
CALIFORNIA COASTAL COMMISSION

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W11b

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STAFF REPORT: APPEAL – DE NOVO

Appeal No.: A-5-LGB-22-0025

Applicant: Mike and Lori Gray

Agent: Steve Kaufmann

Appellants: Mark and Sharon Fudge

Location: 1007 Gaviota Drive, Laguna Beach, Orange County
(APN 644-076-01)

Project Description: After-the-fact authorization for demolition of the majority of existing structure; construction of a new, 3,552 square-foot single-family dwelling and attached 489 square-foot two-car garage; and construction of public amenities, including a public vehicle drop off area and public bike racks within the Anita Street and Gaviota public right-of-way, pursuant to a revocable encroachment permit.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The applicants seek after-the-fact authorization for their demolition of the majority of an existing duplex and prospective authorization for the construction of a new single-family home atop a 5,181-square-foot, rectangular, ocean-fronting, blufftop lot at 1007 Gaviota

Drive in Laguna Beach. The City of Laguna Beach approved a local coastal development permit (CDP) for the proposed project, which was appealed to the Commission, and on July 13, 2022, the Commission found that the appeal raised a substantial issue because the City's findings of local coastal program (LCP) consistency were not adequately supported by documents in the record. Specifically, there were substantial issues as to: (1) whether the bluff edge was properly identified and consequently whether the bluff edge setbacks were appropriately applied; (2) the perpetuation of potentially obsolete bluff retention structures onsite; (3) the encroachment of fenced-in private yard area into the public right-of-way, and (4) the potential reduction in residential density onsite. Furthermore, insufficient information was provided regarding the proposed development's compliance with relevant development and public access policies of the LCP and the Coastal Act.

The City of Laguna Beach LCP was certified by the Commission on January 13, 1993 (except for the areas of deferred certification: Three Arch Bay, Hobo Canyon, and Irvine Cove). The subject structure falls within the City's certified LCP jurisdiction and is also located between the first public road and the sea. Thus, the standards of review for this project are the City's certified LCP and the public access and public recreation policies of the Coastal Act, pursuant to Public Resources Code section 30604(b) and (c).

Where proposed development is undertaken under the auspice of "repair and maintenance" or a "remodel-addition," it is important to determine the nature and extent of work that is occurring on the existing structure to determine whether the scope of the development goes beyond repair and maintenance and the resulting product actually constitutes a replacement structure, which requires applicants to eliminate any heretofore existing legal non-conformities with the certified LCP, such as inadequate or absent bluff edge setbacks, and any relevant policies of the Coastal Act, to ensure that the entire proposed new development complies with the certified LCP and those policies of the Coastal Act. The Laguna Beach LCP also references these terms, sometimes interchangeably.

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

size or degree of an existing nonconformity shall cause the nonconforming structure to be brought into conformity with the LCP.

The proposed plans indicate that the project consists of alterations to major structural components of the primary structure. The square footage of livable area would be increased by 815.3 square feet. Alteration percentages provided by the applicants include demolition of 100% of the roof area, 59% of the main level area, 100% of the upper-level area, and 80% of the total exterior walls. Furthermore, the pre-existing single-family-residence was converted to a duplex in the late 1960's based on a two-family occupancy provided in the Orange County Directory in 1968. In August, 2014, the City issued a permit for a minor remodel of the structure, however, the City discovered that the applicant exceeded the scope of work authorized by the City-issued permit and on December 18, 2014, the City Code Enforcement issued a stop-work order for unpermitted construction that was taking place ([Exhibit 7](#)). The unpermitted demolition of the existing structure caused the applicant to forfeit the opportunity to repair and maintain their existing structure. Based on the available evidence, the proposed development constitutes a major remodel, and would result in a replacement structure. Thus, the resulting structure must be brought into conformity with current standards within the LCP pursuant to LUE Policy 7.3.10.

The applicants' initial bluff edge determination was not made pursuant with the LCP definition pursuant to LUE Policy 10.2.6, which is required because the project has been determined to be a major remodel. The Commission's staff geologist, Dr. Joseph Street, has determined that pursuant to the LUE definition, the current bluff edge at the site is approximately 10 - 24 ft landward of the applicant's determination, depending on the specific location on the bluff ([Exhibit 4](#)).

Per proposed **Special Condition 1**, the applicants would have to revise the proposed project to remove portions of the structure extending seaward of the required bluff edge setback line to ensure the structure is in conformance with the LCP's current bluff edge setback standards. The applicant has revised the proposed project to remove the existing encroachments in the public right of way, and will instead construct public amenities, including a public vehicle drop off area and public bike racks within the Anita Street and Gaviota encroachment area. The project structure has been designed to not rely on coastal armoring or retain coastal armoring for the protection of the proposed blufftop residence, per LUE Policy 7.3.9. However, the neighboring property at 1021 Gaviota Drive, built in year 1926, has been determined to rely on the existing retaining walls crossing both properties. The walls cannot be removed without extensive grading of the bluff face and the construction of large lateral retaining walls along either property line, otherwise causing erosion damage to the neighboring property ([Exhibit 5](#)). Therefore, the least environmentally damaging option is to allow the retaining walls to remain. Nevertheless, per proposed **Special Condition 2**, the retaining walls fronting the proposed structure on the seaward side would be removed when no longer required to protect adjacent blufftop structures, namely the neighboring property to the south located at 1021 Gaviota Drive.

Therefore, staff recommends that the Commission **APPROVE** CDP application A-5-LGB-22-0025 with ten special conditions requiring the applicants to: 1) submit revised final plans to adhere to the LUE-defined bluff edge, setting the home back 25 feet from the bluff edge; 2) agree that the existing seawall/retaining wall system fronting the proposed structure may not be retained to protect the subject new blufftop residence and shall be removed when adjacent legally permitted structures no longer rely on the retaining wall for protection; 3) obtain an amendment to this CDP or a new CDP for any future development; 4) plant only drought-tolerant and native or non-invasive plant species for landscaping; 5) provide a Laguna Beach Building Department job card to verify the degree of alterations undertaken for the project; 6) adhere to construction best management practices in order to protect water quality; 7) assume the risks of injury and damage from hazards in connection to the property and permitted development; 8) waive rights to future shoreline protective devices; 9) agree that this permit shall not constitute a waiver of any public rights on the property; and 10) record a deed restriction to memorialize the special conditions of approval. The motion is on Page 6 of the staff report.

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EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Proposed Project Plans](#)

[Exhibit 3- Existing Retaining Walls](#)

[Exhibit 4 – Coastal Commission Bluff Edge Exhibit](#)

[Exhibit 5 – Bluff Edge and Geologic Setback Review Memorandum](#)

[Exhibit 6 – Buildable Area](#)

[Exhibit 7 – 2014 Building Permit and Stop Work Order](#)

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

Motion:

I move that the Commission approve Coastal Development Permit A-5-LGB-22-0025 pursuant to the staff recommendation.

