commissioners
California Coastal Commission
South Coast District Office
301 E. Ocean Boulevard, Suite 300
Long Beach, CA 90802

Re: Commission Appeal No. A-5-LGB-22-0025
(Mike & Lori Gray)
Hearing Date: April 10, 2023 Agenda Item: W 11.b

Dear Chair Brownsey and Honorable Coastal Commissioners:

This firm represents Mike and Lori Gray, the owners of the oceanfront property at 1007 Gaviota Drive, Laguna Beach, who, after over 10 years of effort, seek Commission approval of their proposed residential remodel.

The last two years marked a commendable, cooperative effort between the Grays, the City, and Commission staff in which the Grays addressed all of the issues raised, leading to unanimous City approval of the proposed remodel, in conformity with the LCP and the public access and recreation policies of the Coastal Act. The bluff edge was determined and approved by the City, consistent with this Commission's 1980 CDP "top of the bluff" determination at the upper retaining wall and two expert reports by Geofirm (2021) and GeoSoils, Inc. (2022 "Final Coastal Bluff Edge Evaluation") and a third peer review by the City's third-party geotechnical consultant confirming that location. The City approved the remodel with a 25-foot setback. That is the Project we ask the Commission to approve. (Please see Exh. 1 hereto.)

Unfortunately, the staff recommendation would nullify that entire past effort. While the Grays willingly agree to nearly all of the special conditions recommended, **they specifically object to Special Conditions 1 (the first paragraph), 1.a, 1.b, and 1.g and Special Condition 2,** insofar as they improperly redetermine the location of the bluff edge as being substantially landward and then add a 25-foot setback on top of that, and additionally require future removal of the bluff retaining wall system that the Commission approved in 1980 and as to which the Grays have a vested right to retain.

A copy of this letter has been provided to Commission Staff in the South Coast District Office

As a result, the staff recommendation is not for approval; it is a de facto denial. It would destroy the proposed residence, making it unbuildable, and also makes it impossible for the Grays to provide the collaborative public access, native landscaping, and related public amenities in the Anita Street right-of-way that have been intended to complement the City's own access and sewer lift project, agendaized following this item as Item W12.a.

As discussed below, the staff recommendation would repudiate the 1980 Commission's CDP "top of the bluff" determination, which, as a matter of settled law, the Commission may not do. The 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. The staff recommendation would result in an unconstitutional taking with respect to the 1980 CDP and the proposed development, a violation of substantive due process, and a denial of equal protection, as it demonstrably treats the Grays' proposed residence differently from the other residences, upcoast and downcoast, on Gaviota Drive, which are larger and situated far seaward, including to the beach below.

Accordingly, we respectfully request that the Commission and Staff revisit the staff recommendation. While our objections are detailed below, at the conclusion of this letter, in Part XII, we ask the Commission to consider the many factors that enable it to approve the proposed Project, consistent with the 1980 CDP and the City's approval, or as permitted to avoid constitutional violations in the exercise of its discretion.

To that end, we ask simply that the reference in Special Conditions 1 (the first paragraph), 1.a, 1.b., and 1.g, to "from the bluff edge identified in Exhibit 4" be revised to read instead "from the bluff edge identified in the GeoSoils' 'Final Coastal Bluff Edge Evaluation (October 20, 2021)'," and that Special Condition 2 be deleted.

I. Procedural Background

The Grays have spent 10 years before the City of Laguna Beach in an effort to remodel their existing house. In May 2021, the City approved a prior iteration of this remodel, which was appealed to the Commission (A-5-LGB-21-0043). The Commission found substantial issue. Thereafter, the Grays determined that the best course was to withdraw their application and return to the City to work closely with both the Commission and City staffs to address each of the concerns noted in the Commission's substantial issue staff report. As a result, the Project was significantly revised, with the two staffs closely reviewing and dictating the changes at each step. Indeed, questions that Commission Staff asked were addressed and changes that Staff requested were, in turn, required by City staff and agreed to by the Grays. Still further, the Grays volunteered substantial public improvements in the Anita Street right-of-way, including an attractive vehicle drop off and pickup area for beachgoers (and especially children being dropped off at the beach by the parents), bikes racks, and a concrete bench. It was, as noted, a case of commendable collaboration between the two staffs and compliance by the Grays.

On April 28, 2022, the City's Design Review Board (DRB) unanimously voted to conditionally approve design review and a CDP for the major remodel of the existing residence. The resulting residence – although not disclosed by the Staff Report – is completely compatible with the surrounding neighborhood, except that it is lower in profile and, with one unique exception,¹ located further landward than any of the neighboring residences, upcoast or downcast, on Gaviota Drive. (Exh. 4 hereto; Staff Report, exh. 1, pp. 1-2, and Exh. 2, pp. 22, 24.) As approved, it complies with the stringline and all required setbacks, including a 10-foot deck setback that Commission Staff itself dictated just prior to City approval, and with the guidance from Commission Staff and as required by the City, the Project is fully compliant with the LCP and public access and recreation policies of the Coastal Act.

The Project also has a unique history. Unlike most projects, this Project does not come before the Commission with an unprotected bluff. In 1980, the Commission approved a CDP for a separate project – the restoration and stabilization of a bluff that failed not only across this property but the adjacent downcoast property as well. That CDP permitted the retaining wall system that now protects both properties, as well the upcoast Anita Street public access stairs to the beach below. The Commission-issued CDP expressly marked the “top of the bluff” at the upper retaining wall. (Exh. 5 hereto.) The prior landowner vested that permit with the bluff repair. He also complied with the Commission's 1980 permit conditions, dedicating lateral public access over the sandy beach – a popular, wide beach enjoyed by the public (as evidenced by the City's concurrent application on your agenda as Item 12. as to implement additional public access and City sewer lift station improvements). (Exh. 6 hereto.) As discussed below, the current staff recommendation would unwittingly result in a taking or, alternatively, a forfeiture of the dedicated beach access.

It also is worthy of note that the City of Laguna Beach weighed in previously to address the issues as well (See Substantial Issue Staff Report, exh. 5), presumably because the City, too, felt that its positive interaction with Commission Staff during its review process compelled the conclusion that we now ask the Commission to make – an approval with the house in the location proposed and approved by the City.

II. The Grays Did Literally Everything Asked of Them by Both the Commission and the City, and Then Even More, as the Commission Recognizes in the Concurrently Issued Staff Report on the City's Anita Street Improvements

Before proceeding to the issues, we believe it is critical to emphasize just how commendably cooperative the Grays have been in pursuing their proposed residence. As noted,

¹ As discussed below, the exception is a 1936 1,136 square foot structure adjacent to Gaviota Drive, 122 feet from the bluff edge, presently undergoing a remodel. As is plainly evident from aerial photographs of the numerous homes along Gaviota Drive, all other houses, upcoast and downcoast are proximate to, or at, the beach, including all of those on Staff's inaccurate neighborhood chart shown as having a 10-foot or 25-foot setback. (Exhs. 2 and 3 hereto.)

after the initial City approval was appealed to the Commission and a Substantial Issue Staff Report issued, the Grays elected to withdraw and work with the City and Commission staff to address and resolve all issues. This included:

- For nearly 100 years, the existing home has taken lawful driveway access to the garage from the Anita Street right-of-way. Staff questioned that driveway access, so the Grays redesigned the home to take direct driveway access off Gaviota Drive instead.
- Staff questioned whether the beach-level retaining wall should be removed as unpermitted or obsolete. The Grays produced the Commission permit for the wall (No. A-80-7442) and submitted reports from the consulting geologist demonstrating that the wall is not obsolete and continues to function and provide bluff stability on this property and the adjacent downcast property, exactly as designed for over 40 years now.
- Staff indicated that an up-to-date wave run-up and sea level rise assessment must be prepared. The Grays had GeoSoils, Inc., prepare the required report.
- Staff stated the City should impose a condition requiring waiver of the right to future shoreline protection. The Grays proactively proposed, and the City imposed, the condition.
- Staff stated the City should require a bluff edge determination. The City required a further bluff edge determination. In addition to producing the Commission's 1980 CDP which identified the "top of the bluff," the Grays had two additional bluff edge determinations prepared by both Geofirm and GeoSoils, both of which were peer-reviewed and approved by the City's geotechnical reviewer, Kling Consulting Group.
- Staff stated the City should determine the appropriate setback from the bluff edge, also noting that the LCP provides some discretion to determine whether the site should be subject to the 25-foot bluff edge setback. The Gray's provided the 25-foot setback from the multiple consultants' identified bluff edge.
- Staff indicated the City should determine that the proposed remodel is consistent with the string line. The City did so, and the Grays demonstrated, and the City concurred, that the proposed residence complies with the stringline.
- Staff stated that the adverse visual impacts of a substantial below-grade room proposed under the seaward deck and to daylight on the bluff be reconsidered and alternatives, if any, addressed to eliminate any such impacts. The Grays simply deleted the below-grade room from the Project.
- Staff stated that the City should consider whether approval of the proposed remodel would reduce density in the R-2 zone. The City did so, and the Grays produced evidence, and the City concurred, that the Project would not reduce density in the R-2 zone and, other than perhaps the period 1968 to 1974, its use since 1924 has been as a single-family residence.

But that is not all.

First, Commission Staff advised the City, and the City in turn directed the Grays, to eliminate that portion of the deck proposed within 10 feet of the existing upper retaining wall, because in Staff's view that would be 10 feet from the bluff edge. The Grays obliged and revised the plans to indicate native plants would be planted in the setback.

Second, the Grays' adjacent downcast neighbor, whose house is significant larger and significantly further seaward (Exh. 4 hereto; Staff Report, exh. 2, pp. 22, 24), insisted that the Grays move the downcast portion of the house landward to avoid blocking their ocean view out of a side window. The Grays did so.

Third, because there are only a handful of parking spaces on Anita Street and Gaviota Drive, parents routinely must drop off and pick up children who go to the popular beach in the middle of the street. To eliminate the safety issue and working with the City, the Grays proactively proposed an attractive "cut-out" in the Anita Street right-of way for temporary drop-off and pick-up parking, a bench, a water fountain, and bike racks; agreed to protect and maintain a mature tree in the right-of-way and to landscape the area with native plants; and removed all fencing along the upper portion of the slope along the right-of-way. (Staff Report, exh. 2, pp. 29, 31, 34.)

The Grays were not obligated to provide the off-site public access amenities in the right-of-way, but they did so and, as discussed below, that should be credited, among several other factors, in addressing the setback issue. As the "No Substantial Issue" staff recommendation for the City project (Item 12.a on your Agenda) states:

"Through the City's issuance of a REP [Revocable Encroachment Permit], the applicant [the Grays] would construct public amenities in the encroachment area, including a public vehicle drop off area and public bike racks (Exhibit 2). The applicant would also be responsible for maintenance of an existing mature tree and native landscaping within the public right-of-way. Those elements are not part of the subject project, but should the Commission approve the adjacent project through a separate permit on appeal, they will improve public access adjacent to the public right of way." (Staff Report, Item 12.a, p. 4.)

With the current Staff Recommendation, the Project would not proceed and it would be impossible for the Grays to provide these collaborative public benefits.

III. The Commission's 1980 CDP Determined the "Top of the Bluff" and, As a Matter of Law, That Determination May Not Be Collaterally Attacked or Reexamined in this Appeal

The Staff Report first suggests that the location of the bluff edge, as approved by the City, is not accurate. Staff's analysis is wrong. In 1980, the Commission itself identified the location of bluff edge, and that bluff edge location was further confirmed by two expert geotechnical reports, which also were peer reviewed and approved by the City's own geotechnical consultant. Commission staff knew exactly where the "top of the bluff" was located. In approving the

restoration and stabilization of the bluff, the Commission noted the “top of the bluff” in the 1980 CDP at the upper retaining wall, which is essentially coincident with the natural location of the bluff subsequently delineated by GeoSoils, Inc., in its “Final Coastal Bluff Edge Evaluation” (2022).

Specifically, in 1980, the prior owner of this oceanfront property (1007 Gaviota Drive) and the owner of the adjacent downcast oceanfront property (1021 Gaviota Drive) concurrently applied to the Commission to restore and stabilize the bluff, which had just failed in a landslide that occurred across the two properties. The Commission approved two CDPs. As to this property, the Commission issued CDP No. A-80-7442 (Langman), which approved the construction of the three retaining walls to restore and stabilize the failed bluff. (Exh. 5 hereto.) It concurrently issued a second CDP, A-80-7288 (Butts), to continue the bluff restoration/stabilization on the adjacent property. Importantly, the description of the project which Staff wrote on the Commission permit approved for the subject property stated the following:

“Construction of 3 retaining walls on an improved, 4,880 +/- ocean bluff, R-2 lot. One retaining wall, at the top of the bluff, will be 32’ across the site and 4.5’ above grade, one wall will extend the width of the site, 40’ and 2’ above grade and the third wall, the most seaward, will extend the width of the site, 40’ above grade. Three walls are required to stabilize the site due to the steep slope and the distance down slope, 57 +/-’, to be stabilized.” (Exh. 5 hereto, p. 1; emphasis added.)

The Commission itself thus defined the “top of the bluff,” and it did so to restore the bluff to its natural location and based upon the definition of “coastal bluff” in the Commission’s regulations at the time. The validity of the Commission’s decision is necessarily presumed. (Evid. Code, § 664; *City of Sacramento v. State Water Resources Control Bd.* (1992) 2 Cal.App.4th 960, 976 [courts must presume that an agency carries out its official obligations].)

Under settled case law, the 1980 Commission decision was not challenged and became “administrative res judicata” and binding in effect. Today, as a matter of law, it may not be collaterally challenged or repudiated by anyone, whether the appellants or the Commission. It is “absolutely immune from collateral attack.” (*Citizens for Responsible Development v. City of West Hollywood* (1995) 39 Cal.App.4th 490, 505.) Indeed, the cases are legion in which this Commission has successfully barred attempts to collaterally attack its LUP and permit decisions. (*Beach and Bluff Conservancy v. City of Solana Beach* (2018) 28 Cal.App.5th 244, 263 [LUP decision]; *Sierra Canyon Co. v. California Coastal Com.* (2004) 120 Cal.App.4th 633, 669 [CCC permit decision]; *Ojavan Investors, Inc. v. California Coastal Com.* (1994) 26 Cal.App.4th 516, 524 [CCC permit decision]; *Patrick Media Group, Inc. v. California Coastal Com.* (1992) 9 Cal.App.4th 572, 617 [CCC permit decision]; *Rosasco Holdings, Inc. v. State of California* (1989) 212 Cal.App.3d 646, 656 [CCC permit decision]; *Liemert v. State of California* (1983) 149 Cal.App.3d 222, 233 [CCC permit decision].)

The Staff Report asserts that the Commission's findings and exhibits did not identify the bluff edge and that bluffs are dynamic landforms which change over time. (Staff Report, p. 16.) To the contrary, the Coastal Development Administrative Permit approved the construction of three retaining walls (currently in place) and, as to the upper retaining wall, it specified "[o]ne retaining wall, *at the top of the bluff*, will be 32' across at the site, and 4.5' above grade," and the "three walls are required to stabilize the site due to the steep slope and the distance down the slope (+/-57') to be stabilized." (Exh. 5 hereto, p. 1; italics added.) Further, the foregoing cases demonstrate that the 1980 decision may not now be reexamined to support a new and different "top of the bluff" determination. For purposes of administrative res judicata, even an erroneous decision, which is not the case here, would be as conclusive as a correct one. (*California Coastal Com. v. Superior Court (Ham)* (1989) 210 Cal.App.3d 1488, 1493-1501 [barring a collateral challenge to a Commission decision imposing the same lateral access condition under the same circumstances as the access condition struck down as unconstitutional by the U.S. Supreme Court in *Nolan v. California Coastal Commission* (1987) 483 U.S. 825]; *Weil v. Barthes* (1955) 45 Cal.2d 835, 839.)

The Staff Report also fails to apply the Commission regulation in effect at the time of the decision but rather purports to use the definition of "Oceanfront Bluff Edge or Coastal Bluff Edge" in the certified Land Use Element ("LUE"), which was added to the City's LCP in 2011. However, the current definition is not the same as the coastal bluff edge definition in the Commission's regulations in 1980. This is evident from the current definition, which is relied upon instead by Dr. Street.

In 1980, Section 13577 of the Commission's regulations defined the bluff edge as:

"Bluff line or edge shall be defined as the upper termination of a bluff, cliff, or Seacliff. In cases where the top edge of the cliff is rounded away from the face of the cliff as a result of erosional processes related to the presence of the steep cliff, the bluff line or edge shall be defined as that point nearest the cliff beyond which the downward gradient of the land surface increases more or less continuously until it reaches the general gradient of the cliff. In a case where there is a step like feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the cliff edge."

In fact, that language in the Commission's regulation is unchanged today.

By contrast, the 2011 amendment of the City's certified LUE added the definition of "Oceanfront Bluff Edge or Coastal Bluff Edge" as:

"The California Coastal Act and Regulations define the oceanfront bluff edge as the upper as the upper termination of a bluff, cliff, or Seacliff. In cases where the top edge of the cliff is rounded away from the face of the cliff as a result of erosional processes related to the presence of the steep cliff face, the bluff line or edge shall be defined as that point nearest the bluff face beyond which a downward gradient is maintained continuously to the base of the bluff. In a case where there is a step like feature at the top of the bluff, the

landward edge of the topmost riser shall be considered the bluff edge. **Bluff edges typically retreat over time because of erosional processes, landslides, development of gullies, or by grading (cut). In areas where fill has been placed near or over the bluff edge, the original bluff edge, even if buried beneath fill, shall be taken to be the bluff edge.**" (Emphasized portion added by the 2011 LUE amendment.)

In 1980, the definition of bluff edge was simply different than that addressed by Staff. Indeed, that same definition was applied by the Commission right up to the 2011 LUE amendment. (5-11-064 (Yousef), p. 11 [decided by the Commission in 2011, just prior to the final certification of the 2011 amendment to the LUE].)

In this case, the City carefully reviewed the issue, including with Commission Staff. In fact, the GeoSoils bluff edge delineation was requested by, and shared with, your Staff. As the City concluded, the two recent expert reports addressed the bluff issue and confirmed that the top of the bluff is where the Commission itself determined it in 1980. The first report, prepared by Geofirm (10/22/21), explained the location of the top of bluff by reference to both the Commission's 1980 determination and its regulation defining "coastal bluff" in effect at that time. Geofirm determined that the bluff edge is located at the upper retaining wall, *i.e.*, "at the top of the bluff," consistent with the 1980 CDP. That is the controlling location of the bluff edge on this property, and the Commission, adhering to settled precedent (nearly all of it established in cases involving the Commission), should so determine in approving this Project. Nothing has changed since 1980. As a matter of law, the 1980 CDP bluff edge determination cannot now be reconsidered. It is dispositive of the bluff edge and setback issues.

IV. Staff's Attempt to Dismiss the Commission's 1980 Bluff Edge Determination Has No Merit.

The Staff Report offers different arguments in an effort, surprisingly after all the cooperation, to negate the 1980 bluff edge determination. The arguments have no merit, as a matter of law.

First, Staff argues that when the Commission acted in 1980, the express reference in the Coastal Development Permit was a "general reference to the location of the proposed development," and it "did not constitute an analysis of a complex geomorphological feature." (Staff Report, p. 20.) The Staff Report erroneously states that the description "may well have been taken directly from the applicant's application form, as was a common practice as a way of reflecting applicants' descriptions of their proposed work." Nonsense. There is nothing in the application that states that. It is a made-up argument.

The bluff restoration and stabilization project was approved by the Commission on the Administrative Calendar. The Staff Report inaccurately states that "the Commission's "findings" and exhibits did not identify the top of the bluff or that [the] retaining wall was to be the bluff edge and, in fact, did not identify a bluff edge in any way." (Staff Report, p. 20.) There were no separate findings, and Staff has subsequently confirmed that. The findings for this permit were

set forth in the 1980 CDP itself, and its reference to the upper retaining wall being at the “top of the bluff” were critical in identifying the location of the bluff edge and where the upper retaining wall was to be constructed. There was no other reason for the CDP to make clear “One retaining wall, at the top of the bluff, will be 32’ across the site and 4.5’ above grade.” Further, Staff’s argument does exactly what the settled principle above declares that neither an applicant, a project opponent or the Commission itself may do years after the 60-day statute of limitations has run on the permit approval – undertake a re-review of the Commission’s quasi-judicial decision. We all must presume that in 1980 Commission staff properly did its job – period. That is the law, and the decision may not be collaterally re-examined or challenged by anyone now.

Second, the Staff Report states “[e]vent if the reference to the ‘top of the bluff’ were the Commission’s description, it does not say at the bluff edge.” (Staff Report, p. 20.) This is nonsensical. The 1980 CDP states, “One retaining wall, at the top of the bluff.” Where else would it be other than at the bluff edge? The fact that Staff referenced in the CDP the “top of the bluff” means that Staff clearly did consider the “top of the bluff” to be the bluff edge or it would not have stated it so in referring to the upper retaining wall. It was not merely “dicta” – a term used in the Staff Report reserved for court opinions. It was the very permit issued to authorize the bluff restoration and stabilization project.

Third, equally spurious is the assertion that administrative res judicata, flowing from the 1980 CDP, was only administrative res judicata at the time because “bluffs are dynamic landforms.” (Staff Report, p. 20.) Perhaps, but not this bluff and not at this time. There has been no change in the bluff at all in 43 years because the retaining wall system has worked just as it was designed.

Finally, it is no coincidence that GeoSoils, Inc., identified the natural bluff edge as being essentially in the location of the upper retaining wall. This is discussed below, but that expert determination confirms what the 1980 CDP states: “One retaining wall, at the top of the bluff.”