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

Resolution:

The Commission hereby approves Coastal Development Permit A-5-LGB-22-0025 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the certified Local Coastal Program and the public access and recreation policies of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

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

all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Revised Final Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit for review and written approval of the Executive Director, revised final plans in substantial conformance with the proposed plans provided in **Exhibit 2** of the staff report dated February 24, 2023, except that all foundation and structural elements shall be revised to be set back a minimum of 25 feet from the bluff edge identified in **Exhibit 4** and all accessory structures without foundations shall be set back a minimum of ten feet from the bluff edge identified in **Exhibit 4**. The revised final plans shall be approved by the City of Laguna Beach and shall include the following:

- a) The plans shall show the LCP defined bluff edge and the foundation of the proposed home shall be located at least 25 feet landward of the LCP-defined bluff edge of the site identified in **Exhibit 4**.
- b) Accessory structures such as decks, patios and walkways that do not require structural foundations shall not be less than 10 feet from the bluff edge of the site identified in **Exhibit 4**. Accessory structures shall be removed or relocated landward when threatened by erosion, geologic instability or other coastal hazards.
- c) Native landscaping shall be provided in areas within ten feet of the bluff edge that are currently covered by non-conforming accessory structures, including portions of the existing patio. Temporary above-ground irrigation may be installed in this area for up to three years but no temporary or permanent irrigation shall be installed seaward of the bluff edge.
- c) The residence may include a reduced front yard setback along Gaviota, if approved by the City of Laguna Beach. The City approved plans and associated variance and/or encroachment permit shall be submitted to the Executive Director for review and approval. No amendment to the subject permit would be required for a project revision that includes relocating or expanding the structure to accommodate a reduced front yard setback, consistent with all other policies of the certified LCP including height, density, and public view corridors.
- d) Grading and excavation shall be prohibited within 25 feet of the bluff edge of the site identified in **Exhibit 4**. Construction necessary to remove existing accessory structures and debris adjacent to the bluff edge shall be identified on the plans.
- e) All runoff from impervious surfaces on the top of the bluff shall be collected and directed away from the bluff edge toward the street. Drainage elements shall be identified on the plans.

f) The final site plan shall identify the proposed public improvements within the public right-of-way identified on **Exhibit 2**, page 1 including but not limited to a vehicle drop off location, bike racks, a concrete bench, beach access safety signs, and temporary above-ground irrigation within the public right-of-way. The applicants shall also provide the final City of Laguna Beach issued revocable encroachment permit and any variances required for development along Anita Street and Gaviota for the review and written approval of the Executive Director. Should the applicants elect not to provide the proposed public benefits, the applicants shall remove all private encroachments including fencing, walls, curbs, concrete, and furniture from the encroachment area to the north of the applicant's property line prior to construction of the new development authorized by this permit and shall provide evidence to the Executive Director and the City of Laguna Beach that removal of the private encroachments is complete.

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

2. Coastal Armoring. By acceptance of this permit, the applicants agree, on behalf of themselves and all successors and assigns, that the 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. By acceptance of this permit, the applicants agree that removal of existing retaining walls and simultaneous restoration of the seaward slope to a stable and natural condition shall require conformance to City of Laguna Beach building code Chapter 22.06 while maintaining conformance to the certified LCP setback requirements, which may reduce the subject property's buildable area upon removal of the retaining walls and may require removal of some structural elements of the subject development including the seaward side of the home. Prior to the anticipated termination of the retaining walls, the permittees shall apply for a new CDP or amendment to this CDP, to remove the shoreline armoring or to modify the terms of its authorization, including with respect to any necessary mitigation, unless the Executive Director determines that no amendment or a new coastal development permit is legally required. By acceptance of this Permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to retain the existing retaining wall fronting the subject site to protect the blufftop residence that may exist under Public Resources Code Section 30235 or under the certified Laguna Beach LUP.

3. Future Improvements. This permit is only for the development described in coastal development permit No. A-5-LGB-22-0025. Pursuant to Title 14 California Code of Regulations (CCR) Section 13250(b)(6), and LCP Section 25.07.008, the exemptions otherwise provided in Public Resources Code (PRC) Section 30610(a) shall not apply to

the development governed by coastal development permit No. A-5-LGB-22-0025. Accordingly, any future improvements to the permitted single-family residence and/or guest house authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in PRC Section 30610(d) and Title 14 CCR Sections 13252(a)-(b), shall require an amendment to coastal development permit No. A-5-LGB-22-0025 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

4. Landscaping – Drought tolerant, Non-Invasive Plants.

A. Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants that are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://ucanr.edu/sites/WUCOLS/files/183488.pdf>).

B. Use of reclaimed water for irrigation is encouraged. If using potable water for irrigation, only above-ground drip or microspray irrigation systems may be used. Other water conservation measures shall be considered, such as weather based irrigation controllers

5. Confirmation of the Extent of Demolition, Removal, and/or Replacement. After demolition, removal, and/or replacement of all primary and accessory structures on the property has been completed, the applicants shall provide the Executive Director, for review and approval, a certified copy of the City of Laguna Beach Building Department job card showing that such work has been performed pursuant to the plans approved under this coastal development permit.

6. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris. By acceptance of the permit, the permittee agrees to comply with the following construction-related requirements and shall do so in a manner that complies with all relevant local, state, and federal laws applicable to each requirement:

- i. No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, rain, or tidal erosion and dispersion;
- ii. Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;

- iii. Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;
- iv. Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMP's shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and
- v. All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

Best Management Practices (BMP's) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the onset of such activity. Selected BMP's shall be maintained in a functional condition throughout the duration of the project. By acceptance of the permit, the permittee agrees that the following measures shall be used during construction:

- vi. The permittee shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. It shall be located as far away from the receiving waters and storm drain inlets as possible;
- vii. The permittee shall develop and implement spill prevention and control measures;
- viii. The permittee shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50 feet away from a storm drain, open ditch or surface water; and
- ix. The permittee shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

7. Assumption of Risk. By acceptance of this permit, the applicants acknowledges and agrees (i) that the site may be subject to hazards, including but not limited to waves, storms, flooding, landslide, bluff retreat, erosion, and earth movement, many of which will worsen with future sea level rise; (ii) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs

(including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards

8. No Future Shoreline Protective Device(s).

A. By acceptance of this permit, the permittee agrees, on behalf of themselves and any successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to CDP No. A-5-LGB-22-0025 including, but not limited to, the residential structures, accessory structures, and foundations in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, sea level rise, or any other natural hazards in the future. By acceptance of this permit, the permittee hereby waives, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235, any similar provision of a certified LCP, or any applicable law.

B. By acceptance of this permit, the permittee further agrees, on behalf of themselves and all successors and assigns, that they are required to remove all or a portion of the development authorized by this permit and restore the site, if:

- i. The City or any government agency with jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, sea level rise, or other natural hazards related to coastal processes, and that there are no feasible measures that could make the structure suitable for habitation or use without the use of bluff or shoreline protective devices;
- ii. Essential services to the site (e.g. utilities, roads) can no longer feasibly be maintained due to the coastal hazards listed above;
- iii. Removal is required pursuant to LCP policies for sea level rise adaptation planning; or
- iv. The development requires new or augmented shoreline protective devices that conflict with applicable LCP or Coastal Act policies.

Approval of CDP No. CDP A-5-LGB-22-0025 does not allow encroachment onto public trust lands. Any future encroachment onto public trust lands shall be removed unless authorized by the Coastal Commission. Additionally, encroachment onto public trust lands is subject to approval by the State Lands Commission or other designated trustee agency.

9. Public Rights and Public Trust. The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that exist or may exist on the property now or in the future. Because the boundary between

public land (tidelands) and private land may shift with rising seas, the structure may currently or eventually be located on public trust lands. This development approval does not permit encroachment onto public trust land; any current or future encroachment must be addressed through an amendment to this permit such that the Coastal Commission may determine whether the encroachment is legally permissible pursuant to the Coastal Act. Further, any existing or future encroachment would also be subject to the State Lands Commission's (or other trustee agency's) review and approval.

10. Deed Restriction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS

A. Project Description

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

The site is currently developed with a partially demolished 2,737-square-foot, 30-foot-high structure with a two-car garage built circa 1924. Seaward of the site, there is a series of retaining walls consisting of a masonry wall at the bluff toe and two upper bluff retaining walls laterally crossing beachfront properties 1007 Gaviota Drive and 1021 Gaviota Drive, built pursuant to Commission-issued CDP A-80-7442 in 1980-81. The applicants propose a major remodel consisting of the demolition of the structure and addition of a two-story, 3,552-square-foot, 30-foot-high single-family dwelling with an attached 489-square-foot two-car garage, and construction public amenities, including a public vehicle drop off area and public bike racks within the Anita Street and Gaviota public right-of-way, pursuant to a revocable encroachment permit. The City is currently developing an expanded public stairway just north of the site and landings to support an improved sewer lift station, which increases the footprint of public infrastructure adjacent

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

Project History

The pre-existing single-family-residence was converted to a duplex in the late 1960's based on a two-family occupancy provided in the Orange County Directory in 1968. In August 2014, the City issued a permit for a minor remodel of the structure, however, the City discovered that the applicant exceeded the scope of work authorized by the City-issued permit and on December 18, 2014, the City Code Enforcement issued a stop-work order for unpermitted construction that was taking place ([Exhibit 7](#)). The unpermitted demolition of the existing structure caused the applicant to forfeit the opportunity to repair and maintain their existing structure. Based on the available evidence, the proposed development constitutes a major remodel, and would result in a replacement structure. Thus, the resulting structure must be brought into conformity with current standards within the LCP.

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

On May 18, 2022, the Coastal Commission received the City’s Notice of Final Action for the approval of local CDP 22-0121 and opened a 10-working-day appeal period. On June 1, 2022, Mark and Sharon Fudge filed an appeal to the Commission during the appeal period which raised the following concerns with the City-approved development:

- 1) The approved development does not comply with the public access requirements of Section 30210 of Chapter 3 of the Coastal Act such that the proposed development does not provide maximum access.
- 2) Review of the proposed development did not consider the certified LCP’s Land Use Element Glossary Entry 101 definition of a bluff edge and the proposed development does not comply with the LCP’s setback requirements from the correct bluff edge.
- 3) The three retaining walls are obsolete since new development cannot rely on existing protective devices per LUE Action 7.3.9 and must be removed per LUE Action 7.3.8.
- 4) Shoreline or bluff protective devices are limited to protecting existing development and not accessory structures per LUE Action 7.3.13. As such,

- the rear patio supported by the retaining wall and fill slope system is obsolete and must be removed.
- 5) The CDP did not address the (unpermitted) demolition of a pre-existing duplex.
 - 6) The proposed development is inconsistent with SB330 and the LCP because it replaces an existing duplex with a single-family residence.

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

Because the Commission found that a substantial issue existed based on the grounds on which the appeal was filed, the Commission's action voided the local CDP, and the Commission must review the merits of the project.

This application was scheduled for a Coastal Commission hearing on March 9, 2023 but was postponed prior to that hearing.

B. Standard of Review

Section 30604(b) of the Coastal Act states:

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

In addition, Section 30604(c) of the Coastal Act states:

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

The standard of review for projects heard on appeal by the Coastal Commission that are located between the first public road and the sea, like this one, are the City's certified LCP and the public access and public recreation policies of the Coastal Act. The City of Laguna Beach LCP was certified by the Commission on January 13, 1993 (except for the areas of deferred certification: Three Arch Bay, Hobo Canyon, and Irvine

Cove). The subject site falls within the City’s certified LCP jurisdiction. The City’s LCP Land Use Plan portion is comprised of a variety of planning documents including the LUE, Open Space/Conservation Element (OS/C Element), and the Coastal Technical Appendix. The Implementation Plan (IP) portion of the LCP is comprised of a number of documents including Title 25, Zoning.

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

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

Certain improvements to existing structures are exempt from Coastal Act or LCP review because they constitute improvements or repair and maintenance without risk of adverse impacts to coastal resources. However, the City’s certified LCP and the Coastal Act require a CDP for improvements located on a beach or within 50 feet of the bluff edge. Section 25.07.008(A) of the certified IP states, in relevant part, that “improvements to any structure where the structure or the improvement is located on a beach, in a wetland or stream, seaward of the mean high tide line, within fifty feet of a coastal bluff edge, in an environmentally sensitive habitat area, and/or in an area designated as highly scenic in the certified Land Use Plan” require a coastal development permit.

Moreover, if changes are so extensive that they go beyond mere improvements or repair and maintenance, then the provisions regarding such changes don’t apply at all. As discussed below, in Subsection D, Development, proposed work cannot be considered repair and maintenance, and the resulting structure is considered redevelopment, or a major remodel, if 50% or more of the major structural components are replaced. The proposed plans indicate that the project consists of alterations to major structural components of the primary structure. The square footage of livable area would be increased by approximately 815 square feet. Alteration percentages provided by the applicants include demolition of 100% of the roof area, 59% of the main level area, 100% of the upper-level area, and 80% of the total exterior wall. Some of the demolition work has already taken place and was stopped by the City because it exceeded the scope of a building permit that was granted for repair and maintenance ([Exhibit 7](#)). Based on the available evidence, the proposed development constitutes a major remodel, and would result in replacement structure(s). As such, the entire

resulting structure must be brought into conformity with the current standards. The proposed actions would also increase the size and degree of the existing onsite nonconformities, and it therefore would require the entire structure to come into conformity with the LCP pursuant to LUE Policy 7.3.10, as well.