V. Staff’s Redetermination of the Bluff Edge and Setback is Fundamentally Flawed and Wrong

Dr. Street has now revised his earlier bluff edge determination prepared for the March 2023 hearing of this item. Importantly, because the Commission determined the bluff edge in its 1980 CDP, the current Land Use Element definition of the bluff edge, certified in 2011, and Dr. Street’s view of how it should be applied here are legally irrelevant. In any case, even addressing his analysis, it is fundamentally flawed in several respects. This is separately addressed as well by Geofirm in its March 3, 2023 letter.

First, Dr. Street notes the second bluff edge determination prepared by GeoSoils, Inc., the “Final Coastal Bluff Edge Evaluation” (2/22/2022). (Exh. 7 hereto.) GeoSoils fully considered geologic maps and literature, historical aerial photographs, site reconnaissance, and engineering and geological analyses to determine the location of the “natural bluff edge” based on the City’s LUE definition of oceanfront bluff/coastal bluff. Based on that information, GeoSoils concluded

that the location of the coastal bluff edge at the subject site occurs at “the topographic inflection point between the mostly flat-lying to gently sloping coastal terrace and the more steeply sloping coastal bluff.” (*Id.*, p. 7.) The approximate location of the natural bluff edge was plotted, roughly coterminous with upper retaining wall, which the 1980 CDP determined as “the top of the bluff.” (*Id.*, Plate 1 and pp. 6-7, and Exh. 8.) And, the GeoSoils natural bluff edge determination was itself peer-reviewed and approved by the City’s consulting geotechnical consultant. It demonstrated that the Commission knew exactly what it was doing in approving the 1980 CDP, in defining the “top of the bluff” as the location of the upper retaining wall and restoring the bluff to its natural location.

Second, Dr. Street agrees that the GeoSoils report “is a useful study, as it provides an estimate of the bluff edge position prior to . . . the 1980 landslide.” (Staff Report, Exh. 5, p. 4.) However, Dr. Street omits from the current memorandum the discussion in his first memorandum where he erroneously postulated that the GeoSoils report, which utilized overhead aerials from 1947 and 1963, did not account for the “significant erosion and bluff edge retreat that appears to have occurred in the late 1960s – 1970s.” (*Id.*) In the first memorandum, he further posited that the natural bluff edge in the GeoSoils Report “no longer existed (or had been substantially eroded) by the time the bluff slope was stabilized in 1980-1981.” (*Id.*) Still further, he stated that as a result, the Land Use Element bluff edge occurs approximately 10 feet landward of the top of the uppermost retaining wall, i.e., the seaward edge of the fill. (*Id.*, pp. 4-5.) The problem is that outside of perhaps significant sloughing that occurred on the face of the bluff, there is zero evidence to support Dr. Street’s comments, and in fact the evidence is to the contrary, which we assume is why he eliminated the discussion in current memorandum.

There is no evidence that natural bluff edge eroded or retreated by 10 feet, a couple of inches, or at all. There is no evidence that there was some blanket uniform, across the bluff, erosion of the natural bluff edge, as Dr. Street appeared to assume. And there is no evidence where erosion or retreat occurred, and no evidence of how much erosion or retreat may have occurred. There is, though, other helpful aerial photographic evidence. The California Records Project included oblique aerials from 1972 and 1979, and they do show some evidence of erosion on the bluff face. It was localized erosion, primarily on the downcoast side of the bluff face, but there is no evidence of an impact on the natural bluff edge during that period until the bluff failed in 1979-1980. Thus, the underpinning for the assumption that there was some significant bluff edge retreat, let alone 10 feet, was simply unsupported.

Third, Dr. Street has also abandoned his comment in the first memorandum that “tracing the bluff edge across the site in plan view is necessarily inexact due to the presence of the fill obscuring the topography of the natural bluff materials, and due to the limited subsurface information available.” We would have to agree that an effort 43 years after the fact and actual Commission review is subject to inherent uncertainty. But in both memoranda, Dr. Street then resorts to use of the contractor’s cut and fill line, the geologic contact between the fill (“Af”) and the upper bluff marine (“Qtm”) and non-marine (“Qtn”) terrace deposits across the site. This bizarre line does not represent the natural bluff edge, or a “step-like feature,” or grading or

terracing to create a house pad or new level. It is nothing more than the contractor's temporary cut and fill line to permit access to restore the failed bluff on an essentially flat area of the property. The contractor could have placed it anywhere. Dr. Street, however, states that this is the best evidence of the position of the LUE bluff edge on the subject lot, and the Staff Report incredibly states that this whacky line is the "natural bluff line." (Staff Report, pp. 21, 22.) This wrong for two reasons.

First, the LUE definition itself states in the last sentence "[i]n areas where fill has been placed near or over the bluff edge, the original bluff edge, even if buried beneath fill, shall be taken to be the bluff edge." (*Italics added.*) The original bluff edge was established in the 1980 CDP and the 2022 GeoSoils report. The bluff edge is defined by where the natural bluff is located, not where the fill is. That is consistent with the Coastal Act policies in sections 30251 and 30253, which require protection of "natural landforms," not artificial ones. In this case, the whole goal of temporary cut and fill was to restore the natural bluff, not to exceed or change it. The 1980 CDP accomplished that. The fill was placed near or over the bluff edge, and as the LUE expressly provides "the original bluff edge, even if buried beneath fill, shall be taken to be the bluff edge." The contractor's temporary cut and fill line obviously was not used or relevant under your regulation in 1980. And, under these unique circumstances, if it were applied now, a landslide repair in Laguna Beach – whether public or private – would be foreclosed since the Land Use Element also forecloses development on the bluff face, an absurd result.

Second, the use of the temporary cut and fill line was grossly improper. That line is shown on Staff Report Exhibit 4 and Exhibit 5, page 9, as the "LUE Bluff Edge." (See also Exh. 9.) It is noticeably bizarre and completely irregular for a reason, and again that reason bears no relation to the natural bluff edge. There is nothing "natural" about that line. It is taken from the Geotechnical Plot Plan and Cross Sections A-A and B-B attached to the July 20, 2016 geotechnical report prepared by Geofirm. As Geofirm explained in its separate March 3, 2023 letter, the line is an artifact created by the contractor to make the bluff repair efficient by creating access to facilitate the work and build the footings required to effect the repair. It could have been anywhere – further seaward or landward, whatever the contractor believes is necessary and in whatever configuration she/he/it believes is necessary to get the work done properly. But, it does not in any respect reflect any natural bluff edge, and it should be noted that it includes three 90 degree angles, something that does not occur in nature, much less in the configuration shown on the graphic. For the Staff Report to characterize this line as the "natural bluff edge" is pure nonsense.

Lastly, from Dr. Street's oddly configured LUE Bluff Edge," he creates a largely straightline on an angle, which does not match, to artificially concoct a 25-foot bluff edge setback, but which effectively destroys the proposed residence. (Exh. 10 hereto.)

In sum, while we have great respect for Dr. Street, in this case his suggested bluff edge determination and setback is fundamentally flawed and should not be applied to this Project.

VI. The Grays Have a Vested Right to the 1980 CDP and its Terms; Special Condition No. 2 Requiring Future Removal of the Bluff Retaining Walls Would Impair That Vested Right.

There is a yet a further reason why the 1980 CDP and its terms may not now be repudiated. This relates specifically to the three retaining walls approved, but which Special Condition no. 2 states would have to be removed in the future when no longer required to protect the structures on the downcoast neighbor's property.

It bears emphasis that the bluff on the Grays' property is not unprotected as might be the case with other properties to which the Land Use Element policies might apply. This property is unique. The Commission issued the 1980 CDP for bluff restoration and stabilization. The then owner of the property satisfied the conditions of approval requiring him to dedicate a lateral public access easement over the sandy beach. In reliance on the 1980 CDP issued and its terms, the owner and his then downcoast neighbor completed the approved bluff restoration and stabilization work over the two properties. Both the owner (and the neighbor) acquired a classic vested right to retain the bluff, as approved and restored, consistent with all the terms of the permit, which on its face detailed the three retaining walls, including "[o]ne retaining wall, at the top of the bluff."

The rule in California is that if a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government – as here, he acquires a vested right to complete construction in accordance with the terms of the permit. (*Avco Community Developers, Inc. v. South Coast Regional Com.* ("Avco") (1976) 17 Cal.3d 786, 791.) This vested rights doctrine protects property owners from changes in zoning or other land use regulations, which may occur before the completion of the owner's development project. (*Avco, supra* [discussing the doctrine in the context of the intervening 1972 California Coastal Zone Conservation Act]; *Billings v. California Coastal Com.* (1980) 103 Cal.App.3d 729, 735 [quoting the rule].) The vested right acquired is in the nature of a property right, rooted in the constitution. (*Pardee Construction Co. v. California Coastal Com.* (1979) 95 Cal.App.3d 471, 479.)

The Staff Report erroneously states: "The Commission's 1980 action was the approval of retaining walls. *Nothing in the current action upsets that approval.*" (Staff Report, p. 19; italics added.) Obviously wrong. Special Condition 2 specifically states:

"[T]he existing retaining walls on the upper, middle, and lower bluff identified in Exhibit 3 of the staff report dated 3/30/23 fronting the subject site may not be retained to protect the blufftop residence and/or and associated accessory development and *shall be removed 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.” (Italics added.)

Simply put, the Grays have a vested right to retain the retaining walls under the 1980 CDP that this Commission granted. It is abundantly clear that in recommending that the very retaining wall system be removed, the Staff recommendation, if adopted, would “upset that approval” and impermissibly destroy that vested property right. As discussed further below, Special Condition 2 would constitute an unconstitutional taking, and additionally it would impair the beach access easement that the owner dedicated in good faith reliance on the 1980 CDP.

VII. Staff’s Statistical Analysis is Simply Flawed and Wrong.

On Page 21 of the Staff Report, Staff indulges in a *flawed* statistical analysis in an effort to justify the structure that results from its *flawed* bluff edge determination. Again, because the Commission determined the bluff edge in its 1980 CDP, this analysis is irrelevant. But it also is wrong. Staff has prepared its own chart of houses in the 900 and 1000 block of Gaviota Drive (this house 1007 Gaviota Drive). The chart has errors and is misleading in every respect. Attached as an Exhibit to this letter is Staff’s chart with both our notations and corrected information. We break it down for you as follows:

1. **Bluff Top Setback.** Staff’s chart states on page 3 that the “average bluff edge setback” is 33.4 feet. That skewed figure is meaningless. The aerial photographic evidence is striking because it demonstrates that **literally every house, except for one, is proximate to the beach or at the beach.** (Exhs. 2 and 3 hereto.) Second, of the 19 properties, five are indicated as having a 25-foot setback, two with a 10-foot setback, and the exception being an aberrant property with a 122.83 foot setback. To convince the Commission that its 25-foot setback is reasonable here, Staff first skews its “average bluff edge setback” of 33.4 feet by including the 122.83 foot setback. That is from an 87-year old, 1936 structure set at Gaviota Drive currently undergoing a remodel. When that structure is excluded, as it should be, **the average bluff edge setback is actually 20.7 feet.** But, more importantly, the 25-foot setback referenced is dramatically different from the Staff Recommendation here because, as the aerial photographs unerringly demonstrate, **every house, including those with a 10-foot or 25-foot setback noted, are again proximate to, or at, the beach.** (*Id.*)

2. **Square Footage Generally.** The Staff Report notes that house sizes it canvassed range from 1,012 square feet² to 4,486 square feet, and it states that the “average square footage” of the ten single-family homes in this two-block stretch is 2,513.9 square feet. This is misleading. There are three houses that are very old and smaller – 154 Thalia (108 years old, 2101 sq. ft., and historic K-1 rated), 1073 Gaviota (99 years old, 1,835 sq. ft.), and 1085 Gaviota (87 years old, 1,136 sq. ft.). **When the other seven houses, which are more representative and of far more**

² This is inaccurate. The chart attached to the Staff Report accurately shows this old structure, currently being remodeled to be 1,136 square feet.

recent vintage, are considered, the average square footage is 3,285 square feet. The smallest of these houses is 1095 Gaviota, which has 1900 square feet, but even with a 25-foot setback, it is right up against the beach.

3. **Square Footage Specifically.** The Staff Report states that with its Land Use Element bluff edge determination and 25-foot setback, a 2,365 square foot house could be built on the Grays' property. That, again, is both misleading and inaccurate. It is a simplistic calculation that fails to account for the garage on the first level (there is no residential street parking available at this location). Applying Laguna Beach requirements, a typical garage square footage for this property would be 488.8 square feet, taking into account two cars, plus mechanical space (100 sq. ft., plus enclosures for three trash containers (25 sq. ft) – a total of 570 square feet. Accepting Staff's calculation of 1184 square feet on each levels, the habitable square footage of the first level would be 614 square feet. **The total livable area on both levels would be 1,798 square feet (614 sq. ft. + 1,184 sq. ft.), not 2,365 square feet.**

4. **Height.** In an effort to avoid the takings claim, the Staff Report suggests the possibility that a three-story structure might be built on this property. That, however, is not possible. As Staff notes, **the height limit along this portion of Gaviota Drive and Anita Street is 30 feet. Given its location on Gaviota Drive, the split-level two-story house is already proposed at 30 feet.** A house on this property cannot exceed the 30-foot height limit.

VIII. If the Commission Were to Repudiate its 1980 Permit Decision and Impose Special Conditions 1, 1a, and 1g, the Decision Would Constitute a "Taking" – Alternatively, it Would Require a Forfeiture of the Deed-Restricted Public Access Over the Sandy Beach

If, despite all the foregoing, the Commission were to somehow repudiate the "top of the bluff" determination in its 1980 permit decision, then the decision would result in a "taking" or, alternatively, a forfeiture of the deed-restricted public access over the sandy beach which the then owner granted, as required by the Commission's conditions of approval.

As discussed above, pursuant to the Commission's 1980 CDP, the bluff restoration project was implemented and thus vested. The permit also required the dedication of a lateral access easement over the sandy beach to the mean high line. Commission legal staff prepared and approved the easement document. It states:

"NOW, THEREFORE, in consideration of the granting of Permit No. A-80-1442 to the owners by the Commission, the Owners hereby irrevocably agree that there be, and hereby is, created the following restriction on the use and enjoyment of said property, to be attached to and become a part of the deed to the property: . . . An easement for public access and passive recreational use along the shoreline. The easement shall run parallel to the approved bulkhead and includes all area from the seaward edge of the most seaward bulkhead to the mean high tide lines." (Exh. 6 hereto, CCC Deed Restriction, pp. 2-3; emphasis added.

The applicant recorded the easement, and today the public enjoys a fairly wide and very popular sandy beach in front of this property. Yet, the staff recommendation that the Commission now can repudiate its 1980 decision, and specifically (1) its “top of the bluff” determination and (2) the retaining walls approved, puts that public access and the Commission at risk in two ways.

First, to exact the public access easement and then subsequently repudiate that decision and permit issued would surely constitute an unconstitutional taking, which the Fifth Amendment of the U.S. Constitution, and Article 1, Section 19 of the California Constitution forbid. Coastal Act section 30010 further prohibits the Commission from exercising its power “to grant or deny a permit in a manner that will take or damage private property for public use, without payment of just compensation therefor.” In reliance on the Commission’s approval of the 1980 CDP, the applicant gave away a valuable property right, the sandy beach, in exchange for a permit that approved the retaining walls and specified the upper retaining wall would be “at the top of the bluff.” That permit approval runs with the land, and subsequent owners, including the Grays, have the right to rely upon the Commission’s CDP.

Second, it would terminate the access easement because the deed restriction further provides:

“[S]aid deed restriction shall remain in full force and effect during the period that said permit, or modification or amendment thereof, remains effective, and **during the period that the development authorized by said permit, or any modification of said development, remains in existence**” (*Id.*; emphasis added.)

Simply put, the deed restriction providing the access ceases if the retaining walls are removed.

Consequently, with this Staff Recommendation, the Commission cannot have it both ways. We would agree with the Commission that the deed restricted public beach access should remain; however, if the CDP which gave rise to it is impaired, then the access exacted is forfeited, or just compensation must be paid for it.

IX. Imposition of the Bluff Edge and Setback Restrictions in Special Conditions 1, 1.a, and 1.b, and 1.g Would Violate the Equal Protection Clause

Special Conditions 1 (first paragraph) and 1.a requires that “the foundation of the proposed home shall be located at least 25 feet landward of the LCP-defined bluff edge” as Dr. Street suggests it should be located. Similarly, Special Condition 1.g. prohibits grading and excavation within 25 feet of that referenced bluff edge. This presents the unusual situation where such a contested restriction, if imposed by the Commission, would first violate the Equal Protection Clause of the 14th Amendment of the U.S. Constitution and Article 1, Section 7 of the California Constitution. The rules are settled.

The Equal Protection Clause provides that no State shall “deny to any person within its jurisdiction the equal protection of the laws.” (*City of Cleburne, Tex. V. Cleburne Living Center*

(1985) 473 U.S. 432, 439.) The State Constitution similarly provides “[a] person may not be deprived of life, liberty, or property without due process of law or denied equal protection.”

Equal protection challenges usually come from claims that a state or local government has discriminated against an identifiable class or group of persons. (*Las Lomas Land Co., LLC v. City of Los Angeles* (2009) 177 Cal.App.4th 837, 857 (“*Las Lomas*”). The United States Supreme Court, however, has provided that a claim may be made by “a ‘class of one.’ Where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.” (*Village of Willowbrook v. Olech* (2000) 528 U.S. 562, 564 (“*Olech*”).) In *Olech*, the High Court found that the Village of Willowbrook irrationally and arbitrarily discriminated against a property owner by requiring a 33-foot easement as a condition of connecting her property to the municipal water supply when the Village only required 15-foot easements from similarly situated property owners. (*Id.* at p. 565.) In cases like *Olech* and here, where there is an equal protection claim from a “class of one,” a “claim is sufficient if the plaintiff alleges that (1) the plaintiff was treated differently from other similarly situated persons, (2) the difference in treatment was intentional, and (3) there was no rational basis for the difference in treatment.” (*Las Lomas, supra*, 177 Cal.App.4th at p. 858.) A claim fails if the claimant cannot meet any one of the three factors, above.

In this case, Condition 1 (first paragraph), 1.a, and 1.g would improperly move the bluff edge substantially landward and then apply a flat 25-foot setback, destroy the residence proposed, and treat the Grays in a manner dramatically different from all of the neighboring residences on Gaviota Drive, upcoast and downcoast. The Grays residence proposed to construct a home that respects the Commission’s 1980 bluff top determination, a 25’ setback, and a further setback from downcoast adjacent neighbor’s side window ocean view. As discussed above, by comparison to the other structures, upcoast and downcoast, is it lower in profile and much further setback from the bluff than the rest of the homes upcoast or downcoast on Gaviota Drive. (Exhs. 2-4 hereto.) However, Condition 1 (first paragraph) and 1A show the structure so far landward of every other home on Gaviota Drive, all of which, with the exception noted in footnote 1, above) are substantially seaward and even extend all the way to the beach below, arbitrarily reducing its size, functionality, and viability. (*Id.*; Staff Report, exh. 1, pp. 1-2.)

Further, Condition 1 would arbitrarily repudiate a decision that the Commission granted in 1980 and on which the then applicant and now the Grays have relied; would seek to retain the lateral beach access that the Commission extracted for granting that CDP but arbitrarily repudiate the bluff edge determination by reference to a standard that obviously was inapplicable in 1980; would radically alter that bluff edge, which in any event conforms to the current standard; improperly redetermines the bluff edge in a way that is fundamentally unsupported by the evidence; and would so radically reduce the size and configuration of the structure as to make the residence effectively unbuildable. The Staff Report may have cloaked its recommendation as an “approval with conditions,” but, if adopted, it obviously would leave the Grays with an unbuildable project and necessarily the inability provide the public benefits they proposed. Simply put, it was an intentional “denial.”

Finally, the Commission has no rational basis nor any coastal resource benefit for redefining the bluff edge, different from its 1980 permit decision, and then imposing a 25-foot setback. In a rational basis test, a claimant must show that the government's differing treatment was "so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the actions were irrational." (*Gregory v. Ashcroft* (1991) 501 U.S. 452, 471.) "The rational basis test is extremely deferential and does not allow inquiry into the wisdom of government action." (*Las Lomas, supra*, 177 Cal.App.4th at p. 858.)

The Staff Report asserts that the project site is highly visible from the public beach. This merits two responses. First, the house, as proposed and approved with the setback approved the City, would not be highly visible, if it is visible at all. What is visible is the bluff face. But we agree with the Staff's observation that "the coastal bluff on which the subject home is built is marked with the development of multiple single-family and multi-family residences. The proposed new structure would not significantly or adversely affect the natural character of the bluff face and beach." This is not because of the staff recommendation. Rather, it is because it is transparently obvious that every other house, upcoast and downcoast, is further seaward on the coastal bluff and larger creating – as to this home – a non-Coastal view issue. This house, as proposed and approved by the City, will not have any negative view impacts at all, either from the beach or the right-of-way. Any suggestion to the contrary would be devoid of any merit or evidentiary support.

The second response is Staff's suggestion that, despite the height limit, the Grays might explore a three-story house. That would be highly visible house, if that were a legitimate Staff concern on this stretch of Gaviota Drive. However, as explained, the height limit is 30 feet and because of its location, the Grays propose a two story, 30 foot high home, so that would not be possible.

By contrast, if the Project is approved in the location where the City approved it, it will have beneficial view impacts by helping to clean up and beautify the Anita Street access to the beach. It will create the temporary drop-off/pick-up parking area and access support amenities (e.g., a bench, bike racks), will maintain a mature tree and add native landscaping, greatly improving, along with the City project, the aesthetics at this entry point to the beach at Anita Street. Unlike the other property owners on Gaviota Drive, upcoast or downcoast, the Grays will contribute significant benefits to the residents and general public who use this popular beach.