Thus, the proposed project, which is a major remodel with additional hardscape, and landscape improvements within 50 feet of a coastal bluff edge, constitutes non-exempt development and requires approval of a CDP consistent with the policies of the certified LCP and the public access policies of the Coastal Act.

C. Coastal Hazards

An updated preliminary geotechnical investigation report was prepared for the proposed development by Geofirm., dated July 17, 2019. Following the appeal and finding of substantial issue, the applicants also submitted a revised slope stability analysis by Geofirm, dated October 3, 2022. The slope stability analysis indicates a determination of the 1.5/1.1 Factor of Safety line to be projected onto the building pad to address slope stability with respect to the siting of the residence. The Commission's staff geologist, Dr. Joseph Street, has reviewed all submitted reports, confirmed the statements discussed herein, and identified the bluff edge consistent with the certified LCP (**Exhibit 4**). Dr. Street's more detailed review of the bluff edge and coastal hazards issues, supporting these findings, can be found in **Exhibit 5**.

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

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

Action 7.3.10 of the LUE states: Allow oceanfront and oceanfront bluff homes, commercial structures, or other principal structures, that are legally nonconforming as to the oceanfront and/or oceanfront bluff edge setback, to be maintained and repaired; however, improvements that increase the size or degree of nonconformity, including but not limited to development that is classified as a major remodel pursuant to the definition in the Land Use Element Glossary, shall constitute new development and cause the pre-existing nonconforming oceanfront or oceanfront bluff structure to be brought into conformity with the LCP.

Action 10.2.6 Require all new development located on an oceanfront bluff top to be setback from the oceanfront bluff edge a sufficient distance to ensure stability, ensure that it will not be endangered by erosion, and to avoid the need for protective devices during the economic life of the structure (75 years). Such setbacks must take into consideration expected long-term bluff retreat over the next 75 years, as well as slope stability. The predicted bluff retreat shall be evaluated considering not only historical bluff retreat data, but also acceleration of bluff retreat

made possible by continued and accelerated sea level rise, future increase in storm or El Nino events, and any known site-specific conditions. To assure stability, the development must maintain a minimum factor of safety against landsliding of 1.5 (static) or 1.2 (pseudostatic, $k=0.15$ or determined through analysis by the geotechnical engineer) for the economic life of the structure.

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

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

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

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

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

LUE Actions 10.2.7 and 10.2.8 require bluff top residences to observe a 25-foot minimum setback for primary structures and a 10-foot minimum setback for accessory structures (such as decks and landscaping) that do not require foundations. The applicant's bluff edge determination shows that the existing residence does not conform with the LUP's blufftop setback requirements.

The Commission received comments from the applicants' attorney, stating that the bluff edge identified by Commission staff and the 25-foot building setback would reduce the building footprint to such a degree that would destroy the proposed residence by making the proposed home unbuildable, and will result in a de facto denial. The applicants purchased their home in November, 2013. The policies of the certified LCP, including the LUE, which determines how to locate a bluff edge and stipulates required setbacks, were certified and accepted by the City in February 2012, more than a year and a half after the current development standards were in place. Therefore, any financial or development expectations the applicants had when purchasing the property

should have, at a minimum, accounted for the development standards in the certified LCP at the time of purchase, including any site constraints associated with the property.

Based on the bluff edge location pursuant to the certified LCP, the project site yields a building pad area of approximately 2,513 square feet. The height limit for this area is 30 feet, which could accommodate a two or three story home. If the applicant chose to build within the maximum allowable envelope of this site, the resulting home would be approximately 2,000-2,500 square feet. Which is comparable in size to other homes in the area and only slightly smaller than the pre-existing 2,746 square foot structure that was illegally demolished by the applicants.

The applicants are seeking approval for an after-the-fact authorization of a new structure. Because of the unpermitted demolition of the pre-existing structure, the applicants forfeit their right to repair and maintain their home and should not expect to retain conditions that do not conform to the City's building and planning codes or the certified LCP with their proposed structure.

The proposed development constitutes a major remodel. Pursuant to LCP - Action 7.3.10, "the pre-existing nonconforming oceanfront or oceanfront bluff structure to be brought into conformity with the LCP." Thus, nonconforming portions of the home extending seaward of the required bluff edge setback line must be removed and the new structure must conform with the LCP's current bluff edge setback standards. The bluff edge and required setback have been identified based on the bluff edge definition in the certified LCP as described herein by the Commission's staff geologist.

The bluff edge determination submitted by the applicants does not adhere to the LCP definition included in the certified LUE. The applicants identified the bluff edge in the approximate location of an existing retaining wall permitted by the Commission in its approval of CDP A-80-7442 and claim that, through that action, the Commission identified the bluff edge to be located in line with the upper-most retaining wall. However, no such determination was made by the Commission at that time. The Commission findings for the approval of the retaining walls simply state that one wall was to be "at the top of the bluff." There are no findings or exhibits that identify the top of the bluff or that upper-most retaining wall as the bluff edge and, in fact, there is nothing in that record that identifies a bluff edge in that action in any way. The location of the second wall was not described at all, and the third was merely described as being "the most seaward." Additionally, bluffs are dynamic landforms which change over time in response to natural conditions and human intervention, thus, even if the bluff edge was identified in that action, there is no guarantee that the bluff edge would forever remain in that location.

In this case, determining the correct location of the bluff edge is required by the certified LCP and is critical to determining where the developable area of property exists within which to place a new home and accessory structures. Dr. Street's analysis ([Exhibit 5](#)) identifies the coastal bluff edge as defined in the certified LUE as the seaward edge of the natural upper bluff terrace deposits, which would exclude the added fill and rely explicitly on the natural bluff edge ([Exhibit 4](#)). As such, **Special Condition 1** requires the applicants to provide revised final plans which identify the bluff edge pursuant to the definition in the certified LCP, locate the proposed home a minimum of 25 feet landward

of the LUE bluff edge, and locate all accessory development a minimum of 10 feet landward of the LUE bluff edge. The revised plans are necessary for the proposed development to be consistent with the certified LCP and, as discussed further below, would ensure stability and account for future erosion of the bluff seaward of the home over the economic life of the proposed development, consistent with the certified LCP.