Similarly, there is no bluff retreat issue at this site, with or without the retaining walls approved by the 1980 CDP. Geofirm has explained that "the bluff repair and stabilization systems that the Commission approved in 1980 has performed as intended . . . The results indicate a factor of safety greater than 1.5 for a static condition and 1.1 for a pseudo-static is located throughout the property and supporting the proposed residence." (Geofirm (Oct. 3, 2022, pp. 2–3.) Similarly, "without the retaining walls supporting the backfill, a 1.5 factor of safety is achieved approximately 14 feet landward of the Commission bluff edge and seaward of the proposed building pad." (*Id.*, p. 2.) Thus, the Grays proactively proposed the "no future

shoreline protective device” and the City imposed it as a condition. Special Condition 8 repeats that condition and the Grays have no problem accepting it again.

In short, the differential treatment the current Staff Recommendation would impose on the Grays would deny them their constitutional rights under the U.S. and State Constitutions to equal protection of the law.

X. Imposition of the Bluff Edge and Setback Restrictions in Special Conditions 1, 1.a, and 1.b, and 1.g Would Violate Substantive Due Process

The same conditions, if imposed, would violate the Grays’ substantive due process rights. We acknowledge that the courts have held that “rejections of development projects and refusals to issue building permits do not ordinarily implicate substantive due process.” (*Stubblefield Construction Co. v. City of San Bernardino* (1995) 32 Cal.App.4th 687, 710.) Even where state officials have alleged violated state law or administrative procedures, such violations do not ordinarily rise to the level of a constitutional deprivation.” (*Id.*) Rather, substantive due process prevents “governmental power from being used for purposes of oppression,” or “abuse of government power that shocks the conscience,” or “action that is legally irrational in that it is not sufficiently keyed to any legitimate state interests.” (*Id.*) This is not the “ordinary” case, and substantive due process would be implicated here based on the facts.

In brief, this Commission approved two CDPs in 1980 for bluff repair and stabilization on the Gray’s property and the adjacent downcoast property at 1021 Gaviota Drive. Its decision set the “top of the bluff” at the upper retaining wall on the Gray’s property. Thus, two properties were protected, and today the house at 1021 Gaviota Drive is far larger, higher, and further seaward and will remain notwithstanding any decision the Commission makes on the Gray’s application. Yet, if the staff recommendation were adopted without change, the Grays, based upon repudiation of the 1980 CDP bluff edge determination and a fundamentally flawed attempt to redetermine the bluff edge, will be penalized and left with a largely unbuildable lot. One lot, the adjacent protected lot immediately downcoast, would retain its substantial structure, as with the other lots, upcoast and downcoast, but the Grays will have no buildable house. That result would shock the conscience, and would be legally irrational because, as demonstrated in the preceding Section, it would not be keyed to legitimate state interests. The house proposed by the Grays is set well back, as approved by the City. The staff recommendation does not further any coastal resource protection issues. Those issues were addressed by the Grays and the City in the back-and-forth between the City and Commission staffs and the many project revisions that the Grays in earnest made in response.

XI. Imposition of the Bluff Edge and Setback Restrictions in Special Conditions 1, 1.a, and 1.b, and 1.g Would Constitute a Regulatory Taking

A separate regulatory takings issue is additionally raised by the Staff Recommendation. Whether a CDP denial would constitute a taking is addressed under the ad hoc test identified in *Penn Central Transportation Co. v. New York* (1978) 438 US. 104, 124 (“*Penn Central*”).) This

test generally requires an examination of (1) the character of the government action, (2) the economic impact of the challenged regulation, and (3) the extent of the regulation's interference with reasonable, investment-backed expectations.

To evaluate whether an applicant had a "reasonable and investment-backed expectation" that a residence could be developed on the property requires expectations objectively in terms of what a reasonable person might conclude about the developability of a site, and to what degree that expectation was backed by any actual investment. In order to analyze this question, one must assess from an objective viewpoint, whether a reasonable person would have believe that the property could have been developed as proposed by the applicant, considering all the legal, regulatory, economic, physical, and other constraints that existed when the property was acquired.

The Staff Report asserts that "any financial 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." (Staff Report, p. 17-18.) Well they did. When the Grays purchased this property in 2013, they acquired it with this Commission's 1980 CDP, which on the face of the permit for any prudent home buyer in the coastal zone to read, authorized the bluff repair and stabilization and defined the "top of the bluff" at the upper retaining wall. The permit ran with the land and the Grays were entitled to rely on your permit, which they reasonably did. The City's LCP required a 25-foot setback from the bluff edge. The proposed residence complies with that requirement.

Accordingly, the Grays followed the Commission's own decision and the City's LCP and designed their house, which the City approved and is now before the Commission. All other houses, upcoast and downcoast, were larger, higher, and extended further seaward, but the Grays complied with the applicable requirements and had a reasonable, investment-backed expectation that their proposal met those requirements. In approving the Project, the City agreed.

As to the character of the government action, if the Commission were to adopt the staff recommendation and effectively "deny" the Grays' application, that decision would not advance a legitimate public interest, as explained in the discussion above concerning the other two constitutional issues. There is no legitimate view or bluff retreat issue as to this unique property. Thus, the character of a Commission action in that regard would strongly argue for a taking.

Finally, *Penn Central* requires an analysis of the economic impact of the regulatory action on an applicant's property. Although a landowner is not required to demonstrate that the regulatory action destroyed all of the property's value, the landowner must demonstrate that the value of the property has been very substantially diminished. The Grays purchased the property for \$6 million, and the Orange County Assessor places the land value of the property at \$6.686 million. Staff has suggested that taking into account the irregular setback line shown on Dr. Street's graphic, there is 1184 square feet of buildable area. But, as indicated, that does not account for 570 square feet for a two car garage, mechanical space, and trash containers. Consequently, the total habitable space would be approximately 1,798 square feet.

To determine a finished price per square foot, there is just one house on Gaviota Drive, 1165 Gaviota Drive, which is currently listed for sale at \$16.9 million, with 4,288 square feet, which yields a finished price per square foot of \$3,941/square foot. The estimated cost per square foot to build a 2,368 square foot structure (with only approximately 1,798 square feet of habitable square footage) in this location in coastal Orange County and Laguna Beach would be approximately \$2,000/square foot, and thus it would cost on the order of \$4.7 million to build such a structure. The Grays' \$6 million purchase price plus \$4.7 million to construct the structure would therefore involve an investment of about \$10.7 million. However, if the finished price per square foot is \$3,941, that times 2,368 square feet would yield a sales price, after construction, of \$9,320,465. However, it would be quite a bit less because of the limited habitable square footage (approximately 1,798 square feet) and odd configuration leaving but a small resulting area for use on the first floor), a loss of at least \$1.4 million but, again, probably much more. Thus, it would make no sense for the Grays or anyone to pursue. Further, the Grays' realtor indicates there are no 2000 square foot structures in this area of Laguna Beach that have sold for as much as \$8 million, much less one with significantly less habitable square footage than that, and that especially would be the case with a small structure in this location, set so far back in the shadow of the adjacent downcoast house, which is far larger, far higher, and further seaward.

In sum, based on the difference in value between nearby developed properties, the Gray's purchase price and the land value of this property, we believe that if the Commission were to adopt the staff recommendation, a court would conclude that effective denial of the application to construct the residence proposed results in a taking under *Penn Central*, in violation of Article 1, Section 10 of the California Constitutional, the Fifth and Fourteenth Amendments to the U.S. Constitution, and Coastal Act section 30010, which states that the Commission may not exercise its "power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor."

XII. Reasons Why the Commission Should Approve the Project in a Manner That Permits a Viable Home Consistent With the City's Approval

In summary, there are a host of reasons why proposed Project should be approved in a manner which results in a bluff edge and setback that permits a viable home consistent with the Grays' current proposal.

Unlike most of the projects that come before the Commission, this is not a residential project with an unprotected bluff, potentially subject to erosion through, for example, sea level rise or wave action. It is well-protected by the Commission-approved retaining wall and bluff stabilization system that has worked perfectly as designed, as explained in reports prepared by Geofirm and GeoSoils. There is a 1980 Commission-issued permit with a "top of the bluff" determination at the upper retaining wall. There are two peer-reviewed expert reports which confirm that "top of bluff" determination, one based on the Commission regulation in effect at the time of the 1980 approval and one based on the more recent certified LUP. Dr. Street's bluff edge determination and setback are, unfortunately, inherently uncertain, erratic based on

assumptions that are unsupported, a redetermined bluff edge line that does not exist in nature or for the purpose of delineating a bluff edge, and a maximum setback line that does not relate to the bluff edge line. And there are constitutional issues – the takings, equal protection, and substantive due process issues – if the Staff’s redetermined bluff edge and 25’ setback and retaining wall removal requirement are applied to this property, as Staff has proposed in Special Condition 1, 1.a, 1.b, and 1g and Special Condition 2.

In these unique circumstances, the Commission should approve the Grays’ residence consistent with its 1980 CDP and apply the 25 foot setback, as the City properly did. As the Commission knows, where the federal and state constitutional issues have prohibited a taking or denial of equal protection, the Commission has exercised flexibility and discretion to avoid the constitutional violations. It could do that here as well.

The controlling factors are, in summary:

- (1) The “top of the bluff” determination the Commission made in 1980 CDP No. A-80-7422;
- (2) The Grays’ vested right to the 1980 CDP and all of its terms, including retention of the retaining walls;
- (3) The access easement required by the 1980 CDP dedicated over the sandy beach;
- (4) If the 1980 CDP is repudiated, the inability from Dr. Street’s analysis to properly determine the exact location of the bluff edge and associated setback;
- (5) The avoidance of a violation of the Gray’s federal and state constitutional rights;
- (6) The bluff seaward of the proposed residence is protected by the Commission-approved retaining wall and bluff stabilization system that has functioned perfectly and as designed for 43 years;
- (7) The location of the proposed remodel, as approved by the City is set back significantly landward of every other house upcoast and downcoast on Gaviota Drive;
- (8) The proposed home is lower in profile and smaller in size in contrast to all of the other homes, including the adjacent downcoast home, on Gaviota Drive;
- (9) The proposed home will not create visual impacts from the beach below in contrast to every other house upcoast and downcoast on Gaviota Drive.

Finally, the proposed remodel is distinctly different from every other home on Gaviota Drive in voluntarily providing the recognized public access benefit to the Laguna Beach community and beach-going public generally by providing a safe drop-off/pick-up parking area for beachgoers (especially children) with associated access amenities (e.g., a concrete bench, bike racks), as well as landscaping improvements in the right-of-way (maintaining the mature tree, planting native landscaping) which will greatly improve and enhance the aesthetics of the approach to the beach at Anita Street, together with the access improvements proposed by the City.

Donne Brownsey, Chair
Hon. Coastal Commissioners
April 7, 2023
Page 22

Conclusion

For all of the foregoing reasons, the Grays ask the Commission to approve their application consistent with the City's approval of the proposed remodel and with all of the special conditions recommended by Staff, except the following:

In each of Special Conditions 1 (the first paragraph), 1.a, 1.b., and 1.f, revise "from the bluff edge identified in Exhibit 4" to read "from the bluff edge identified in the GeoSoils 'Final Coastal Bluff Edge Evaluation (October 20, 2021)'" and delete Special Condition 2.

We look forward to discussing the Project further with you at the upcoming hearing.

Sincerely,

A handwritten signature in blue ink, appearing to read "Steven H. Kaufmann", with a long horizontal flourish extending to the right.

Steven H. Kaufmann
Nossaman LLP

SHK:jr

ccs: Dr. Kate Huckelbridge, Executive Director
Karl Schwing, District Director, San Diego Coast/South Coast Offices
Zach Rehm, District Supervisor, South Coast District Office
Bailey Warren, Coastal Program Analyst, South Coast District Office
Marc Wiener, AICP, Community Development Director, City of Laguna Beach
Christian Dominguez, Senior Planner, City of Laguna Beach
Mike and Lori Gray



NOSSAMAN LLP

W11b

Commission Appeal No. A-5-LGB-22-0025
(Mike & Lori Gray)

Hearing Date: April 10, 2023
Agenda Item: W 11.b

Exhibits 1-10 to Letter Dated April 7, 2023
To The Commission and Staff

Prepared By:

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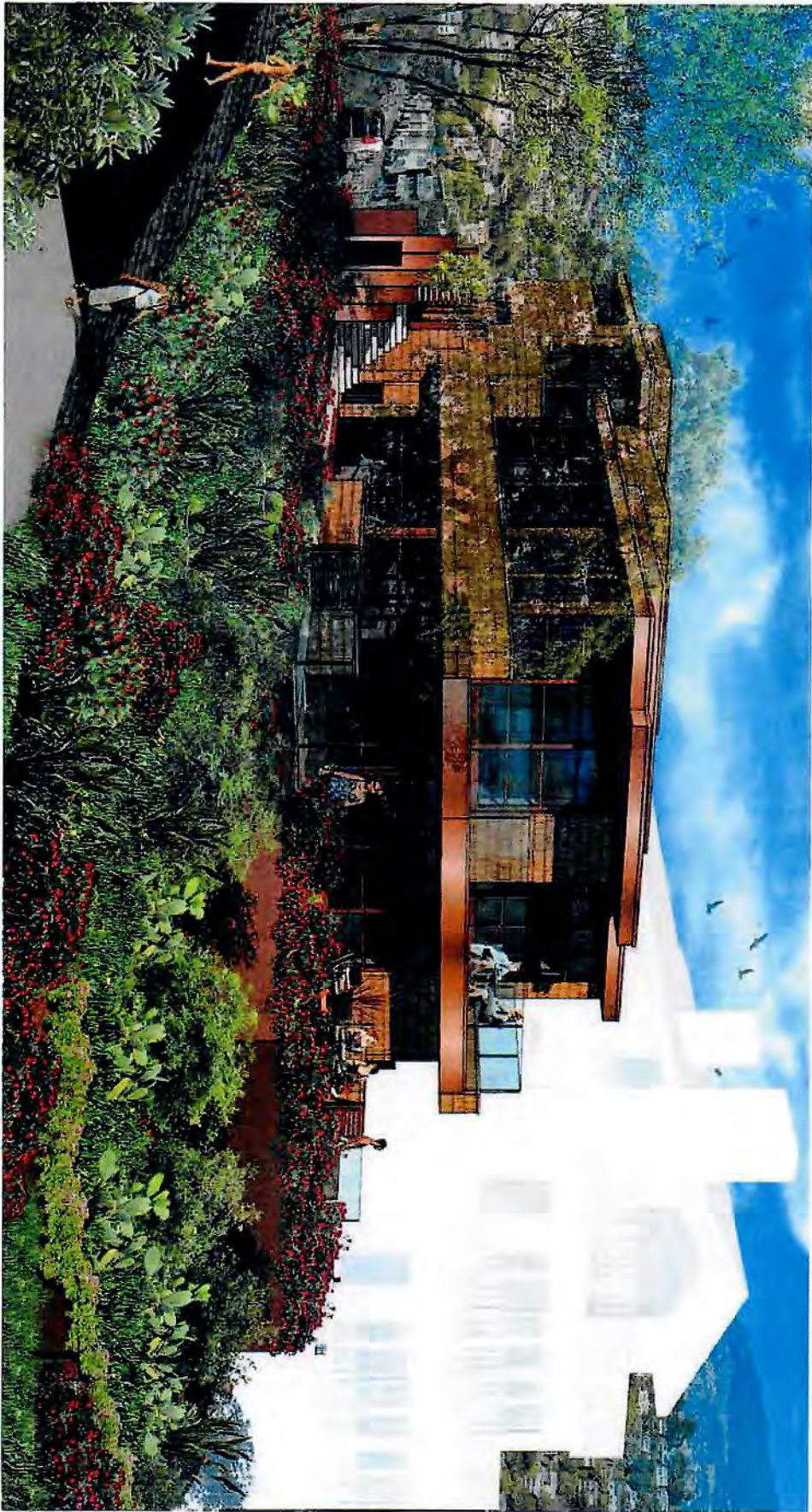
4/26/2022

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GRAY RESIDENCE

1007 Gaviota Drive

Laguna Beach, CA 92651



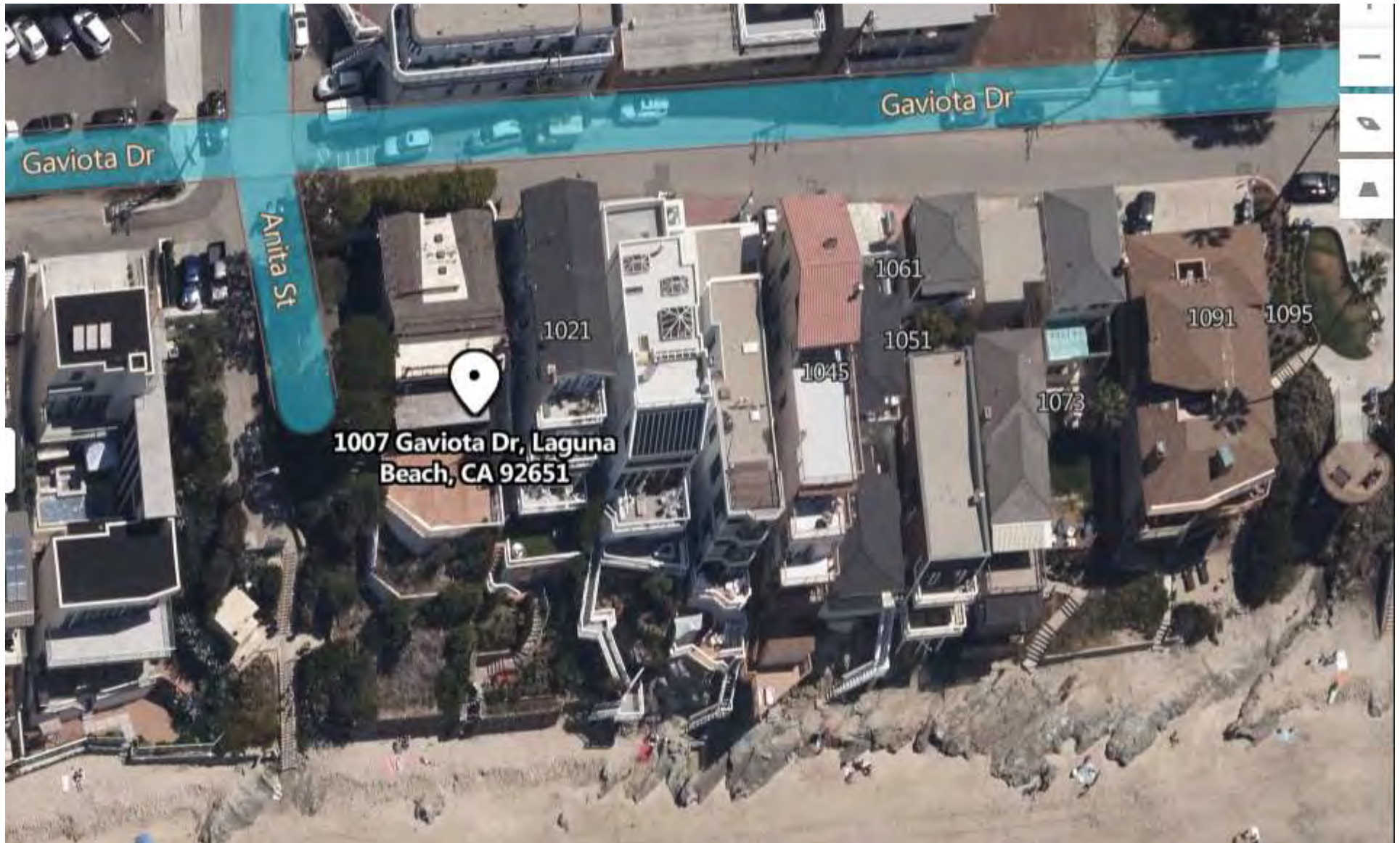
Johnbach studio

EXHIBIT "1"

NEW DESIGN RENDERING

EXHIBIT "1"

Gaviota Drive - Downcoast



Gaviota Drive - Upcoast



Smaller, Lower, Further Landward



CALIFORNIA COASTAL COMMISSION
SOUTH COAST REGIONAL COMMISSION666 E. OCEAN BOULEVARD, SUITE 3107
P.O. BOX 1430
LONG BEACH, CALIFORNIA 90801
(213) 590-5071 (714) 846-0648

CORRECTED

COASTAL DEVELOPMENT ADMINISTRATIVE PERMIT



Application Number: A-80-7442

Name of Applicant: David Langman

1007 Gaviota Drive, Laguna Beach, CA 92651

Development Location: 1007 Gaviota Drive

Laguna Beach, CA

Development Description: Construction of 3 retaining walls on an improved, ± 4800 sq. ft., ocean bluff, R-2 lot. One retaining wall, at the top of the bluff, will be 32' across the site, and 4.5' above grade; one wall will extend the width of the site, 40', and 2' above grade; the third wall, the most seaward, will extend the width of the site, 40', and 7' above grade. Three walls are required to stabilize the site due to the steep slope and the distance down the slope ($\pm 57'$) to be stabilized.

- I. The Executive Director of the South Coast Regional Commission hereby grants, subject to condition(s), a permit for the proposed development, on the grounds that the development as conditioned will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Plan conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.
- II. Conditions: 1. Prior to issuance of permit, the applicant shall submit to the executive director a notarized letter agreeing to comply to the following lateral access condition.
2. Within 90 days from the date of Coastal Commission approval, the applicant shall execute and record a document in a form and content approved in writing by the executive director of the Commission irrevocably offering to dedicate to a public agency or a private association approved by the executive director, an easement for public access and passive recreational use along the shoreline. The easement shall run parallel to the approved bulkhead and includes all area from the seaward edge of the most seaward bulkhead to the mean high tide line.