The Commission received comments from the applicants' attorney stating that Special Condition 1.a, and 1.g would improperly move the bluff edge and treat the homeowners differently than other neighboring residents on Gaviota Dr., upcoast and downcoast. The applicants' attorney further states that Special Condition 1 would leave the applicants with an unbuildable project and an inability provide the public benefits proposed in the encroachment area.

In 2022, when the Commission was preparing to consider the substantial issue question, the Commission received additional comments from the applicants' attorney, stating that repudiation of the Commission's 1980 permit decision would constitute a "taking" or, alternatively, a forfeiture of the deed-restricted public access over the sandy beach. However, he does not explain how this would be the case. He indicates that the staff's bluff edge determination would somehow constitute a repudiation of the Commission's 1980 action, but that is not true. The Commission's 1980 action was the approval of retaining walls. Nothing in the current action upsets that approval. Unpermitted demolition of a 2,746 sq. ft. duplex which was protected in place by the retaining walls subject to that CDP was undertaken by the applicant. Additionally, the subject CDP application does not propose removal of the walls or elimination of the deed restriction providing public beach access, and the conditions of approval of the permit do not require removal of the retaining walls or compel any change to public access. A future CDP or permit amendment would be required to remove the retaining walls. The current proposal is to replace a structure that was developed prior to the effective date of the Coastal Act with a new single-family home. Because of the unpermitted demolition of the majority of the pre-existing structure, the applicants have forfeited their right to repair and maintain their home and should not expect to retain conditions that do not conform to the City's building and planning codes or the certified LCP. Additionally, since the majority of the structure has been demolished, the applicants do not have a valid legal reason or investment backed expectation of being able to develop a new home within the same buildable area that was dependent on decisions made prior to the certified LCP, as the proposed development constitutes a major remodel. The only basis on which the applicants claim that 1980 action would be repudiated is derivative of their misconstruction of that permit as including a finding about the location of the bluff edge. As is explained above, that action contained no such finding. As such, the current action in no ways repudiates the prior action. Unpermitted demolition of a 2,746 sq. ft. duplex which was protected in place by the retaining walls subject to that CDP was undertaken by the applicant.

The applicants' bluff edge determination did not adhere to the LCP definition included in the certified LUE, which serves as the standard of review and applies even to pre-existing portions of projects determined to be a major remodel. The applicants assert that the bluff edge is in the approximate location of an existing retaining wall permitted

by the Commission in 1980 its approval of CDP A-80-7442. The applicants claim that the Commission's 1980 action included a formal determination regarding the location of the bluff edge, and that determination cannot now be altered because it constitutes administrative *res judicata*. This is inaccurate for multiple reasons. First, when the Commission acted in 1980, no determination was made as to the location of the bluff edge. The applicants' claim to the contrary is based on a single reference to the location of the one of the proposed retaining walls at that time as being at the "top of the bluff." This reference occurs in the caption under "Development Description." Such a general reference to the location of proposed development does not constitute an analysis of a complex geomorphological feature. In fact, that 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.

Even if the reference to the "top of the bluff" were the Commission's description, it does not say at the bluff *edge*. Indeed, the Commission's findings and exhibits did not identify the top of the bluff or that retaining wall was to be the bluff edge and, in fact, did not identify a bluff edge in that action in any way. There is no indication that the location of the bluff edge was relevant to anything finding in that report or that the Commission considered the issue. As such, at most, it would be *dicta*, and more likely, it was merely a way of describing where the development was proposed to occur, not of defining the bluff edge.

Even if the reference were intended as an identification of the bluff edge, that would only mean that it was administrative *res judicata* as to the question of the location of the bluff edge *at that time*. The applicants' lawyer acknowledges (page 6 of his letter) staff's emphasis of the fact that bluffs are dynamic landforms that change over time in response to natural conditions and human intervention. However, he provides no response to that fact. As a dynamic feature, it is not possible to have a determination count as *res judicata* for all times in the future. The finding that would become unassailable as administrative *res judicata* would be the determination as to where the bluff edge was located at that time.

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

With the setback required by the LCP, four-foot side yard setbacks required by the City's zoning code, and a reduced front yard (street-side) setback which the City has applied, the applicants could construct the home on an approximately 1,184 square foot portion of the property. This would allow for approximately 2,368 square feet of home and garage area as part of a two story home or 3,552 square feet of home and garage area as part of a three story home. The applicants' attorney contests that the remaining buildable area for the home would be approximately 2,000 square feet. However, the applicants provided an insufficient exhibit for their description of buildable area and did

not account for a potential third story, which City staff have indicated is feasible since the relevant height limit along Anita Street is 30 feet. There are other homes in the vicinity of the project which are two stories or three stories. The average size of homes within one block of the subject side is approximately 2,500 sq. ft. so the developable area of the approved home would be consistent with other homes in the vicinity and would be consistent with a reasonable investment backed decision based on the land use rules in place at the time the applicant purchased the property. The LUE-defined bluff edge setback identified in [Exhibit 6](#), shows the proposed new home in relation to the area of the property that can be developed on approximately 42 by 32 foot area (reduced to 28 feet in depth at the southern edge based on the curvature of the natural bluff edge). Some gradient deviations may affect the final dimensions, and the City's variance may allow for additional development within the front setback adjacent to Gaviota. Additionally, the City review could reduce the developable area of a potential third story, depending on view impacts and interpretation of the height limit along Anita Street vs Gaviota Street (the site is a corner lot fronting two streets).

As referenced in Appendix B, the average square footage for single-family residences one block upcoast and one block downcoast of the proposed project is approximately 2,513 square feet. The smallest home in the survey area is 1,012 square feet and the largest is 4,486 square feet. There are five homes within the survey area that are smaller than the potential 2,368 square foot home that could be developed on the subject site with just two stories (excluding area for a garage) and six homes within the survey area that are larger than 2,368 sq. ft. Therefore, the contention that the reduced buildable area would treat the homeowners differently than other neighboring residents on Gaviota Dr., upcoast and downcoast is not supported by the evidence. If the applicant were to construct an approximately 3,500 sq. ft. home and garage over three stories, it would be one of the largest structures within two blocks.

The review of adjacent development approved by the Coastal Commission and the City of Laguna Beach also demonstrates that the 25 foot bluff edge setback has been consistently applied. While each bluff edge is identified based on site specific conditions and geotechnical analysis, once the bluff edge is identified, the Commission and the City have consistently applied a 25 foot setback as required by the certified LCP. The applicants' request to deviate from the required 25 foot bluff edge setback in order to develop a larger home would be inconsistent with prior decisions made by the Commission and the City of Laguna Beach.