California Coastal Commission

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Conditions met on November 17, 1980 By [Signature] EP

- III. This permit may not be assigned to another person(s) except as provided in Section 13170 of the Coastal Commission Rules and Regulations.
- IV. This permit shall not become effective until:
- A. Completion of the Regional Commission review of the permit pursuant to the notice of public hearing.
- B. A copy of this permit has been returned to the Regional Commission, upon which copy all permittees or agent(s) authorized in the permit application have acknowledged that they have received a copy of the permit and have accepted its contents.
- V. Any development performed on this permit prior to the review by the Regional Commission is at the applicant's risk and is subject to stoppage upon completion of the review pending the Regional Commission's approval and/or completion of any appeal of the Regional Commission's decision.
- VI. Work authorized by this permit must commence within two years from the date of approval. Any extension of time of said commencement date must be applied for prior to expiration of the permit.

Approved on December 5, 198 0.

[Signature]

M. J. Carpenter
Executive Director

I, AVID LANGMAN, permittee/agent, hereby acknowledge receipt of Permit Number A-80-7442 and have accepted its contents.

DEC 11 1980

(Date)

[Signature]

(Signature)

Scheduled Hearing Date December 8, 1980

California Coastal Commission
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Page 27 of 43

83-035333

RECORDING REQUESTED AND RETURN TO:
CALIFORNIA COASTAL COMMISSION
631 HOWARD STREET, FOURTH FLOOR
SAN FRANCISCO, CA 94105

\$11.00
C2

RECORDED IN OFFICIAL RECORDS
OF ORANGE COUNTY, CALIFORNIA

-12 10 PM

JAN 24 '83

LEE A. BRANCH, County Recorder

DEED RESTRICTION

I. WHEREAS, (1) DAVID LANGMAN and ARLINE LANGMAN, TRUSTEES
of the Langman Family Trust dated May 17, 1982.

record owners of the real property located at (2) 1407 Avenida Drive
Laguna Beach, CA 92651.

and more specifically described in attached Exhibit A (3), which is attached
hereto and incorporated by reference; and

II. WHEREAS, the California Coastal Commission is acting on behalf of
of the People of the State of California; and

III. WHEREAS, the People of the State of California have a legal interest
in the lands seaward of the mean high tide line; and

IV. WHEREAS, pursuant to the California Coastal Act of 1972, the permit
applied to the Commission for a coastal development permit for a development
on the real property described above; and

V. WHEREAS, a Coastal Development Permit No. (4) A-50-1982 was granted
on (5) November 17, 1980 by the Commission to accommodate

with the Staff Recommendation on the permit application, which is attached
hereto as Exhibit B (6) and subject to the following condition:

(6) Verbatim condition for access:

An easement for public access and passive recreational use

along the shoreline. The easement shall run parallel to the

approved bulkhead and includes all area from the seaward edge

of the most seaward bulkhead to the mean high tide line

(6) continued

VI. WHEREAS, the real property described above is located between the first public road and the shoreline; and

VII. WHEREAS, under the policies of Section 30217 through 30212 of the California Coastal Act of 1972, public access to the shoreline and along the coast is to be maintained and in all new development proposed located between the first public road and the shoreline provided; and

VIII. WHEREAS, the Commission found that for the disposition of the above condition the proposed development could not be taken into account with the public access provisions of Section 30210 and 30211, and that a permit could not therefore have been granted;

NOW, THEREFORE, in consideration of the premises, the Commission, do hereby order that the owners by the Commission, the owners hereby irrevocably agree that there be, and hereby have created the following restriction on the use and enjoyment of the property, as attached to and become a part of the deed

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MAILED
10-14-83

California Coastal Commission
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to the property:

(B) Verbatim public access condition:

An easement for public access and passive recreational use along the shoreline. The easement shall run unutilized to the approved bulkhead and includes all area from the seaward edge of the most seaward bulkhead to the mean high tide line.

Said deed restriction shall remain in full force and effect during the period that said permit, or modification of said permit, is effective, and during the period that the said permit, or any modification of said permit, is in effect upon any part of, and thereby confers benefit upon, the real property described herein, and to that extent, said deed restriction shall be deemed to be a covenant running with the land, and agreed by Owners to be a covenant running with the land, and agreed by Owners and all their assigns or successors in interest.

When person signs to record this deed, declaration in _____
 office for the County of (a) Orange _____
 after the date of _____.

DATED September 7, 1982

Don D. Langman
 TYPE OR PRINT NAME OF ABOVE

Signed:

Arlene Langman
 TYPE OR PRINT NAME OF ABOVE

STATE OF CALIFORNIA

COUNTY OF _____

On September 8, 1982 before the undersigned,
 a Notary Public for the County and State mentioned above, personally
 appeared Don D. Langman and Arlene Langman
on the basis of satisfactory evidence known to me to be the persons whose
 name(s) is subscribed to the within instrument, and acknowledged that they
 executed the same.

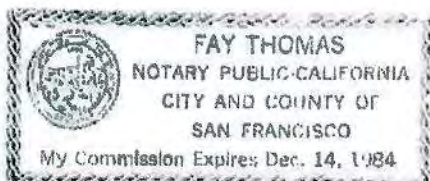


NOTARY PUBLIC IN AND FOR THE COUNTY OF _____
 STATE: _____

1 This is to certify, that the said restriction for the above named, listed
 2 September 1, 1978, and executed by
 3 David Longenecker, David A. Longenecker, David A. Longenecker, and Family Trust
 4 owner(s), is hereby acknowledged by the undersigned officer on behalf of
 5 the California Coastal Commission, in accordance with the provisions of the
 6 Commission when it was in effect on September 1, 1978
 7 and that the Commission, subject to the provisions
 8 thereof by its duly authorized officers.
 9 Witness my hand and seal this 17th day of January, 1979.
 10 Fay Thomas
 11 NOTARY PUBLIC
 12

State of California)
) SS.
 County of San Francisco)

On this 19th day of January, in the year 1979,
 before me Fay Thomas, a Notary Public, personally
 appeared Arthur D. Berman, personally known to me to
 be the person who executed this instrument as Lynd Carroll
 _____ TITLE
 _____ of California Coastal Commission and acknowledged
 to me that the public agency executed it.



Fay Thomas
 NOTARY PUBLIC IN AND FOR SAN FRANCISCO AND
 STATE



Geotechnical • Geologic • Coastal • Environmental

5741 Palmer Way • Carlsbad, California 92010 • (760) 438-3155 • FAX (760) 931-0915 • www.geosoilsinc.com

October 20, 2021

W.O. S8215-SC

Mr. Mike Gray
309 Via Lido Soud
Newport Beach, CA 92663

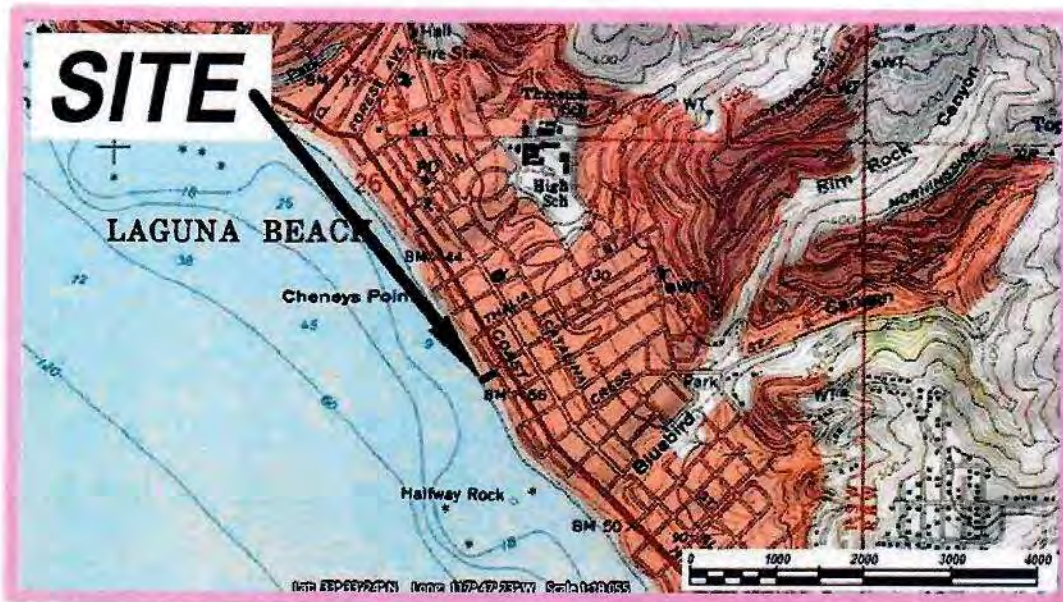
Subject: Coastal Bluff Edge Evaluation, 1007 Gaviota Drive, Laguna Beach,
Orange County, California 92651

Dear Mr. Gray:

In accordance with your request and authorization, GeoSoils, Inc. (GSI), is providing this summary of our coastal bluff edge evaluation as it pertains to proposed development at the subject site. The intent of this study was to delineate the coastal bluff edge location to fulfill the requirements of a coastal development permit (CDP) application. The explicit purpose of our evaluation was to locate the coastal bluff edge within the subject property. Therefore, this investigation does *not* constitute a preliminary geotechnical evaluation of the site relative to the proposed development. The scope of our services for this study included: 1) reviews of in-house regional geologic maps and literature; 2) stereoscopic and oblique aerial photograph analysis (see the Appendix); 3) site reconnaissance; 4) engineering and geological analyses; and 5) the preparation of this summary report.

EXISTING SITE CONDITIONS

The subject property consists of a rectangular-shaped parcel of land located at 1007 Gaviota Drive, in Laguna Beach, Orange County, California (see Figure 1, Site Location Map). The site is situated upon a coastal terrace atop a bluff that overlooks the Pacific Ocean. According to a topographic survey prepared by Toal Engineering, Inc. ([TEI], 2019), the site may be characterized as relatively flat-lying to steeply sloping terrain that descends in a southwesterly direction, toward the Pacific Ocean shoreline at gradients on the order of 1:1 (horizontal:vertical [h:v]), or flatter. TEI (2019) shows that site elevations vary between approximately 7 feet, on the beach, to about 60 feet (per North American Vertical Datum of 1988 [NAVD88]), for an overall relief of roughly 53 feet. The site is bounded by the beach on the Pacific Ocean, an adjacent property to the southeast, a public beach access (Anita Street) to the northwest, and by Gaviota Drive. The toe of the site bluff is comprised of erosion resistant cemented bedrock (Topanga Formation), at about elevation +11.5 feet NAVD88.

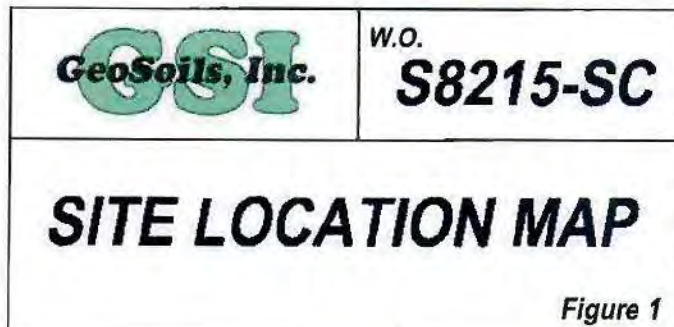


Base Map: TOPO!® ©2003 National Geographic, U.S.G.S. Laguna Beach Quadrangle, California – Orange Co., 7.5 Minute, dated 1996, current, 2000.



Base Map: Google Maps, Copyright 2021 Google, Map Data Copyright 2021 Google

This map is copyrighted by Google 2021. It is unlawful to copy or reproduce all or any part thereof, whether for personal use or resale, without permission. All rights reserved.



Existing site improvements consist of a one- to two-story structure with concrete pavements, retaining walls, patio, and associated perimeter walls. Vegetation consists of typical residential shrubbery. The site and fronting shoreline were inspected on September 29, 2021 by GSI personnel. Figure 2 is a "Birds Eye" aerial photograph downloaded from the internet. The site visit/inspection focused on the back beach, the present shoreline conditions, the bluff slope and bluff top, and site geology. The top of the bluff on the site proper was obscured by a retaining wall, and the bluff face to the northwest was graded. The retaining wall and the graded slope were part of a permitted repair (CDP A-80-7442) from a previous bluff failure. The bluff failure was relatively shallow and is believed to be a result of heavy rainfall. The top of the bluff was identified to be at the top retaining wall in the permit.



Figure 2

SITE GEOLOGIC CONDITIONS

The subject site is contained within the southeast portion of the U.S.G.S. Laguna Beach 7½ minute quadrangle within the coastal plain region of the Peninsular Ranges geomorphic province. The beachfront property is located between Oak Street and Anita Street on the seaward side of Gaviota Drive. The property backs up to an approximately 34-foot high (from elevation +11 NAVD88 to about elevation +45 NAVD88), roughly 1:1 (horizontal to vertical) and locally steeper, seacliff associated with the western margin of the gently seaward-sloping terrace topography that extends from the base of the San Joaquin Hills approximately 2000 feet northeast of the site, and down to the coastline.

Active fault zones within the general site region include the Newport-Inglewood (offshore extension), Palos Verdes, and Elsinore, which are located approximately 2.1-miles southwest (offshore), 16.8-miles southwest (offshore), and 22.1-miles northeast of the site, respectively. The postulated San Joaquin Hills Blind thrust fault (model by Grant, et al, 1999), which has been classified as a Type B active fault by the California Geological Survey, reportedly extends from offshore to beneath the Laguna Beach area at a depth of approximately 3.7 miles. Review and interpretation of available aerial photographs and geologic maps/literature indicate no obvious deep-seated landsliding has been mapped and/or reported within the property. Review of the State of California Seismic Hazard Zones map for the Laguna Beach quadrangle indicates that the subject property does not lie within an area zoned as potentially susceptible to earthquake induced landsliding or liquefaction.

According to Morton (2004), the elevated terrace portion of the site is underlain by late to middle Pleistocene-age old paralic deposits comprised of poorly sorted, moderately permeable, reddish-brown, interfingered strandline, beach, estuarine, and colluvial deposits composed of silt, sand, and cobbles that are capped by extensive but thin, discontinuous, younger, locally derived, sandy alluvial fan deposits. These sediments were deposited during glacio-eustatic changes in sea level during the Pleistocene. The paralic deposits unconformably overlie older Tertiary-age (middle Miocene) marine sedimentary bedrock belonging to the Topanga Formation. The Topanga Formation is a very dense olive brown to olive grey brown, silty fine to medium sandstone, with occasional thin interbeds of stiff olive gray to green siltstone. The geologic contact between the two units lies at an elevation of approximately 33 feet (NAVD88) at the site. Structurally, the paralic deposits are considered essentially massive, and typically flat-lying, while bedding attitudes reported in the underlying Topanga Formation within the site vicinity indicate moderate inclinations ranging from approximately 22 to 44 degrees to the south/southwest. Morton (2004) also indicates that the shoreline is mantled by late Holocene-age marine deposits comprised of unconsolidated, active, or recently active sandy beach deposits.

COASTAL BLUFF & BLUFF EDGE

According to the "Laguna Beach General Plan, Land Use Element," (City of Laguna Beach, 2012), an oceanfront bluff/coastal bluff is defined as,

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

According to the California Code of Regulations, Title 14, § 13577 (h) (2), the

Bluff line or edge shall be defined as the upper termination of a bluff, cliff, or seacliff. In cases where the top edge of the cliff is rounded away from the face of the cliff as a result of erosional processes related to the presence of the steep cliff face, the bluff line or edge shall be defined as that point nearest the cliff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff. In a case where there is a steplike feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the cliff edge.

This definition is recognized by the California Coastal Commission (CCC), and was in effect when the 1980 permit was issued. However, in a 2003 memorandum to the CCC, Dr. Mark Johnsson, former Staff Geologist for the CCC, indicated that the definition of the coastal bluff edge is largely qualitative and subject to various interpretations (CCC, 2003). This is particularly in the case when the natural bluff edge cannot be determined with precision.

RESEARCH

The University of Santa Barbara Library Aerial Photographs (UCSBLAP) contain several historical vertical images of the site. The oldest image available on the UCSBLAP website was taken in May 1931. However, the image is not of sufficient resolution to accurately determine the location of the natural bluff top. Figure 3 is a 1947 aerial photograph of the site which shows the estimated location of the bluff edge as determined using a stereoscope. The presence of vegetation obscures the exact location, so the bluff top on the site is approximated by connecting the adjacent bluff top locations. UCSBLAP also contains vertical aerial photographs that shows the site in February 1963. This image has the best resolution for determining the bluff top using a stereoscope, and also using the visible bluff top on properties to both the north and the south of the site. The bluff top shown on this image is Figure 4, and is in reasonable agreement with the location shown on Figure 3. It should be noted that the aircraft that were taking the photographs in 1947 and 1963 were flying over the ocean and not directly above the site. This is why the ocean facing side of the residence is seen in the images. If the aircraft was directly above the site,

the side of the residence would not be visible much like one sees in Google Earth images. The angle from the lense to the site results in some distortion of the features on the images.



Figure 3. Bluff top location from USCB Aerial Photograph Collection image C11730 4-75, taken on August 23, 1947.



Figure 4. Bluff top location from USCB Aerial Photograph Collection stereo pair images, taken on February 29, 1963.

CONCLUSIONS

Based on our site observations, review of vertical aerial photographs, and oblique aerial photographs prior to the construction of the upper retaining wall and grading of the slope, GSI concludes that the coastal bluff edge at the subject site occurs at approximate elevation 45 feet NAVD88. The location of the coastal bluff edge at the subject site is shown in plan view on Plate 1, adopted from TEI (2019). Figures 3 and 4 show the approximate location of the coastal bluff edge on two of the aerial photographs obtained for the investigation. It is our opinion that the location of the coastal bluff edge shown on Plate 1 represents the topographic inflection point between the mostly flat-lying to gently sloping coastal terrace and the more steeply sloping coastal bluff. In addition, per California Code of Regulations, Title 14, §13577(h)(2), the coastal bluff edge location shown on Plate 1 is considered the point nearest the cliff beyond which the downward

gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff in effect when the 1980 permit was issued for bluff repair. It should be noted that the bluff top location shown on Plate 1 is essentially where the bluff top was denoted in CDP A-80-7442.

LIMITATIONS

Inasmuch as our study is based upon our review, engineering analyses, and laboratory data, the conclusions and recommendations presented herein are professional opinions. These opinions have been derived in accordance with current standards of practice, and no warranty is express or implied. Standards of practice are subject to change with time. GSI assumes no responsibility or liability for work or testing performed by others, or their inaction; or work performed when GSI is not requested to be onsite, to evaluate if our recommendations have been properly implemented. Use of this report constitutes an agreement and consent by the user to all the limitations outlined above, notwithstanding any other agreements that may be in place. In addition, this report may be subject to review by the controlling authorities. Thus, this report brings to completion our scope of services for this portion of the project.

The opportunity to be of service is sincerely appreciated. If you should have any questions, please do not hesitate to contact our office.

Respectfully submitted,

GeoSoils, Inc.


John P. Franklin

Engineering Geologist, CEG 1340




David W. Skelly

Civil Engineer, RCE 47857



DWS/JPF/sh

Enclosure: Appendix - References
Plate 1 - Coastal Bluff Edge Location

Distribution: (2) Addressee (US Mail and email)

APPENDIX

REFERENCES

California Coastal Commission, 2003, Memorandum: Establishing development setbacks from coastal bluffs, W11.5, dated January 16.

California Department of Conservation, Division of Mines and Geology, 1997, Seismic hazard zone report for the Laguna Beach 7.5-minute quadrangle, Orange County, California, revision dated January 13, 2006.

City of Laguna Beach, 2020, Laguna Beach municipal code, dated January 1.

_____, 2012, Laguna Beach general plan, land use element, ordinance no.: 1559, dated February 7.

Morton, 2004, Preliminary geologic map of the Santa Ana 30' x 60' minute quadrangle, southern California, v. 2.0, 2 sheets, 1:100,000-scale, United States Geological Survey Open-File Report 99-172.