The applicants' attorney further states that the reduction of buildable area would yield a loss of approximately \$2 million, resulting in a taking under the precedent set by the Penn Central decision. However, as previously stated, unpermitted demolition of a 2,746 sq. ft. duplex has taken place on the property. The current proposal is to replace that pre-existing structure with a single-family home. Because of the unpermitted demolition, the homeowners can no longer expect to retain buildable area that was dependent on decisions made prior to the certified LCP because the proposed development includes such extensive alterations to the existing structure that it would constitute a major remodel. Action 7.3.10, quoted above, requires that "the pre-existing nonconforming oceanfront or oceanfront bluff structure to be brought into conformity

with the LCP.” In other words, the portions of the home extending seaward of the required bluff edge setback line need to be removed and the structure made to conform with the LCP’s current bluff edge setback standards.

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

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

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

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

The Commission received additional comments from the applicants’ geologist, stating that the current position of the natural bluff edge is a result of a temporary grading cut necessary to construct the upper retaining wall previously approved by the Commission in 1980. Specifically, the cut was needed in order to install the wall footing. Once wall

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

This interpretation of the LUE bluff edge definition is consistent with how the Commission has typically determined bluff edges where the natural landform has been modified by human actions; specifically, the Commission has typically treated cuts as erosion, moving the bluff edge inland, and ignored fill, in prior bluff edge determinations (5-19-1284, Sommerville; A-5-LGB-20-0050, Dig Coast Inn; 5-21-0392, Boyd; A-5-LGB-18-0071, Hale). The Laguna Beach LUE bluff edge definition is also similar to the bluff edge definition contained in a number of other LCPs. For example, for the City of San Clemente and Marin County, the certified LUPs provide the following definition of a bluff edge:

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

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

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

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

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

In the case of the project site, a portion of the bluff has been cut, thereby altering the bluff edge. It would be inconsistent with the City’s certified LUE and past Commission actions to acknowledge alteration and removal of the bluff edge, yet still consider the bluff edge unchanged. Therefore, Commission staff recommends adherence to the 25-foot setback from the LUE bluff edge, as determined by Dr. Street’s analysis.

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

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

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

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

³ Solana Beach LUP, 2013, Chapter 8.

certified LUE, the project site shall not rely on coastal armoring or retain coastal armoring for the protection of the proposed blufftop residence.

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

The Commission's records cited as part of the approval of the subject retaining walls include a geological report provided by Geofirm for the construction of the retaining walls on May 30, 1980. The report addresses the owners of both 1007 Gaviota Drive and 1021 Gaviota Drive. The report states that both properties are impacted by a landslide and "[b]ecause the problem is mutual, [their] investigation has been directed toward a unified stabilization scheme for both properties." (Geofirm, 1980). The report includes discussion and analysis to address instability on both properties, suggesting that, even if the walls were separately permitted, they were intended and designed to function together. The report also indicates that the residence at 1021 Gaviota Drive had more severe exposure to the landslide. Because it is likely that the 1021 Gaviota structure was entirely reliant on the underlying natural bluff for stability (i.e., no deep foundation system), it follows that the neighboring house may be the more vulnerable to the removal of the adjacent, connected seawall and retaining walls than the development area of the subject property.

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

In order to feasibly and safely remove the retaining walls from the 1007 Gaviota Drive, extensive construction would need to take place with uncertain results. As concluded in a conceptual analysis provided by the applicants' geologist (Stoney Miller & Geofirm, Jan. 13, 2023), removal of the existing retaining walls would require a new lateral retaining wall to be built along the lot line between 1007 Gaviota Drive and 1021 Gaviota Drive to support the 1021 Gaviota property (Geofirm, Inc, 2021). Additionally, the bluff slope at 1007 Gaviota Drive would have to be extensively regraded to conform

with building code requirements of a 2:1 slope, creating a lower elevation in the bluff face, in turn requiring construction of a lateral retaining wall along the northern lot line adjacent to the City stairway and sewer force main to prevent that development and the underlying northern slope from collapsing into the 1007 Gaviota Drive lot. The Commission's staff geologist reviewed this analysis and agreed that significant slope regrading and the construction of new lateral retaining devices would likely be required if the existing walls were removed. The City of Laguna Beach Building Department affirmed the requirement for a 2:1 slope at such time as the lot is regraded and noted that terracing would also be required, necessitating additional landform alteration. The City of Laguna Beach Public Works Department advised that their stairway and sewer force main project would have to be re-designed should the slope be regraded and retaining walls added between the public right-of-way and the subject 1007 Gaviota Drive property.

As mentioned, the above construction analysis for the removal of the existing retaining walls is conceptual, as further study would be required from the applicants' geotechnical engineers. However, removing the existing retaining walls would likely require a return retaining wall along the edge of the 1021 Gaviota lot. Such a project would have its own impacts, including extensive landform alteration at the bluff edge, bluff face, and northern and southern sides of the property. The least environmentally damaging path forward towards restoration of the natural bluff would be to remove the walls as part of a joint effort among the adjacent properties, likely involving regrading of the bluff face to achieve stability without wall support. As such, **Special Condition 2** requires that the existing retaining walls fronting the subject site shall not be retained to protect the applicants' blufftop development (including the residence and accessory improvements) and shall be removed when no longer required to protect adjacent blufftop structures, namely the neighboring property to the south located at 1021 Gaviota Dr. Because removal of the retaining walls would likely cause extensive regrading of the bluff edge across both properties to conform to building code requirements of a 2:1 slope, **Special Condition 2** also requires the applicants to acknowledge that their home may be required to conform to a smaller buildable area in the future, which could require removal of part of the seaward portion of the home in order to comply with the conditions of this permit and the City's building code with respect to graded slopes. Future conformance to City of Laguna Beach building code Chapter 22.06 could cause the bluff edge to change due to extensive regrading. However, conformance to the building code is not a part of the certified LCP requirements. Therefore, the identified bluff edge identified in [Exhibit 4](#) is consistent with the certified LCP.

As discussed above, with the required 25-foot setback from the bluff edge (a 40 to 50 foot setback from the edge of the fill slope), the proposed development is not expected to be threatened by coastal hazards and thus is not expected to need shoreline protection over the life of the development, the project can be found to conform with the hazards policies of the Coastal Act. However, given the dynamic nature of coastal beaches, as well as the Commission's review of data indicating that the property could be impacted by sea level rise at some point in the future, it is important to ensure that the risks of developing on the site are borne by the applicant, not the public at large.

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

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

Since coastal processes are dynamic and structural development may alter the natural environment, future development adjacent to the beach could adversely affect future shoreline conditions if not properly evaluated. For this reason, the Commission imposes **Special Condition 3**, which states that any future improvements to structure, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13253(b)(6) shall require an amendment from the Commission or shall require an additional CDP from the Commission or from the applicable certified local government. This condition ensures that any future development on this site that may affect shoreline processes, structural stability, or elevate cumulative development to a major remodel receives review under the Coastal Act (or future certified LCP) by the appropriate regulatory body.

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

As proposed and conditioned, the project is consistent with the hazards policies of the certified LCP.

D. Development

Major/Minor Remodel

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

While the dividing line between an improvement (or repair and maintenance) and “redevelopment” is not always clear, at a certain point, substantial alterations to a home can no longer be considered minor improvements, but instead must be considered to have resulted in a new structure. The City’s certified LUE defines “major remodel” as:

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

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

Moreover, LUE Action 7.3.8 of the LUE (cited above) requires, where applicable, that applications for new development (e.g., redevelopment of a site) on oceanfront bluff sites identify and remove all unpermitted or obsolete structures which encroach into oceanfront bluffs.

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

Based on the available evidence, the proposed development constitutes a major remodel, and would result in replacement structure(s). The proposed repair and maintenance actions would increase the size and degree of the existing onsite nonconformities and therefore would be considered new development that would require the entire structure to come into conformity with the LCP pursuant to LUE Policy 7.3.10. Furthermore, as detailed below, extra precautions should be taken to ensure that approved development maintains consistency with the applicants' proposal.

The Commission typically looks at cumulative development over time when determining whether or not a project constitutes redevelopment. Even small improvements that may not ordinarily need a CDP (such as replacing doors and/or windows or other small additions) could add to the total alterations to the primary structural elements over time and push the alteration total of one or more elements over the 50 percent threshold. To ensure that any future improvements to the development are consistent with the LCP and relevant Coastal Act policies, the Commission imposes **Special Condition 3**. This condition requires a new CDP or amendment for all future improvements, including repair and maintenance actions that would ordinarily not require a permit.

Additional conditions must be imposed to assure that the quantity and location of alterations to the existing residence occur in the manner proposed. First, the Commission imposes **Special Condition 1**, which requires the applicants to undertake development only in accordance with the Commission-approved final plans, which apply the 25-foot bluff edge setback consistent with the LCP, based on the bluff edge identified in **Exhibit 4**. Any changes to the approved plans would require an amendment to the CDP, unless the Executive Director finds that an amendment is not required. Should the quantity or location of alterations actually carried out substantially differ from that which is proposed and identified specifically by the Commission-approved plans, the Commission may establish requirements for the project to be reassessed based on the revised alteration/demolition plan. The Commission therefore imposes **Special Condition 5**, which requires that the applicants submit a copy of the City Building Department job card after any proposed alterations are complete. The City's job card would verify the extent of work and the condition of the residence remaining. The job card will also enable the Executive Director to verify that additional work is not taking place seaward of the Commission identified building setbacks and verify that public

amenities proposed on the City right of way are completed consistent with the approved plans.

As detailed below, the applicants previously installed a fence and other improvements within the public right-of-way adjacent to the north side of their property without a CDP. In conformance with LUE Action 7.3.8, the applicant's property will no longer encroach into the right-of-way as the unpermitted fence within the public right-of-way will be removed. In the same area, the applicant's proposed encroachment permit will include substantial public improvements within the public right-of-way. The City is currently developing an expanded public stairway just north of the site and landings to support an improved sewer lift station, which increases the footprint of public infrastructure adjacent to the home, and will be complimented by the aforementioned public improvements in the area currently covered by the non-conforming private driveway.

Residential Density

The City of Laguna Beach found that a legal duplex did not exist at the site, although the site had been marketed as having two units in the past. The pre-existing single-family-residence was converted to a duplex in the late 1960's based on a two-family occupancy provided in the Orange County Directory in 1968. In August 2014, the City issued a permit for a minor remodel of the structure, however, the City discovered that the applicant exceeded the scope of work authorized by the City-issued permit and on December 18, 2014, the City Code Enforcement issued a stop-work order for unpermitted construction that was taking place ([Exhibit 7](#)). The unpermitted demolition of the existing structure caused the applicant to forfeit the opportunity to repair and maintain their existing structure. Based on the available evidence, the proposed development constitutes a major remodel, and would result in a replacement structure. The LCP allows for single-family homes as well as duplexes in the subject R-2 zone (Residential Medium Density); thus, the proposed single-family home is consistent with the LCP which is the standard of review for the coastal development permit application.

E. Public Access and Recreation

Projects located between the sea and the first public road paralleling the sea, such as the subject site, must be consistent with the public access policies of the Coastal Act.

Section 30210 of the Coastal Act states:

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

Section 30214 of the Coastal Act states, in relevant part:

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following: ...

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

In addition, regarding public access, Section 25.07.012 (F) of the certified IP states, in relevant part:

Review Criteria. To ensure compliance with the Certified Local Coastal Program, the following criteria shall be incorporated into the review of all applications for coastal development permits:

(1) The proposed development will not encroach upon any existing physical accessway legally utilized by the public or any proposed public accessway identified in the adopted local coastal program land use plan...

(3) The proposed development will not adversely affect recreational or visitor-serving facilities or coastal scenic resources...

Revocable Encroachment Permit

City records include a comment from the previous property owner mentioning a driveway fence within the encroachment area since the original home was built in 1924. The appellants attest that the applicants have a chain link fence within the encroachment area currently. The applicants propose to remove the fence and install the proposed public improvements. On June 11, 2020, the City authorized a REP authorizing the construction or maintenance of pilasters, walls, fencing, lighting, irrigation, patio, and walkways within the public rights-of-way. The applicants, in consultation with the City, have since revised the plans and proposed encroachment permit (which has not yet been issued). The applicant's property will no longer encroach into the right-of-way as the unpermitted fence within the public right-of-way will be removed. The proposed encroachment permit will authorize the retention of private landscaping and an existing mature tree, there would be no private development approved within the public right-of-way to the north of the site. The project as currently proposed includes substantial public improvements within the public right-of-way and to aid beach-goers using the nearby beach stairway; the improvements include a vehicle drop off location, bike racks, a concrete bench, beach access safety signs, and temporary above-ground irrigation within the public right-of-way. There is also an existing lateral wood retaining wall between the City's project and the proposed encroachment area (**Exhibit 2**). All improvements approved under the revocable

encroachment permit within the public right-of-way may be revoked by the City should the underlying land area be needed for future public improvements. The City is currently developing an expanded public stairway just north of the site and landings to support an improved sewer lift station, which increases the footprint of public infrastructure adjacent to the home, and will be complimented by the public vehicle drop off area and existing landscaping in an area currently covered by the non-conforming private driveway.