Toal Engineering, Inc., 2019, Topographic survey, 1007 Gaviot Drive, 1 sheet, scale: 1 inch = 8 feet, job no.: 16076, dated January 21,

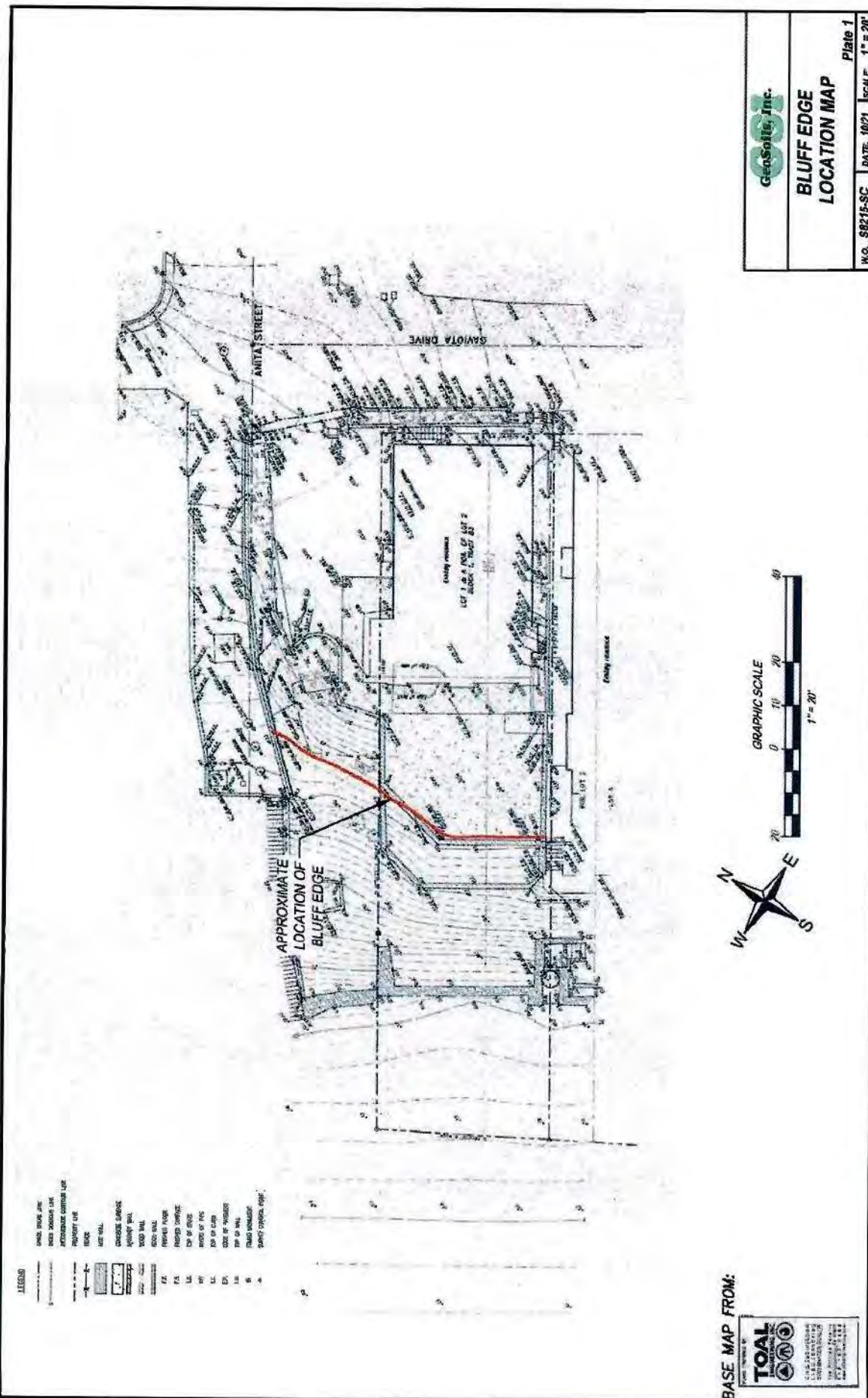
State of California, California Code of Regulations, 2020, Title 14, § 13577 (h) (2).

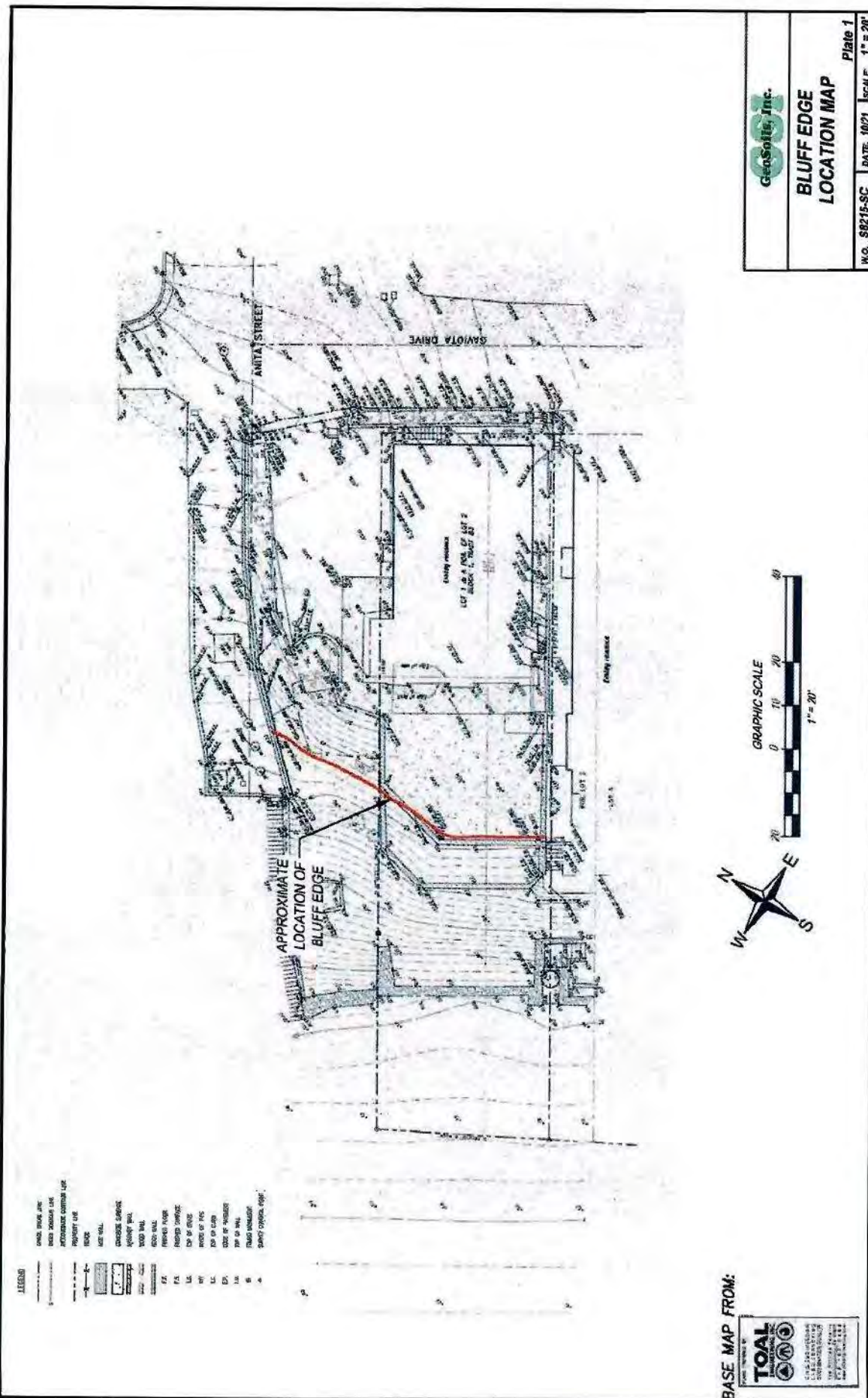
United States Geological Survey, 1996, Topographic survey of the Laguna Beach 7.5-minute quadrangle, Orange County, California, 1 sheet, 1:24,000-scale.

PHOTOGRAPHS

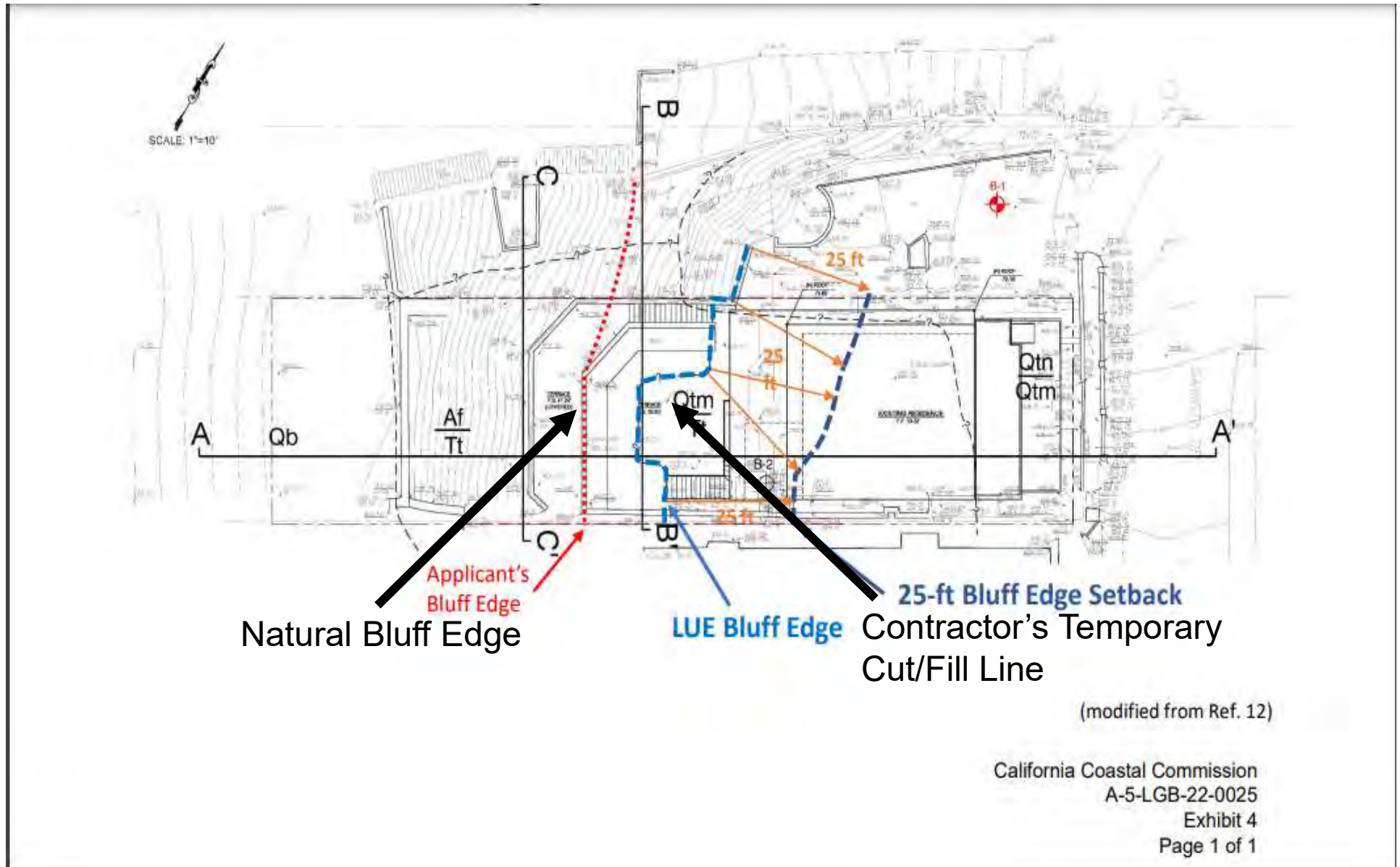
University of Santa Barbara Library Aerial Photographs, C 1559 262 Photo taken on May 22, 1931, C-11730 4-75 Photo taken on 8-23-1947, Pai 199v -22 Photo taken on 2-2-1963, Pai 199v 1 39 Photo taken on 2-2-1963,

Coastal Records Website, 7238083 Photo taken in 1972, 201311206 Photo taken on 9-29-2013 (californiacoastline.org).

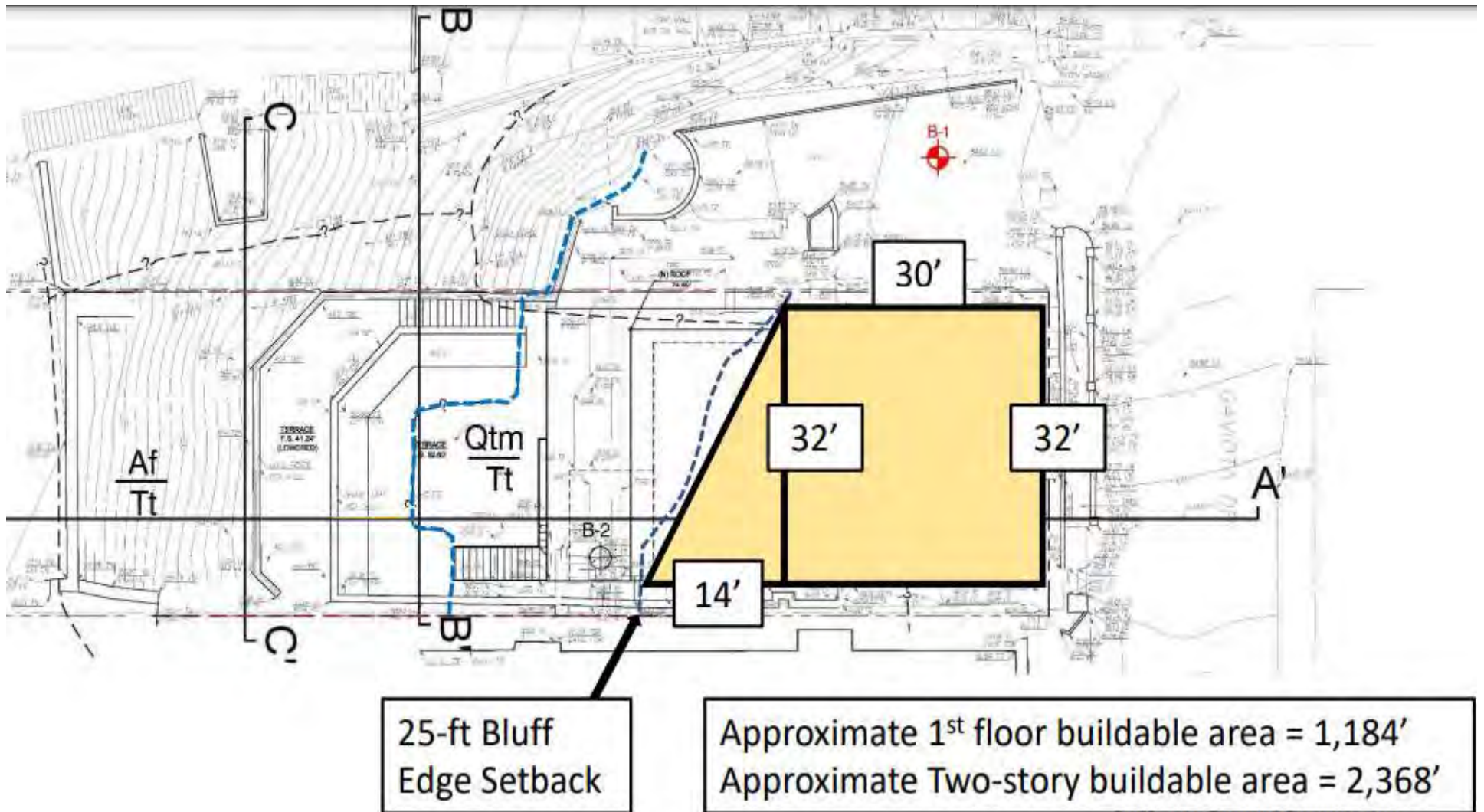




Natural Bluff Edge Versus Contractor's Temporary Cut/Fill Line



Grays' House Consistent With 1980 CDP and 25' Setback vs. the Result of Staff's "Bluff Edge and 25' Setback"



Appendix B – Neighborhood Survey Table

Address	Action No.	Height (story)	Lot Size (sq. ft.)	Sq. Ft.	Bluff Edge Setback (ft)	Links
154 Thalia St, Laguna Beach, CA 92651 NOTE: 108-year old house (1915) - K-1 rated historic structure - 25' setback but next to the beach	5-84-012		4,792	2,101	25	https://lagunabeachgis.net/PublicAccess/api/Document/AetgkoDjIncSlOf7Xnulfik1d4TyFiQAFs9G3IaxOUUt9s2z2t8BoSoX4UclYEm5CFul%C3%89r9nu%C3%81%C3%81aQ0IEpqv2E%3D/
Condo - 925/ 921/ 915 Gaviota Dr, Laguna Beach, CA 92651		2		(925) 1,737 (921) 2,613 (915) NA		
Condo – 935, 937, 939 Gaviota Dr, Laguna Beach, CA 92651	5-83-745	3		(935) 2,177 (937) 2,562 (939) 2,177	25	https://lagunabeachgis.net/PublicAccess/api/Document/AYSOVx2p4AzJP7k5vpspsTUm181ymQZB2tkZFP7DDPSf32uvm9t7Vca0zMxUtuGOw0aU1o8Nxw4H%C3%811BDE%C3%89FDEQ%3D/
Condo - 941 Gaviota Dr, Laguna Beach, CA 92651 NOTE: Part of 935, 937, 939 Gaviota, 2562 sf., Total for 935, 937, 939, 941 = 9,478 sf			7,613	NA	25	https://lagunabeachgis.net/PublicAccess/api/Document/AYSOVx2p4AzJP7k5vpspsTUm181ymQZB2tkZFP7DDPSf32uvm9t7Vca0zMxUtuGOw0aU1o8Nxw4H%C3%811BDE%C3%89FDEQ%3D/
Multifamily - 955 Gaviota Dr, Laguna Beach, CA 92651 NOTE: Multifamily (3 units) 3,343 sf		3		2,415	10	https://lagunabeachgis.net/PublicAccess/api/Document/ASacRbWh%C3%89b2tAgiULbWEsKiOkw6oggQ%C3%89INOlNXFOfmV8jLhiihjZukkpTbQ%C3%89dBpuXk0Y9Bo4eMoSX4bSu0vpLk0%3D/
Multifamily - 967 Gaviota Dr, Laguna Beach, CA 92651	5-LGB-01-121	3		2,115		
990 Ocean Front,		2	2,614	1,012 4,000		

A-5-LGB-22-0025 (Gray)
Appeal – De Novo

Laguna Beach, CA 92651						
992 Ocean Front, Laguna Beach, CA 92651	5-LGB-12-011	2	8,849	4,486		
1007 Gaviota Dr, Laguna Beach, CA 92651 (Proposed)		2	5,181	3,551.5		
1021 Gaviota Dr, Laguna Beach, CA 92651	5-LGB-05-224 / RD-80-07-PA-DR	4	4,180	3,091	10	https://lagunabeachgis.net/PublicAccess/api/Document/AdgHtoIrHdlypwYXRgnMIE4RdnRsU8xsqshmkgKnmdq%C3%815CYcNhW%C3%811AVT7T1HnJpdVHj0GfnsV24zRUoyBJILzo%3D/
1031 Gaviota Dr, Laguna Beach, CA 92651		4		3,000		
Multifamily - 1037 Gaviota Dr, Laguna Beach, CA 92651		3	3,049	2,963		
Multifamily - 1045 Gaviota Dr, Laguna Beach, CA 92651		4	3,049	4,598		
Triplex - 1051 / 1055 / 1059 Gaviota Dr,	5-LGB-03-028		3,078	(1051) 850 (1055) 800	25	https://lagunabeachgis.net/PublicAccess/api/Document/AWXF6yd%C3%81rVFEXLa2RwVC2lu%C3%81PRRu%C3%81gyqQhcbHfEreLq12hYQGoieNcTB

A-5-LGB-22-0025 (Gray)
Appeal – De Novo

Laguna Beach, CA 92651				(1059) 850		3J66%C3%81uymmEfb92itDYOU4GlutIOe1Bo%3D/
1061 Gaviota Dr, Laguna Beach, CA 92651	5-LGB-06-253 / 5-LGB-23-0179 / 5-LGB-06-192	2	3,400	2,700		
1073 Gaviota Dr, Laguna Beach, CA 92651		2	3,049	1,835		
NOTE: 99 year old house (1924) - small lot compared to Gray - 3,049 sf vs. 5,181 sf – next to beach						
1085 Gaviota Dr, Laguna Beach, CA 92651	5-LGB-22-0191 / 5-LGB-22-0759	2	3,250	1,136	122.83'	
NOTE: 87 year old structure (1936) - small lot compared to Gray (3,250 sf v. 5181 sf) - undergoing remodel, aberrant setback						
1091 Gaviota Dr, Laguna Beach, CA 92651		3	3,485	2,939 3,116		
1095 Gaviota Dr, Laguna Beach, CA 92651		2	3,485	1,900	25	https://lagunabeachgis.net/PublicAccess/api/Document/AZICute4672%C3%81y0zeJ3J2E873LvZSiznO%C3%81nwM%C3%811%C3%89la8qkWgbELnr54ohC%C3%81I7s8k5IFccmgbWaYESmDCMml%C3%89YaxYE%3D/
NOTE: Small lot compared to Gray (3,485 sf vs. 5181 sf) - 25' setback but next to the beach						
Average Square Footage not including Multifamily			2,513.9 sq. ft. 3,285 sf Average sf excluding multifamily or 87-99 yr old homes (more modern homes) = 3,285 sf			
Average Height (From info we have)			2.7			
Average Bluff Edge Setback (From info we have)			33.4 ft 20.7 ft (excluding 122' setback for 1,136,1936 structure undergoing remodel)			

W11b and W12a

To: Chair Brownsey, Coastal Commissioners and Staff
From: Mark and Sharon Fudge (appellants)
Re: A-5-LGB-22-0025 and A-5-LGB-0060
Date: April 7, 2023

Dear Chair Brownsey, Commissioners and Staff,

We'd like to add these comments to the comments already submitted on these two projects for the meeting in March of 2023, where both were postponed. Those original comments are attached for your convenience. New questions have surfaced since, such as:

Validity of adjacent property's (1021 Gaviota) reliance on shoreline protection

Research has shown that the structure at the adjacent property -1021 Gaviota - has undergone substantial improvement (in excess of 50%) since the issuance of the CDP for the existing seawalls. Pursuant to the Coastal Act and the LCP, new development cannot rely on shoreline armoring.

Special Condition 2 of the staff report for the Gray project (A5-LGB-22-0025) requires the removal of the seawalls at the 1007 Gaviota parcel once the adjacent properties no longer have rights to shoreline armoring. Since that trigger has already been met, there's no reason for the seawalls to remain at the 1007 Gaviota site and the ones present at 1021 Gaviota will most likely need to be removed as well.

The staff report states that the City of Laguna Beach advised that their stairway and sewer for main project would have to be re-designed should the slope be regraded and retaining walls added between the public ROW and the subject 1007 property. This is one more reason to find that our appeal of the City project (A-5-LGB-22-0060) should result in a finding of substantial issue.

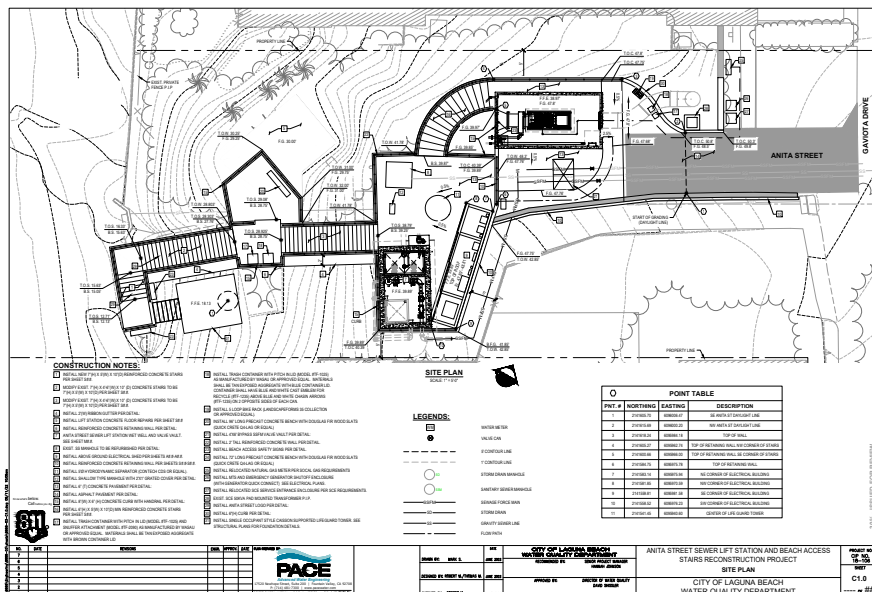
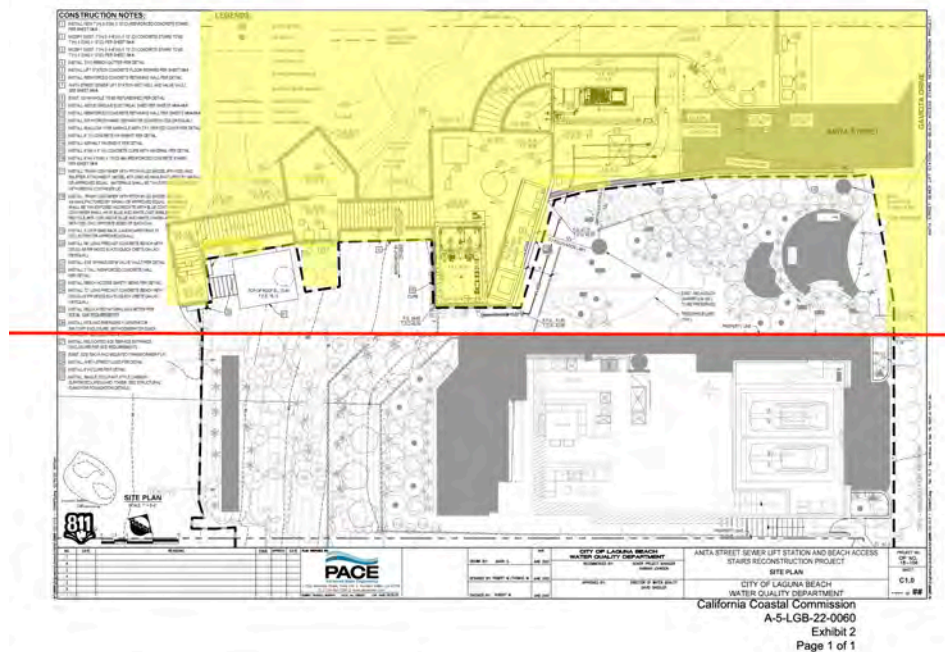
City's reliance on an outdated, unrelated wave run-up study for the stairway project (A-5-LGB-22-0060)

None of the City's plans for this project (beyond the site plan) are shown in the exhibits in the staff report. Upon review of the City's records, it became evident that a 2016 coastal hazards (wave run-up) study for a property in the area (at 1061 Gaviota) was the document used to analyze the conditions at the subject property.

First, the report is outdated and does not contain up to date science/figures on sea-level rise.

Second, the report does not take into account the actual subject property and how it differs from the property at 1061 Gaviota. For instance, the property in the report has a very different condition in that the area directly landward of the property is fully developed. The subject property on the other hand lies at the end of a 60' wide 'open street' which allow much more water flow down to the beach.

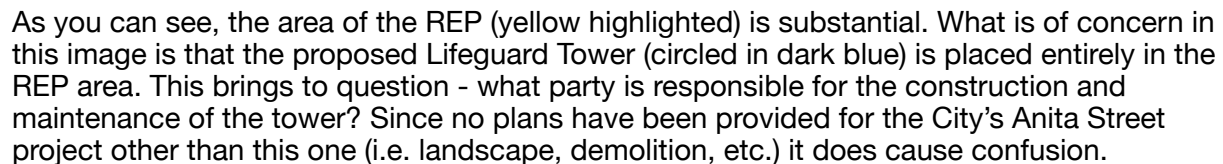
The Anita project's plan (A-5-LGB-22-0060) available in the CCC staff report has been highlighted to show the City's area of development. The red horizontal line delineates the two properties. The entire area (highlighted and not) above the red line is the City's ROW. The area below the red line is Mr. Gray's property:



In contrast, to the left are the plans provided to the City's Planning Commission for their deliberation, which do not consider the Gray's property or the REP at all. This plan - nor any plans considered by the Planning Commission - was not included in the CCC staff report.

Note that of the 60' wide ROW, less than 15' are being utilized to provide public access at the street due to the dual REPs at the parcels to the north and south of the ROW.

The image below¹ shows the configuration of the Gray project, including both the parcel that the applicant owns (yellow highlighted below the red line) and the area of the Revocable Encroachment Permit (REP) (yellow highlighted above the red line). This **same plan** is included in the staff report for the Anita Street



¹ This image is Exhibit 2 Page 1 of 32 in the Gray De Novo action (A-5-LGB-22-0025). It is titled “Anita Street Sewer Lift Station and Beach Access Stairs Reconstruction Project - Site Plan”. This same plan is in the staff report for the Anita Street stairs project (A-5-LGB-22-0060) as Exhibit 2 Page 1 of 1.

Appellant proposed viewing area

The changes to the staff report for the Anita Street project (from March to April) assert that the provision of enhanced viewing platforms would not be possible due to the location being directly behind the proposed electrical shed and lift station. This is incorrect. Since the plans haven't been included in the packet, it's hard to see, but the elevation of the roof top of that new structure is at less than 48 feet whereas the elevation of the REP flat area (where we are proposing a viewing area) is at approximately 53 feet. The rooftop of the lift station will not impede any views other than those down the hill to the sand.

In conclusion

A-5-LGB-22-0025

We ask that the Commission either **DENY** the Gray application and send the applicant back to the drawing board to design a project that complies with the LCP

OR to

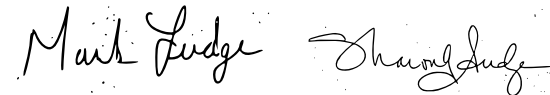
AMEND the conditions: 1) to require removal of the seawalls; and 2) to limit development to the boundaries of the applicant's parcel (i.e. no development in the public Right of Way).

A-5-LGB-22-0060

We ask that the Commission make a finding of **SUBSTANTIAL ISSUE** with the appeal and send the project back to the City for a redesign of the project that will provide maximum public access as required by the California Constitution, the Coastal Act and the certified LCP.

We thank you for your consideration.

Sincerely,

Handwritten signatures of Mark and Sharon Fudge in black ink.

Mark and Sharon Fudge
P.O. Box 130
Laguna Beach, CA 92652-0130
fudge1@cox.net

Th11a & Th12a

March 3, 2023

Re: A-5-LGB-22-0060 and A-5-LGB-22-0025

From: Mark and Sharon Fudge, Laguna Beach

Dear Chair Brownsey, Coastal Commissioners and Staff,

We thank you for this opportunity to express our objections to the staff recommendations for two items we have involvement with on this month's agenda.

The projects at the Anita Street Stairway and 1007 Gaviota are directly adjacent to one another and inextricably linked. They involve a public project to improve a right of way and a private project that encroaches into that public right of way.

When looked at in the simplest terms, the staff recommendations for these two projects turns the mandate of 'providing maximum public access to all the people' on its head. **Instead of requiring the city to provide maximum access, staff is requiring the adjacent landowner (a private party) to encroach into a public right of way as a condition of receiving a permit.** By definition,¹ Revocable Encroachment Permits (REP) are issued to benefit the adjacent land owner (the holder) and they are considered to be an extension of the yard of the holder. The result of this scenario is that the city is absolved of responsibility for the provision of maximum access and we have no idea what the private party might ultimately propose for the space. The currently proposed improvements submitted by the private landowner are: 1) subject to change; 2) inadequate and don't provide anywhere near maximum public access; and 3) are not guaranteed to ever be carried out in the case the applicant sues, sells, or withdraws the project as he has previously done.

A little bit of history might be helpful here -

The items that are *italicized* relate to the 1007 Gaviota project:

2014 - Laguna Beach issues repair/maintenance permit for the structure at 1007 Gaviota. The scope of this permit is exceeded by Mr. Gray and the project was red-tagged and stopped. Work completed included the demolition of more than 50% of the existing structure.

March 2017 - The project to rehabilitate the beach access stairs at Anita Street was first considered by the City. A contract to a consulting group was approved.

October 2017 - The City's Design Review Board held a hearing to consider the new structure that was to be built at 1007 Gaviota.

¹ LBMC 11.50

April 2018 - The city's Planning Commission considered and rejected a proposal to abandon a portion of the public right-of-way and sell it to the adjacent landowner (Mr. Gray). This was scheduled to be done without a CDP which we objected to. Coastal Commission staff stepped in and informed the City that a CDP would be necessary.

May 2018 - The City Council's agenda included an item to approve the above mentioned abandonment and accept a \$540,000 contribution from the adjacent landowner (Mr. Gray). The item was continued to the June 2018 meeting where city staff requested more time to review the project. It never came back before the Council and was evidently dropped.

February 2019 - \$510,000 was transferred from the budget for the Anita Street stairs to the Pearl Street stairs project. (As you might remember, the Pearl Street stairs were built and just recently completed but have already been back to the Commission seeking emergency repair permits which were heard at last month's Coastal Commission hearing.)

March 2021 - DRB considered and approved the request to 'demolish an existing duplex and construct a new single-family dwelling'. This decision was locally appealed to the City Council which upheld the approval. This application included the use of the public right of way as a private driveway.

June 2021 - Appellants Mark and Sharon Fudge, and Councilman George Weiss appealed the city's approval of the new house to the CCC.

*August 2021 - The CCC was scheduled to hear the appeal, and had written a staff report recommending a finding of 'substantial issue.' The **applicant withdrew the application** prior to the hearing.*

April 2022 - The DRB considered and approved a new application for a newly designed home that eliminated the need for the use of the public right of way as a private driveway (the entrance to the garage was moved to allow access from the street). However, the applicant still desired to maintain an encroachment into the right of way and offered to place some minor public amenities there as well.

June 2022 - Mark and Sharon Fudge appealed the decision to approve the newly designed home to the Coastal Commission.

July 2022 - the appeal for the newly designed home was heard by the Commission and substantial issue was found. The de novo portion of that hearing is the subject of today's hearing (March 2023).

September 2022 - Planning Commission approved the public project to rehabilitate the Anita Street stairs that is the subject of the current appeal (substantial issue consideration March 2023).

The most important detail of the above timeline is that the scope and configuration of the house design changed in a significant way between the first proposal in March of 2021 and the second in April of 2022 in that the location of the garage moved from the northern elevation of the structure to the eastern elevation. This change of location meant that the driveway that previously encroached in the public right of way was no longer necessary, rendering the encroachment no longer necessary.

The second most important detail is that although the City had full knowledge that the adjacent homeowner no longer had an underlying need for an encroachment, and had this knowledge PRIOR to the presentation of the public works project to the Planning Commission, there was no consideration of revoking the previously approved revocable encroachment permit and making use of that extra 2000 sf (at a minimum) in the public works project to provide maximum access. Importantly, the staff report for the 1007 Gaviota project for your hearing on 3/9/23 states that the Revocable Encroachment Permit was never issued by the City to the applicant.

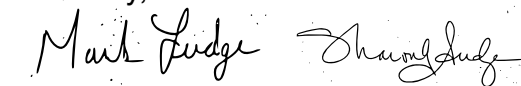
In this case the REP benefits the owners of 1007 Gaviota but has precluded the city from incorporating a superior set of amenities in coordination with the work currently being proposed at the public accessway adjacent. It only makes sense that the city incorporates a complete project NOW and that they will be responsible for it's timely completion and ultimate maintenance.

We are asking the Commissioners to **1) find substantial issue with our appeal A-5-LGB-22-0060; and 2) DENY permit A-5-LGB-22-0025.** If a denial is not possible, we ask that, at a minimum, the applicant be required to remove any obsolete or unpermitted seawalls immediately, and that the amended plans to be submitted be limited to the parcel owned by the applicant (i.e. do not require them to obtain a revocable encroachment permit).

Following this letter are explanations of our contentions in further detail, by project. Also included are some 'visuals' that may be helpful in understanding it all.

We appreciate your consideration of our requests and your tireless efforts to protect the coast and public access to the coast. If you have any questions, we are available to answer them at your convenience.

Sincerely,

Handwritten signatures of Mark and Sharon Fudge in black ink.

Mark and Sharon Fudge

P.O. Box 130

Laguna Beach CA 92652-0130

fudge1@cox.net

The Anita Street Stairway project A-5-LGB-22-0060

comments:

- Staff's recommendation of a 'no substantial issue' finding is inconsistent with previous actions taken by the Commission to ensure that not just public access, and not just 'better' amenities, but **maximum public access** is provided for all people in accordance with the California Constitution and the Coastal Act.

For instance, in "Harbor Center" the Commission objected to a proposed reduction in the width of a walkway (from 10' to 8') because it did not maximize public access as required by the Coastal Act. In the "Seaside Co Fence Extension" matter, the Commission equated maximum access to "unrestricted access" when considering the hours of availability of a walkway and required an expansion of those hours. Excerpts from those staff reports are included at the end of our comments.

- The Laguna Beach Planning Commission was not presented with a complete picture of the project's potential as the project application failed to address the existence of an encroachment into the public right of way. Instead, they were told that the encroachment area was unavailable to the project because the adjacent landowner had a permit.
- The provision of maximum access relies on a private land owner that isn't even a party to this permit. He is not compelled to EVER provide public access or amenities. He may reject the permit, or he may withdraw the project as he has done previously, or he may never act on the permit.
- Planning Commission's permit condition to recommend consideration of putting public amenities in the ROW to City Council for future work was meaningless. The moment is now, the opportunity is now. The decision makers were misinformed about the process. They were not told that the project next door had been redesigned² to eliminate the need for any encroachment into the ROW and were incorrectly told that the Coastal Commission has jurisdiction over revocable encroachment permits.
- Planning Commissioners were hopeful that a view bench or viewing area could be provided in the proposed design but were told it was not possible. In reality, it was only 'impossible' because the proposed design failed to incorporate the area most suited to those amenities into the project plan (the encroachment area). Due to the challenging topography of the site, the only place to provide amenities that can be used by people with disabilities is the area where the driveway of the adjacent property was located. This would be the perfect location for a handicapped parking space, picnic tables or a level viewing area on the site.

Our Request:

We ask that you make a finding that our appeal **presents a substantial issue** and review the project in its entirety in a de novo hearing to ensure that maximum access is provided by the City to all the people as required by the California Constitution and the Coastal Act.

²repositioning of garage allowing for access via Gaviota instead of Anita)

Th9a-5-2014.pdf 3-13-006 (Harbor Center)

However, the proposed reduction in width of the northern portion of the bayside walkway does not maximize public access as required by the Coastal Act. The proposed new retail unit will remove a significant portion of the currently 20+-foot-wide public walkway for use as a commercial retail establishment, resulting in a walkway that is only eight feet in width (Exhibit 2). Currently, this 20+-foot-wide area is especially important because it provides outdoor public tables and chairs and allows easy movement and congregation to observe the views of Morro Rock and the Bay. Although eight feet is the minimum width required by the LCP (which can be used as guidance), the Coastal Act provisions for development of this type require that maximum public recreational opportunities shall be provided. As stated above, the Commission has generally found ten feet to be the appropriate width for lateral public access in this important and well-used visitor serving area. Although the Commission has occasionally approved projects that have provided less than ten feet, these exceptions were for remodel projects that were constrained by existing development, did not include extension of the building footprint, and did not result in the loss of existing public access area. Therefore, especially given the project's impact on existing public access, it is appropriate to maintain the continuity of the 10-foot wide access along the Embarcadero and maintaining a ten foot lateral access width is necessary to meet the Coastal Act requirements regarding maximizing public access.

Therefore, to achieve Coastal Act consistency, Special Conditions 1(a) and 2(b) require that a minimum ten-foot-wide bayside lateral access be maintained. As conditioned, the project is consistent with the Coastal Act's public access and recreation policies.

F13a-10-2005.pdf 3-04-075 (Seaside Co Fence Extension)

Coastal Act Section 30210 states that maximum public access for all people shall be provided consistent with public safety needs. Rather than providing maximum (i.e., unrestricted) public access, the project proposes to limit public access through Walkway 6 to the hours when the Boardwalk is open for business at the east end of the park to preserve public safety and prevent tampering of existing rides, though it has not clearly established the specific times (i.e., days and times) when access would be available to the public. Accordingly, the proposal is not consistent with section 30210 of the Act. To bring the project into conformance with the Coastal Act, Special Condition 2 expands the required hours under which any gate at Walkway 6 must be open and available for general public use to include whenever the seasonal gate shown by Exhibit C is open, and as necessary to restore historic hours of availability. In addition, the permit has been conditioned to require the applicant to submit an access signing plan, providing for the installation of access signs at conspicuous locations within the Boardwalk parking lots, Boardwalk entry points, and along the San Lorenzo River levee trail. The Applicant is also required to update its Attraction Map to reflect the availability of public access at Walkway 6. These conditions are necessary to adequately inform the public of available access routes, particularly in light of the unpermitted restriction to public access promulgated by the Seaside Company in the recent past.

The 1007 Gaviota project comments:

1. The extent of work to redesign this house to comply with the certified LCP cannot be characterized as anything but significant, major, and substantial. It will require a complete overhaul (reducing the size by 25%) and is likely to be rejected by the applicant. This possibility would leave the property in it's degraded and dilapidated state for an even more extended period than it already has been for the last 10 years.

If redesigned, the review process will happen publicly at the local level where there is no opportunity for appeals or challenges to be made by any of the currently interested parties due to limitations for such at the city level. There will be no opportunity for the public to come back before the Coastal Commissioner either, as the plans will be approved by the ED, not in a public hearing.

2. The REP is unnecessary - the need was eliminated in the previous design revisions related to the original appeal we filed in 2021. The original project was withdrawn by the applicant when a finding of 'substantial issue' was recommended by staff. Specifically, the original design included a garage that took access from the Anita Street face of the structure and the new design allows for garage access directly from Gaviota Street so the driveway encroachment is no longer necessary.

By definition, REPs are issued to benefit the adjacent land owner (the holder). They are considered by the certified LCP (LBMC 11.50.040) to be an extension of the yard of the holder. They are also to be allowed only when it can be demonstrated that the uses will not interfere with the present and prospective public use of a right-of-way (LBMC 11.50.050). In this case the REP benefits the owners of 1007 Gaviota but has precluded the city from incorporating a superior set of amenities in coordination with the work currently being proposed at the public accessway adjacent.

3. The retaining walls are obsolete because the purpose of those walls was to stabilize the site due to the steep slope and the distance down the slope at 1007 Gaviota only. Because the walls were only meant to protect an 'existing house' and the project proposed is for 'new development', shoreline protective devices are prohibited by the LCP

The house next door at 1021 Gaviota does not rely on the bluff protection devices at 1007 because it was issued it's own independent CDP (A-80-7288 approved on October 7, 1980). This CDP was granted **prior** to the one at 1007 (A-80-7442 approved on November 17, 1980 and corrected on December 5, 1980).

Requests -

Deny the permit - there are way too many conditions that will be unenforceable. There are way too many unknowns.

If the permit is approved:

1. limit the development to ONLY the underlying parcel (do not require them to obtain a revocable encroachment permit)
2. require the removal of any obsolete/unpermitted retaining walls immediately
3. include the mitigation measures required by the city's mitigated negative declaration on the first iteration of the project. These mitigation are related to protections of archeo/paleo and cultural resources.

SOUTH

COAST

HIGHWAY

STREET 60

STREET

STREET 60

ANITA

CAK

BLK.A-67

R.O.W

COUNTY LINE

PACIFIC OCEAN

1007
GAVIOTA

MARCH 1974

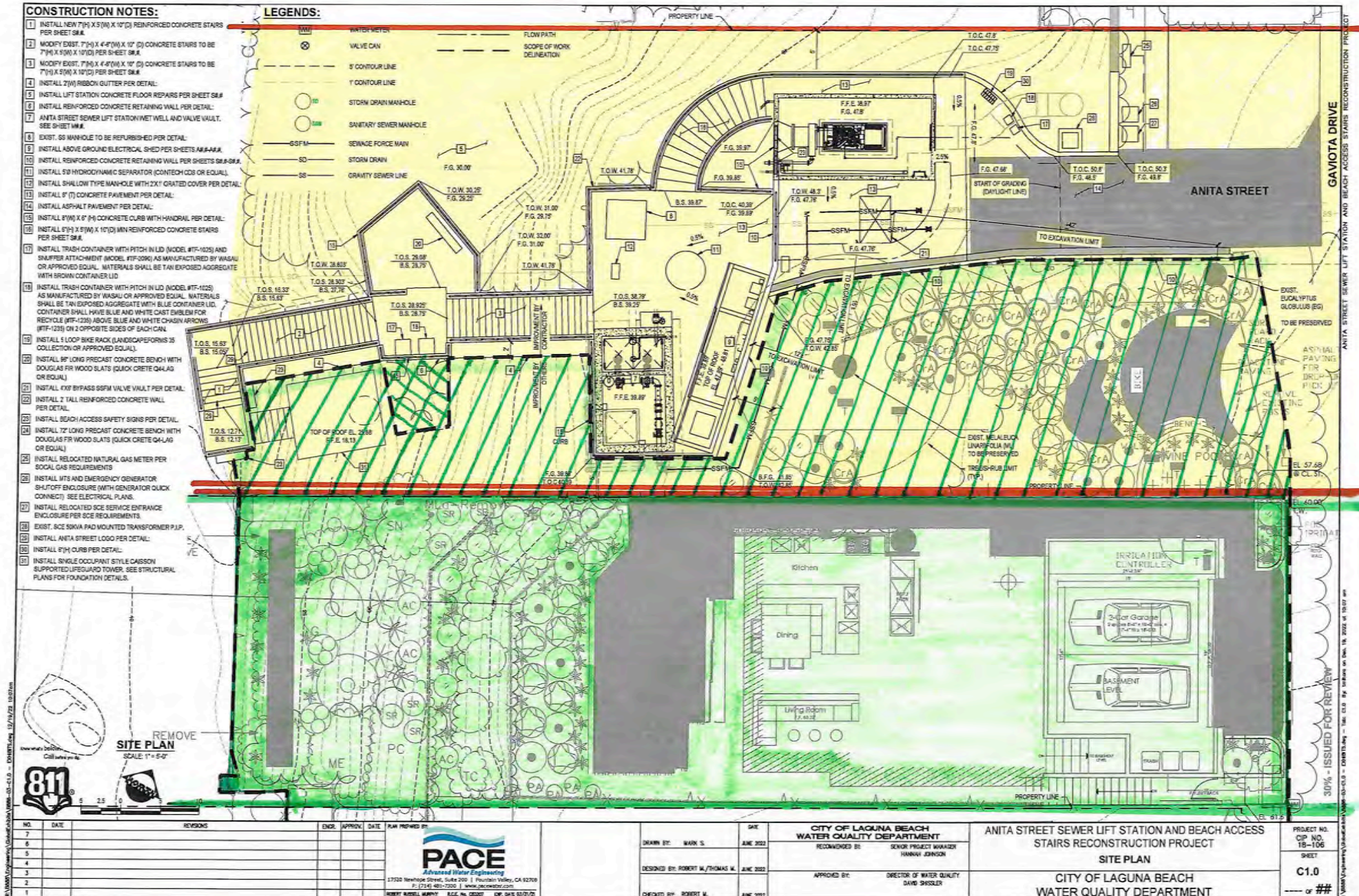
LAGUNA TERRACE
LAGUNA HEIGHTS NO.3
TRACT NO. 83
TRACT NO. 92

M.M. 4-80
M.M. 8-1
M.M. 10-32
M.M. 10-39

NOTE ASS
PAR

Apita St. Stairs, Laguna Beach

A-5-LGB-22-0060
Item Thila 3.9.2023



R.O.W

City development

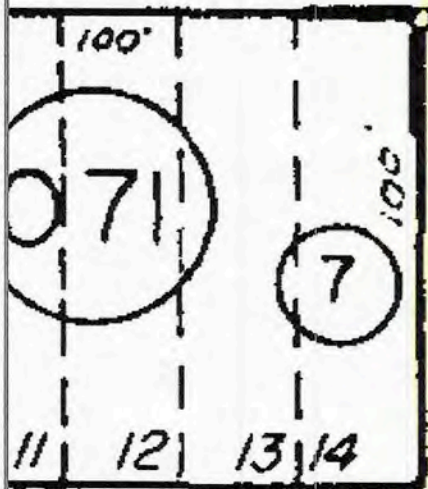


ENCROACHMENT INTO R.O.W. (private party)

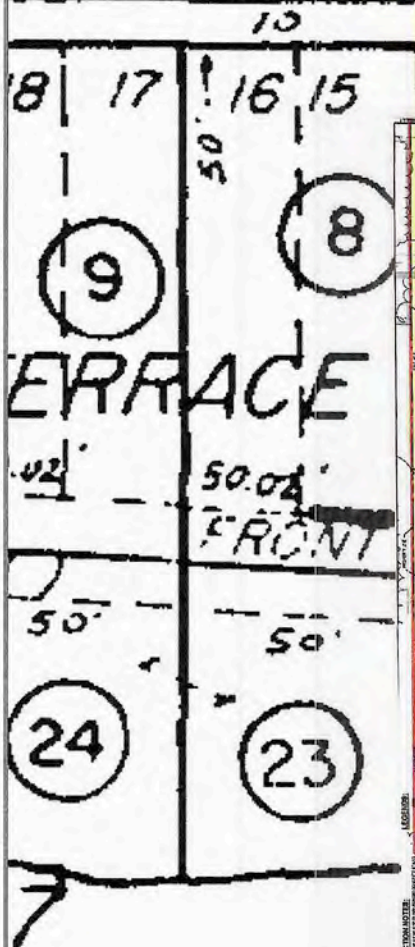
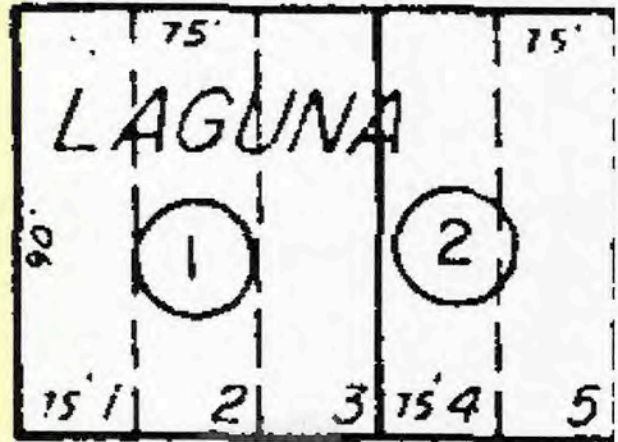
1007 Gaviota

private party development

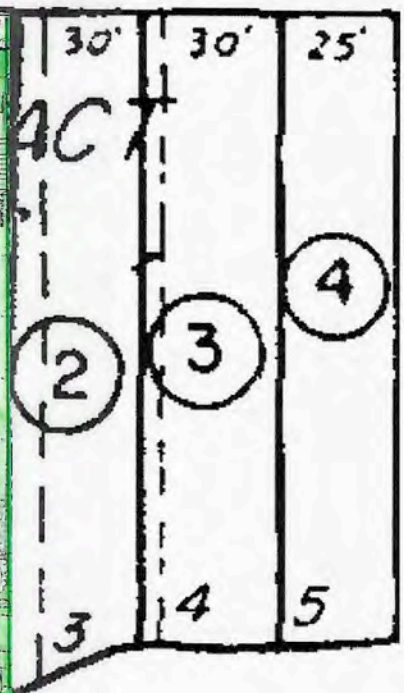
PACIFIC COAST HIGHWAY



ANITA STREET



GAVIOTA



R.O.W.


EXTENT OF 100' DEVELOPMENT

PACIFIC OCEAN



Private Party
Project area

City Project area



Approximate location
of property line

Approximate area of
encroachment

Warren, Bailey@Coastal

From: Fudge <fudge1@cox.net>
Sent: Wednesday, April 5, 2023 12:54 PM
To: Warren, Bailey@Coastal
Cc: Huckelbridge, Kate@Coastal; Haage, Lisa@Coastal; Schwing, Karl@Coastal; Rehm, Zach@Coastal; Mark Fudge
Subject: A-5-LGB-22-0025 - Special Condition 2

Hi Bailey,

Since Special Condition 2 for the project at 1007 Gaviota (A-5-LGB-22-0025) recommends that the existing retaining walls will have to be removed when no longer required to protect adjacent bluff top structures with rights to shoreline armoring under PRC §30235, I've been doing some research on the structure at 1021 Gaviota (the property to the south of 1007 Gaviota). Based on that research, I'm questioning whether or not that structure maintains their right to that shoreline armoring as it has undergone a 'major remodel' and in doing so, has become 'new development'.

I've attached documents below, but will give you a timeline for your review:

8/2/77 - CDP P-4-28-77-817 was granted by the South Coast Regional Commission to the owner to remodel an existing three-level duplex. The project included an expansion of square footage and an addition of 525 square feet of basement storage. As a condition of that permit, the applicant was required to record a deed restriction limiting the use of the structure to two units.

10/6/77 Design Review 77-188. The changes required by the Coastal Commission (placement of an internal stairway to prevent the duplex from being turned into a triplex) were considered by the Laguna Beach Design Review Board.

1/19/78 - CDP P-12-27-77-817 was granted by the South Coast Regional Commission amending the previous permit for further additions (142 sq. ft and 137 sq. ft) not indicated on the original plans). Again, the permit contained the condition requiring a limitation of the use to two units.

1/28/88 - Letter from City Attorney to owners re: Notice of Criminal Violation: Unauthorized Conversion of Duplex to Triplex

3/10/88 - Letter from City Code compliance officer that the structure had been converted back to two units.

8/25/05 - CDP 05-48 was issued by the City of Laguna Beach for an 82 sq ft addition (among other things). Minutes indicate that the "aggregate additions exceeded 50 percent"

7/1/2022 - An application for CDP 2022-1101 was filed with the City of Laguna Beach to allow construction of an accessory dwelling unit (conversion of 833.3 square feet within the existing unit). As there were no objections to this application, it was approved administratively.

As shown above (and in the documents attached), the original pre-Coastal structure has undergone a major remodel and may no longer be entitled to shoreline protection. Additionally, it is possible that the structure at 1021 Gaviota is in violation of CDP P-4-28-77-817 and CDP P-12-27-77-817's condition limiting the use of the structure to two units since they've just added an ADU(probably just re-converting it back to the 'old triplex' which would require minimal work). In such a case, the existing seawalls at 1007 Gaviota would need to be removed as part of the permit application under review A-5-LGB-0025.

Please review and advise.

Thank you,

Sharon Fudge

CALIFORNIA COASTAL COMMISSION
SOUTH COAST REGIONAL COMMISSION

666 E. OCEAN BOULEVARD, SUITE 3107

P.O. BOX 1450

LONG BEACH, CALIFORNIA 90801

(213) 590-5071 (714) 846-0648



COASTAL DEVELOPMENT PERMIT

Application Number: P-4-28-77-817

Name of Applicant: Lee B. Butts

1021 Gaviota Drive, Laguna Beach, CA 92651

Permit Type: ☐ Emergency
☒ Standard
☐ AdministrativeRECEIVED
AUG 8 1977
DEPT. OF PLANNING

Development Location: 1021 Gaviota Drive, Laguna Beach, CA

Development Description: Remodel existing, three-level duplex with two on-site parking spaces. Project will add 189 square feet of residential area and 189 square feet of deck area to two lower levels. Project details kitchens on first and third levels and wet bar on middle level. All levels with separate entrances and no interior connections between any levels. 525 square foot basement storage area on lower level, with conditions.

- I. The proposed development is subject to the following conditions imposed pursuant to the California Coastal Act of 1976:

Prior to issuance of permit, applicant shall submit: 1. a deed restriction for recording limiting the use of the structures to two units; and 2. plans to show interior stairway between two floors.

Condition/s Met On

8/2/77

By

bc

II. The South Coast Commission finds that:

A. The proposed development, or as conditioned, is:

1. In conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 and will not prejudice the ability of local government to prepare a local coastal program in conformity with said chapter.
2. If located between the nearest public road and the shoreline of any body of water in the coastal zone is in conformity with public access and public recreation policies of Chapter 3, California Coastal Act of 1976.
3. That there are/are no feasible alternatives, or feasible mitigation measures, as provided in the California Environmental Quality Act, available which would substantially lessen any significant adverse impact that the development as finally proposed may have on the environment.

III. Whereas, at a public hearing, held on June 6, 1977 at Huntington Beach by a unanimous 88 vote permit application number P-4-28-77-817 is approved.

IV. This permit may not be assigned to another person except as provided in Section 13170, Coastal Commission Rules and Regulations.

V. This permit shall not become effective until a COPY of this permit has been returned to the Regional Commission, upon which copy all permittees or agent(s) authorized in the permit application have acknowledged that they have received a copy of the permit and have accepted its contents.

VI. Work authorized by this permit must commence within two years from the date of the Regional Commission vote upon the application. Any extension of time of said commencement date must be applied for prior to expiration of the permit.

VII. Issued on behalf of the South Coast Regional Commission on August 3, 1977.


M. J. Carpenter
Executive Director

I, _____, permittee/agent, hereby acknowledge receipt of Permit Number P-4-28-77-817 and have accepted its contents.

(date)

(signature)

/dh

VARIANCE APPLICATION 2929 - JEAN CROSS, 855 COAST VIEW DRIVE, LOT 30, TRACT 77E.
*APPROVED.

Applicant requests permission in the R-1 Zone to construct addition to single family dwelling without bringing existing non-conforming (garage-additional building setback and storage; frontyard) into conformance. Project received a categorical exemption class 3,a and 5,c. Staff explained this is a continuation of an on-going project. Letter was read into the file requesting garage be finished before request approved. Public hearing was opened.

Ms. Cross came forward stating she would connect the garage to the street so she could be using the garage. She explained the foundation is in for the new addition and just needs to finish the work. Public hearing was closed.

Motion was made by Mr. Schley, seconded by Mr. Whitney to approve Board of Adjustment Resolution 77-102 granting V.A. 2929 as submitted with condition entrance of garage to be connected to the street and used. Justification being existing condition. 20 day waiting period was waived by the following roll call vote, including the above motion:

AYES: Hamburger, McMann, Schley, Whitney NOES: None ABSENT: Weisbrod

DESIGN REVIEW 77-188 - LEE J. BUTTS, 1021 GAVIOTA DRIVE, LOTS 2,3, BLOCK 31, TRACT 83. APPROVED.

Applicant requests design review in the R-2 Zone for addition and exterior remodel of duplex located on ocean bluff. Staff said project received categorical exemption class E and 1,a. There were no public comments. This project had been approved by the Board earlier and gone to Coastal Commission where they were required to put in an interior stairway, which caused the building to be redesigned. Staff showed Board the old plan of the duplex. Public hearing was opened.

Architect Dennis Lee came forward stating house will be shingled instead of resawn cedar. He said the stairway is being required to prevent the duplex from being turned into a triplex. Board felt the design was great and fit the surroundings better than the original approval. Public hearing was closed.

Motion was made by Ms. Hamburger, seconded by Mr. Whitney to approve D.R. 77-188 as submitted. 20 day waiting period was waived. Motion carried by the following roll call vote:

AYES: Hamburger, McMann, Whitney NOES: Schley ABSENT: Weisbrod

ARCH BEACH HEIGHTS DESIGN REVIEW 77-39 - STEVE BRIDGES, 995 ACAPULCO STREET, LOTS 31,32, BLOCK 52, ARCH BEACH HEIGHTS. CONTINUED TO MEETING OF OCTOBER 20, 1977.

Applicant requests design review for new single family dwelling, including grading permit for 494 cubic yards. Project received an Environmental Documents Release Form. Mr. McMann said the design of this house is of the character not acceptable for Arch Beach Heights. Shape is usually seen on a one story, flat lot situation, not a hillside lot. Better design quality is needed for the entire project. Ms. Hamburger agreed. The design doesn't show much imagination and won't enhance the area; Lack's design quality, just a box. Designer came forward

CALIFORNIA COASTAL COMMISSION
SOUTH COAST REGIONAL COMMISSION

666 E. OCEAN BOULEVARD, SUITE 3107

P.O. BOX 1450

LONG BEACH, CALIFORNIA 90801

(213) 590-5071 (714) 846-0648

COASTAL DEVELOPMENT PERMITApplication Number: P-12-27-77-817Name of Applicant: Lee B. Butts1021 Gaviota Drive, Laguna Beach, CA 92651Permit Type: ☐ Emergency
☒ Standard (Amendment)
☐ AdministrativeDevelopment Location: 1021 Gaviota Drive, Laguna Beach, CA

Development Description: Amendment to construct middle level addition of 142 square feet and lower level additions of 137 square feet not indicated on the original plans submitted. The revised plans indicate relocation of several interior portions which fall within the intent of the conditions of the approved permit.

I. The proposed development is subject to the following conditions imposed pursuant to the California Coastal Act of 1976:

Conditions imposed on original permit: Prior to issuance of permit, applicant shall submit: 1. a deed restriction for recording limiting the use of the structures to two units; and 2. plans to show interior stairway between two floors.

RECEIVED
JAN 24 1978

DEPT. OF PLANNING

Condition/s Met On August 2, 1977 By ejd

II. The South Coast Commission finds that:

A. The proposed development, or as conditioned:

1. The developments are in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 and will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976.
2. If located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone, the development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act of 1976.
3. There are no feasible alternatives, or feasible mitigation measures, as provided in the California Environmental Quality Act, available for imposition by this Commission under the power granted to it which would substantially lessen any significant adverse impact that the development, as finally proposed may have on the environment.

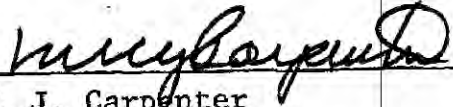
III. Whereas, at a public hearing, held on January 5, 1978 at Torrance by a unanimous ~~xxx~~ vote permit application number P-12-27-77-817 is approved.

IV. This permit may not be assigned to another person except as provided in Section 13170, Coastal Commission Rules and Regulations.

V. This permit shall not become effective until a COPY of this permit has been returned to the Regional Commission, upon which copy all permittees or agent(s) authorized in the permit application have acknowledged that they have received a copy of the permit and have accepted its contents.

VI. Work authorized by this permit must commence within two years from the date of the Regional Commission vote upon the application. Any extension of time of said commencement date must be applied for prior to expiration of the permit.

VII. Issued on behalf of the South Coast Regional Commission on January 19, 197 8.


M. J. Carpenter
Executive Director

I, _____, permittee/agent, hereby acknowledge receipt of Permit Number P-12-27-77-817 and have accepted its contents.

(date)

(signature)

/dh

RUTAN & TUCKER

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

CENTRAL BANK TOWER, SUITE 1400

SOUTH COAST PLAZA TOWN CENTER

611 ANTON BOULEVARD

POST OFFICE BOX 1950

COSTA MESA, CALIFORNIA 92628-1950

OF COUNSEL
MILFORD W. DAHL, SR.

A. W. RUTAN 1980-1972
JAMES B. TUCKER, SR. 1988-1980
M. RODGER HOWELL 1929-1983

TELEPHONE (714) 641-5100
(213) 625-7586

TELECOPIER (714) 548-9035

TELEX 910 598-1883
CABLE ADDRESS RUTAN TUC CSMA

January 28, 1988

IN REPLY PLEASE REFER TO

*Sue Bentley
(818) 241-1164*

Bob (303) 925-1265

*3/2/88 Bob will call me
3/10 for inspection*

GARVIN F. SHALLENBERGER*
JAMES R. MOORE*
H. L. IMKE MCCORMICK*
WILLIAM R. BIEL*
LEONARD A. CURRUTY*
JOHN B. HURLBUT, JR.*
MICHAEL W. IMMELL*
MILFORD W. DAHL, JR.*
THEODORE L. WALLACE, JR.*
RONALD P. ARBINGTON*
RICHARD P. SIMS*
MARSHALL M. BEARLHAN*
ROBERT C. BRUN*
DOUGLAS A. GRABLE*
EDWARD D. SYBESMA, JR.*
THOMAS S. SALINGER*
BARRY R. LAUBSCHER*
ROBERT M. ALBERTS*
WILLIAM V. SCHMIDT*
DAVID C. LARSEN*
CLIFFORD E. FRIEDEN*
ARTHUR G. KIDMAN*
MICHAEL D. RUBIN*
IRA G. RIVIN*
JEFFREY M. ODERMAN*
JOSEPH D. CARRUTH*
STAN WOLCOTT*
ROBERT S. BOWER*
DAVID J. ALESHIRE*
MARCIA A. FORSYTH*
WILLIAM M. MARTICORENA*
JAMES L. MORRIS*
ANNE NELSON LANPHAR*
WILLIAM J. CAPLAN*
MICHAEL T. HORNAN*
JANICE L. CELOTTI*
PHILIP D. KOHN*
JOEL D. KUPFERBERG*
N. TONI PERRY*
STEVEN A. NICHOLS*
THOMAS G. BROCKINGTON*
WILLIAM W. WYNDER*
EVRIDIKI IVICKI DALLAS*
RANDALL M. BABRUSH*
MARY M. GREEN*
PHILIP M. PRINCE*
JOHN L. FELLOWS III*
DAVID M. HOCHNER*
MARK B. FRAZIER*

KARIN T. KROGUS*
THOMAS J. CRANE*
BRUCE A. EHARD*
JAMES J. LITTLE*
DUKE F. WAHLQUIST*
M. KATHERINE JENSON*
JANET L. MACLACHLAN*
DAVID A. THOMPSON*
SCOTT A. PINZONE*
MARY K. RAMSDEN*
RICHARD G. MONTEVIDEO*
DAVID D. COSSGROVE*
MARK SMITH FLYNN*
CAROLE STEVENS*
LOUI SARNER SMITH*
JAMES P. FINERTY*
ERNEST W. KLATTE, III*
DOUGLAS G. SHAFER*
ELIZABETH M. COWLES*
RIM D. THOMPSON*
JAYNE DANOWSKY TAYLOR*
RUTH I. EISEN*
JEFFREY WERTHEIMER*
HANS VAN LIGTEN*
MATTHEW K. ROSS*
MICHAEL D. TURNER*
JOHN F. RAPOSA*
PATRICIA ANDEL DISCOE*
ANDREA S. CALEN*
J. RUSSELL TYLER, JR.*
ROBERT O. OWEN*
BARRY L. ADAMS*
ADAM N. VOLKERT*
JEFFREY A. GOLDFARB*
SANFORD SHATZ*
PATRICK A. MANLY*
TED M. PURCELL*
JANE BIGWELL*
CARL J. THOMAS*
STEVEN W. SPRECHER*
ROBERT YONOWITZ*
RONI D. JACKSON*
MATTHEW P. SEEBERGER*
MELANIE C. CYRE*
CHESTER A. PUCHALSKI*
F. KEVIN BRAZIL*
ROSTY L. MOSMAN*
LAYNE H. MELZER*
PATRICK K. RAFFERTY*

*A PROFESSIONAL CORPORATION

**CERTIFIED MAIL - RETURN
RECEIPT REQUESTED**

Mr. Robert M. Sherman
c/o Beach and Valley
P.O. Box 5045
Glendale, California 91201

Re: Notice of Criminal Violation:
**Unauthorized Conversion of Duplex to Triplex at
1021 Gaviota Drive, Laguna Beach**

Dear Mr. Sherman:

The City of Laguna Beach has requested me, as Deputy City Attorney, to inform you that you are in violation of the Municipal Code of the City of Laguna Beach, namely section 25.12.004(E), which allows up to two units in the R-2, medium density residential zone. A copy of this code section is attached for your information. Under section 25.80.002(c) of the Municipal Code, violation of this section constitutes a misdemeanor punishable by a fine not exceeding \$1,000.00 or imprisonment for a term not exceeding 6 months or both. Furthermore, every day that the violation continues

RUTAN & TUCKER
ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

Mr. Robert M. Sherman
January 28, 1988
Page 2

constitutes a separate offense for which you may be punished separately.

You were advised of this violation in a letter from the City dated August 31, 1987. In that letter, you were advised to remove the third kitchen, remove all the kitchen plumbing to the wall, cap it and seal it inside the wall, and open up the interior connecting stairs between the upper floors. You contacted the City office on September 4, 1987 to advise that you would remove the third kitchen or apply for a wet bar permit. As of the date of this letter, no further contact has been made with the City, thus, the matter has been turned over to the City Attorney's Office.

You are hereby given until February 12, 1988, to contact the City. If you fail to contact the City by the stated date, appropriate legal proceedings including the filing of criminal misdemeanor charges may be brought against you without further notification. I sincerely hope this last step will not be necessary.

I look forward to your cooperation in this matter. Please contact Dee Dillon at the City of Laguna Beach, telephone number (714) 497-3311.

Very truly yours,

RUTAN & TUCKER

Patrick K. Rafferty

Patrick K. Rafferty
Deputy City Attorney
City of Laguna Beach

PKR:dmr

Enclosures

cc: Dee Dillon, Code Compliance Technician
John M. Connors, Zoning Administrator

5/235/053733-0003/122



March 10, 1988

Robert M. Sherman
c/o Beach and Valley
P.O. Box 5045
Glendale, CA 91201

Dear Mr. Sherman:

RE: INSPECTION OF DUPLEX AT 1021 GAVIOTA DRIVE

Thank you for meeting with me on March 10, 1988, so I could make an on-site inspection of your property to determine compliance with the R-2 "Medium Density Residential zone".

My inspection noted that you have a three level structure which consists of two units. The lower one bedroom unit has a kitchen. The upper unit is on two floors with one kitchen on the upper most floor, and a kitchen sink in the middle section. The upper level has two bedrooms and two bathrooms, living room and kitchen, the middle section has two bedrooms and two bathrooms, kitchen sink, but no cooking facilities. (The stove and dishwasher have been removed.) There is also a livingroom/family room on this floor. An interior stairway connects the two levels and is to be used by the same family.

Thank you for your cooperation in this matter, and if I can be of any assistance to you in the future, please contact me.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Dee Dillon", is written over a horizontal line.

Dee Dillon
Code Compliance Technician

13. **VARIANCE 7262, DESIGN REVIEW 05-236 AND COASTAL DEVELOPMENT PERMIT 05-48: 1021 GAVIOTA DRIVE, APN 644-076-02, APPROVED WITH CONDITIONS**

The applicant requests Board of Adjustment/Design Review Board approval and a Coastal Development Permit to construct an 82 square-foot addition to an existing two-family dwelling. **Design review is required for aggregate additions exceeding 50 percent**, elevated decks, landscape and construction in an environmentally sensitive area due to oceanfront proximity and water quality. A variance is requested to construct stairs and landings out of grade within the required side setback [LBMC 25.50.008(C)], to not provide the required open space [LBMC 25.50.010] and to not provide the required onsite parking [LBMC 25.52.012]. A Coastal Development Permit is required for aggregate additions exceeding 10 percent.

Testimony in Support: Lance Polster, project architect, said he reviewed the privacy problems from the neighbor's home and tried to address their concerns. He said the purpose of the window is to look out towards the ocean and not into the neighbor's home.

Public Testimony: Rae Wyman, 1031 Gaviota Drive, would oppose all variances because she feels the additional staircases are not that necessary. Several trees will be removed that will reduce their privacy. Drainage and parking are other concerns.

Barbara Selby, 1007 Gaviota Drive, was concerned about privacy, drainage and parking.

Noel Selby, 1007 Gaviota Drive, was concerned about privacy.

Melford Wyman, 1031 Gaviota Drive, said that parking is a problem.

Response: Mr. Polster said that only Ms. Selby called him with her concerns. Parking is a problem everywhere on this street, but they are reducing three units to two. A variance is not required for the side stairway. They are trying to create an entrance on one side and another entrance for the second unit.

Board Comments: Ms. Liuzzi would not be in favor of enlarging the window due to privacy impacts. Removing the third unit would decrease the intensification and could be justified due to pre-existing conditions. She won't support the exterior stairway out of grade.

Mr. Kawaratani has no problem with the request. The increase in window size will not cause any significant privacy impacts. He supports the stairway for safety reasons and because it will reduce the intensification of use. He can approve the project due to design integrity, neighborhood compatibility and privacy. The justification for the variance is due to topography, location and pre-existing conditions. The Coastal Development Permit is based on 1G, 2A and 3B.

Ms. Lenschow agreed with Mr. Kawaratani. She doesn't feel that squaring off the window will create a privacy impact. The variance for the steps should be granted based on safety. Hopefully this will eliminate the third unit. This proposal will decrease the number of units, which will ease the existing substandard parking problem.

Ms. Plumb agreed with Mr. Kawaratani and can support the project.

Ms. Morrison thinks the house is appropriately fenestrated and additional windows are not necessary. The house to the north will have privacy impacts with this proposal. The windows should be reduced in size and remain in the front. This will mitigate some of the privacy issues for the neighbors. She wants the exterior staircase to remain as it is because landscaping should be preserved unless it's to improve safety. She can support the interior staircase because it will improve the flow. The variance will reduce the potential traffic and parking in this particular residence. She would like a smaller window because she feels there is sufficient fenestration on that side of the building.

Mr. Kawaratani made a motion, seconded by Ms. Lenschow, to approve Variance 7262, Design Review 05-236 and Coastal Development Permit 05-48 at 1021 Gaviota Drive on the condition that all water on the north side of the property be diverted away from the adjacent property with the installation of a curb. The justification for the variance is due to location, topography and pre-existing conditions. The Coastal Development Permit is based on 1G, 2A and 3B. The motion carried 3-2.

Vote: Kawaratani Y Lenschow Y Michel Absent Morrison N Plumb Y Liuzzi N

City of Laguna Beach
Building Division
505 Forest Avenue
Laguna Beach, CA 92651



Building Permit
Permit Number: B05-538
Page 1 of 1 Printed: 3/18/2005
Inspector:
Issued By: Margaret Brown

Parcel Number: 644-076-02 Zoning: R2
Address: 1021 Gaviota Dr Laguna Beach, CA 92651
Purpose: Addition/Remodel SF Residential Site Area:
Structure Use: Units: Grading (CY):
Floor Area: 1929 Other Area: Stories:
Occupancy: Const Type: Code:
Geo Memo Req.: ☐ Sprinklered: ☐ NPDES(3/2/1 - H/M/L):
DR: CDP: Approved: Extended:

Description

Remodel interior staircase, enclose entryway, and remodel existing SFR

Valuation:

Use	Area	Rate	Valuation
Addition/residential	82	\$160.00	\$13,120.00
Single Family - Remodel	1847	\$115.00	\$212,405.00
Construction Value:			\$225,525.00

Owner Courtney L Sherman
114 Russell Ave Portola Valley, CA 94028
Applicant: Polster & Associates AIA 949/497-1254
2094 South Coast Hwy, #5 Laguna Beach, CA 92651
Architect Polster & Associates AIA 949/497-1254
2094 South Coast Hwy, #5 Laguna Beach, CA 92651
State License: Expires:
Workers's Comp: Expires:

Fees and Receipts:

Description	QTY	Amount
Z - Zone Plan Check Fee (Auto)	1	\$320.00
Total Fees:		\$320.00
R05-760		\$320.00
Total Receipts:		\$320.00



**ACCESSORY DWELLING UNIT
COASTAL DEVELOPMENT PERMIT
CATEGORICAL EXEMPTION (CEQA)
PUBLIC NOTICE**

An application to allow construction of an accessory dwelling unit (formerly referred to as a second residential unit) was filed on July 1, 2022 **COASTAL DEVELOPMENT PERMIT 2022-1101** for the:

**Cypress Residence
1021 Gaviota Drive
APN 644-076-01**

The accessory dwelling unit (ADU) is a conversion of 833.3 square feet within the existing unit of a multi-family development, consisting of a living room, kitchen, dining room, bedroom, bathroom, and deck.

According to California State Law and local ordinances, a local public hearing will not be held, and no further public notice will be given. This proposed development may be administratively approved.

This project is located within the City of Laguna Beach Coastal Zone. The Coastal Development Permit application for an accessory dwelling unit is appealable to the California Coastal Commission. Written comments on the proposed development may be brought or mailed to the City of Laguna Beach through October 4, 2022.

In accordance with California Environmental Quality Act Guidelines, the project is categorically exempt pursuant to Section 15303, Class 3(a) (New Construction), which allows construction of an accessory dwelling unit in a residential zone.

City Staff: Russell W. Bunim, AICP, Planning Manager (949) 715-0850
rbunim@lagunabeachcity.net



April 7, 2023

California Coastal Commission
455 Market Street Suite 300
San Francisco, CA 94105

Re: Item W11b (A-5-LGB-22-0025) Mike and Lori Gray, Laguna Beach
AND
Item W12a (A-5-LGB-22-0060) City of Laguna Beach, Laguna Beach

Dear Chair Brownsey and Commissioners:

The Sierra Club Orange County Conservation Committee (OCCC) commented on the two above-referenced City of Laguna Beach items last month in March 2023.

This letter's comments cover both of the above-referenced agenda items since the two projects are proposed for one parcel of land, but developed by two different entities — a private property owner and the City of Laguna Beach (City).

This comment letter, submitted electronically to both agenda items, requests a denial of the Gray project (A-5-LGB-22-0025) and that substantial issue be found for the City project (A-5-LGB-22-0060).

This is a complex issue involving land use and Coastal Act policy non-compliance in attempted development of one parcel of land by two property holders (public and private, with influence from a third private property).

The Commission must understand these two properties are inextricably linked. The staff reports do not make this clear, so the impacts are difficult for Commissioners to understand. The exhibits for both projects use the same exact site plans which further confuses the issue.

GRAY: The Gray project presents a tangled web of actions which, with CCC staff recommendations, allow a private property owner to assume public property development and maintenance.

This inappropriate land use started in 2018, when the Grays negotiated with the City of Laguna Beach to secure this public access land/right of way (ROW) through a purchase offer to the City in the amount of \$540,000 — that would not include a CDP.

Although this proposal was abandoned by the City, the applicant came back with a request for a Revocable Encroachment Permit (REP), at essentially a zero cost, and obtained the rights to develop an even larger portion of the right of way (ROW) than originally pursued through the purchase offer. The request was approved.

The inequity starts there, because for the privilege of obtaining almost one-third of that ROW, the applicant agreed to provide minor public amenities. These "amenities" are nothing compared to what would be required if the City were to develop that area.

Also not addressed in the Gray staff report is the history of development activity at the adjacent property to the south of the Grays, at 1021 Gaviota.

The staff report does not address the Coastal Commission's ongoing involvement in the development process which began in 1977 and was resolved in 2022.

This is a very complicated, interlocking issue requiring thorough research by staff for the Commission's review, as it violates the Coastal Act compliance regarding shoreline protection when a property owner has undergone a major remodel.

SUMMARY OF GRAY: Deny the Gray application because (1) it is misuse and misappropriation of public land/ROW facilitated by both the City and Coastal Commission; (2) it is inappropriate for a private property owner to handle the development and maintenance of public access property when there are no assurances this private entity will fulfill their commitments; (3) allowing the private property owner this ROW thwarts development of an ADA compliant staircase with landings to accommodate the disabled community, as well as other members of the general public.

CITY OF LAGUNA BEACH: CCC staff has not adequately addressed our concerns in the City's project, A-5-LGB-22-0060.

In March 2023, the Sierra Club comments pointed out this project not only will deny maximum public access, but may also set a bad precedent for other stairways and paths to access the coast.

In this project, approved by the City on September 21, 2022 maximum public access was not provided as required by the California Constitution and the Coastal Act.

As stated before, the maximum access problem is further compounded by the recommendations made by CCC staff related to the Gray property.

On September 21, 2022 City decision makers did not review the project 'as a whole' by including the entirety of the 60' wide Public ROW and the revocable encroachment permit (REP). The REP, issued to the adjacent landowner to use approximately one-third of the ROW, was not mentioned in the City staff report nor in the Initial Study/Mitigated Negative Declaration.

Due to this oversight, decision makers were misinformed and failed to consider the revocation of said encroachment permit (REP) at the time of the project's review.

This lack of important information meant only two-thirds of the available land was considered instead of the entire Public ROW. The result: a poorly planned staircase and landings, inadequate ADA parking, and development that are NOT suitable given the Commission's policies on preparing for sea level rise and climate change.

A re-evaluation of the available land must be done to comply with state ADA requirements and the Commission's dedication to equity.

Providing maximum access for all the people, by definition, includes people with disabilities. Yet, very little in the City decision addresses the needs of the disabled community, nor has CCC staff required maximum access in its recommendations. Beach access is beach access, and that is for all people.

The Sierra Club looks to the CCC for their guidance in this area, and to insist on compliance with the CCC's Environmental Justice Policy. This is the same request we made last month that appears to have been overlooked in staff recommendations.

*“The California Coastal Commission’s commitment to diversity, equality and environmental justice recognizes that equity is at the heart of the Coastal Act, a law designed to empower the public’s full participation in the land-use decision-making process that protects California’s coast and ocean commons **for the benefit of all the people**. In keeping with that visionary mandate, but recognizing that the agency has not always achieved this mission with respect to many marginalized communities throughout California’s history, the Commission as an agency is committed to protecting coastal natural resources and providing public access and lower-cost recreation opportunities for everyone. The agency is committed to ensuring that those opportunities not be denied on the basis of background, culture, race, color, religion, national origin, income, ethnic group, age, **disability status**, sexual orientation, or gender identity.”*

This lack of ADA access must be corrected, but staff has failed to do this, yielding the project non-compliant with the Commission’s Environmental Justice policies. Once again we reiterate that beach access should be made available to all people.

Sierra Club concerns also include the precedent-setting possibilities of this decision on a statewide basis. If Laguna Beach is allowed to do this, it opens up this type of bad development up and down our coast.

We believe the City’s decision, and CCC staff’s recommendation, result in an inferior project with regards to Section 30210 of the Coastal Act.

*Section 30210: In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be **provided for all the people** consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

The priorities of public access are superior to private needs when considering development on a public site - especially one related to coastal access. If this project is approved as presented, the opportunity to provide a better public experience will be lost - forever. And again, this sets a bad precedent for the rest of our state.

Providing public use of the FULL public right of way is the correct and lawful decision to make, and would uphold the policies of the Coastal Act. With ALL of the land to work with, the City should be able to create a switch back staircase and landings that could be accessed by wheelchairs and individuals on walkers.

Furthermore, the City, using ALL of the land that should be rightfully under their jurisdiction should provide, at minimum, multiple ADA parking spots without meters that would be free of charge per ADA compliance regulations and signage indicating that ADA access is available at this location.

Shocking to us is the added placement of a permanent lifeguard tower as it has not taken sea level rise into account in any shape, manner or form.

The City’s September 21, 2022 staff report used a wave run up study from a different location on the beach to make their findings for THIS location. The study, completed in 2016, is outdated.

In 2007, the Sierra Club opposed the City’s original plan for the construction of permanent lifeguards in five fragile coves. Commissioners Sara Wan and Patrick Kruer joined the appeal because they recognized how damaging these structures would be to the beaches of Laguna.

Climate change and sea level rise have not improved since 2007, but the City continues to push forward the development of these damaging structures.

This proposed structure will add to the inability to provide maximum public access while creating more development that will scour our beaches. This is derelict planning. It should not be omitted until a current study of sea level rise and future conditions can be done at the proposed location.

SUMMARY OF CITY PROJECT: Please find substantial issue with the City of Laguna Beach application. The intertwined issue of public/private land use does not allow the City to provide adequate public access for the disabled community as required by the Commission's EJ Policy.

Please Commissioners, take the time to look at this area on Google maps to better understand for yourselves how detrimental this type of unplanned development is to our coast.

We once again ask Commissioners to DENY the Gray project and find substantial issue with the City's project. Neither applications are in compliance with multiple Coastal Act policies and do not provide maximum public access that must be developed and managed solely by the City to be compliant with ADA regulations.

Sincerely,

Nancy Okada

Nancy Okada

Chair

Sierra Club Coastal Subcommittee



March 3, 2023

California Coastal Commission
455 Market Street Suite 300
San Francisco, CA 94105

Re: Item Th11a (A-5-LGB-22-0060) City of Laguna Beach, Laguna Beach

Dear Chair Brownsey and Commissioners:

The Sierra Club Orange County Conservation Committee is concerned that this project not only will deny full public access, but may set a bad precedent for other stairways and paths to access the coast.

In this project, approved by the City of Laguna Beach, maximum access was not provided as required by the California Constitution and the Coastal Act.

City decision makers did not review the project 'as a whole' by including the entirety of the 60' wide Public Right Of Way (ROW) and the revocable encroachment permit (REP). The REP, issued to the adjacent landowner to use approximately one-third of the ROW, was not mentioned in the City staff report or in the Initial Study/Mitigated Negative Declaration.

Due to this oversight, decision makers were misinformed and failed to consider the revocation of said encroachment permit (REP) at the time of the project's review.

This unfortunate omission meant that only two-thirds of the available land was considered instead of the entire Public Right Of Way.

Providing maximum access is for all the people, by definition, including people with disabilities. Yet, there is nothing in the City decision that addresses the needs of the disabled community.

We look to the Coastal Commission (CCC) for their guidance in this area, and their insistence on compliance with the CCC's Environmental Justice Policy.

*The California Coastal Commission's commitment to diversity, equality and environmental justice recognizes that equity is at the heart of the Coastal Act, a law designed to empower the public's full participation in the land-use decision-making process that protects California's coast and ocean commons for the benefit of all the people. In keeping with that visionary mandate, but recognizing that the agency has not always achieved this mission with respect to many marginalized communities throughout California's history, the Commission as an agency is committed to protecting coastal natural resources and providing public access and lower-cost recreation opportunities for everyone. The agency is committed to ensuring that those opportunities not be denied on the basis of background, culture, race, color, religion, national origin, income, ethnic group, age, **disability status**, sexual orientation, or gender identity.*

At this location, the areas easily accessible to the disabled community, including a bench or viewing area, would only be available on the portion of the ROW that has been granted to the adjacent landowner.

These amenities cannot be provided on the portion of the ROW considered by the City Planning Commissioners because it is too narrow and too steep. This oversight must be corrected in a de novo review of the project, providing the Commissioners with an opportunity to apply appropriate Environmental Justice policies.

Concerns of the Sierra Club also include the precedent-setting possibilities of this decision on a statewide basis.

Based on our knowledge and experience, the provision of public access/amenities is primarily left in the hands of public agencies or commercial ventures. This is not a matter for private homeowners who stand to benefit disproportionately through the issuance of permits to sort out the access amongst themselves.

We believe the City's decision, and CCC staff's recommendation to not find a substantial issue with the appeal being heard, results in an inferior project with regards to Section 30210 of the Coastal Act.

Section 30210: In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

The priorities of public access are superior to private needs when considering development on a public site - especially one related to coastal access. If this project is approved as presented, the opportunity to provide a better public experience will be lost - forever.

This 'giveaway' of public land use is egregious and should not be advanced. Providing public use of the FULL public right of way is the correct and lawful decision to make, and would uphold the policies of the Coastal Act.

We ask that the Commissioners make a finding of 'substantial issue' with the appeal and review the entire project in a future de novo hearing.

Sincerely,

A handwritten signature in black ink, appearing to read "Raymond T. Heimstra". The signature is fluid and cursive, with the first name "Raymond" and last name "Heimstra" clearly distinguishable.

Ray Heimstra, Chair
Sierra Club Orange County Conservation Committee