The Commission received additional comments from the appellants and the Sierra Club, Laguna chapter, expressing concerns that the Revocable Encroachment Permit would grant private access to public land rather than ensure improvement of public amenities within the encroachment area. The City asserts that the REP has been mischaracterized as a private encroachment area. The City's Design Review Board approved the Revocable Encroachment Permit with the purpose not to grant private access to public land, but to allow the homeowners of 1007 Gaviota to construct public amenities on public property. Should the Revocable Encroachment Permit be revoked or voided, all improvements with the right of way could be removed or demolished and new improvements constructed. However, the public amenities along Gaviota are proposed to improve the public experience at the Anita Street Beach. The proposed amenities will not interrupt or conflict with continued public access through the proposed beach access or the ability for the City to continue to operate and maintain the critical wastewater facilities in the neighboring project site.

As mentioned above, the Commission received comments from the applicants' attorney stating that Special Condition 1 could leave the homeowners with an unbuildable project and an inability to provide the proposed public benefits explained herein. Should the applicants elect not to provide the proposed public benefits, **Special Condition 1.f** requires the applicants to remove all private encroachments from the unpermitted encroachment area.

The project must be found consistent with both the public access and recreation policies of Chapter 3 of the Coastal Act and the LCP policies. In this case, the proposed project would not have any adverse impacts on the Anita Street beach accessway and would remove most existing private encroachments into the adjacent right-of-way. The proposed project would not encroach further down the bluff face and would therefore not obstruct access to or across the sandy beach below. The proposed home, accessory structures with foundations, and fencing would all be located on the applicants' property. The proposed new driveway would be relocated further from the public beach accessway and would front Gaviota and include hardscape and native landscaping in the front yard area and a portion of the public street, which is consistent with the pattern of existing residential development.

F. Visual Resources

The City's certified LCP includes the following visual resource policies:

Laguna Beach Land Use Element:

Policy 2.8 states, in relevant part:

Require building design and siting to be compatible and integrated with natural topographic features, minimize significant alteration of topography and/or other significant onsite resources, and protect public views...

Policy 2.10 states:

Maximize the preservation of coastal and canyon views (consistent with the principle of view equity) from existing properties and minimize blockage of existing public and private views. Best efforts should be made to site new development in locations that minimize adverse impacts on views from public locations (e.g. roads, bluff top trails, visitor serving facilities, etc.)

Policy 3.10 states:

Require building design and siting to be compatible and integrated with natural topographic features, minimize significant alteration of natural topography or other significant on-site resources, and protect public views as specified in the Design Guidelines and Landscape and Scenic Highways Resource Document by maintaining the low-profile character of structures. Require use of appropriate landscaping, special architectural treatments, and siting considerations for projects visible from major highways and arterial streets. Best efforts should be made to site new development in locations that minimize adverse impacts on views from public locations (e.g., roads, bluff-top trails, visitor-serving facilities, etc.).

Policy 7.3 states:

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

Action 7.3.5 states: Prohibit development on oceanfront bluff faces, except public improvements providing public access, protecting coastal resources, or providing for public safety. Permit such improvements only when no feasible alternative exists and when designed and constructed to minimize landform alteration of the oceanfront bluff face, to not contribute to further erosion of the oceanfront bluff face and to be visually compatible with the surrounding area to the maximum extent feasible.

Policy 10.2 states:

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

Open Space/Conservation Element:

Policy 7-A states:

Preserve to the maximum extent feasible the quality of public views from the hillsides and along the city's shoreline.

Policy 7-M states:

New development along Pacific Coast Highway shall preserve existing views where feasible and, where topography allows, new development shall be terraced below the grad[e] of Pacific Coast Highway. [sic]

LUE Policy 2.10, and OSCE Policies 7-A and 7-K require that public scenic and visual qualities of coastal areas be preserved to the maximum extent feasible as resources of public importance, including views of coastal bluffs and canyons from along the City's shoreline. In addition, LUE Policies 2.8, 2.9, 3.10, 7.3, 10.2, and Action 7.3.5 and OSCE Policy 7-M require, in part, that development be designed and sited in a manner that is visually compatible with surrounding uses and is protective of natural resources including public visual resources and to minimize natural landform alterations.

The project site is highly visible from the public beach. However, 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 because the addition would be adequately set back from the beach and bluff edge and the structure's approximate 2,000 to 2500-square-foot size and 30-foot height would be consistent with the pattern of existing development. In addition, the proposed addition would not impede public coastal views from Coast Highway because the subject structure is not visible from PCH.

In this case, the proposed project is not anticipated to have negative impacts on the public coastal views and visual resources and is consistent with the visual resources policies of the LCP.

G. Marine Resources and Water Quality

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

Policy 7.7 states:

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

Open Space/Conservation Element:

Policy 1-C states:

Require the installation of rain gutters and other water transport devices as a condition of approval on blufftop development, in order to convey water to the street (away from the bluff side). When this is impractical, all water shall be piped to the base of the bluff.

Policy 4-A states:

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

Policy 4-B states:

Ensure that development minimizes the creation of impervious surfaces, especially contiguously connected impervious areas, or minimizes the area of existing impervious surfaces where feasible.

Policy 4-C states:

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

Policy 4-D states:

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

Policy 4-E states:

Ensure that development is sited and designed to limit disturbances and to preserve the infiltration, purification, retention and conveyance functions of natural drainage systems that exist on the site to the maximum extent practicable.

Policy 4-I states:

Promote the protection and restoration of offshore, coastal, lake, stream or wetland waters and habitats and preserve them to the maximum extent practicable in their natural state. Oppose activities that may degrade the quality of offshore, coastal, lake, stream or wetland waters and habitat and promote the rehabilitation of impaired waters and habitat

Policy 4-J states:

Promote infiltration of both storm water and dry weather runoff, as feasible, to protect natural hydrologic conditions.

Policy 7-K states:

Preserve as much as possible the natural character of the landscape (including coastal bluffs, hillsides and ridgelines) by requiring proposed development plans to preserve and enhance scenic and conservation values to the maximum extent possible, to minimize impacts on soil mantle, vegetation cover, water resources, physiographic features, erosion problems, and require re-contouring and replanting where the natural landscape has been disturbed.

Policy 9-I states:

Require new development projects to control the increase in volume, velocity and sediment load of runoff from the greatest development areas at or near the source of increase to the greatest extent feasible.

Policy 9-K states:

Promote preservation and enhancement of the natural drainage of Laguna Beach.

Title 25 of the certified Implementation Plan (IP):

Section 25.07.012 (F) states, in relevant part:

Review Criteria. To ensure compliance with the Certified Local Coastal Program, the following criteria shall be incorporated into the review of all applications for coastal development permits: ...

(2) The proposed development will not adversely affect marine resources, environmentally sensitive areas, or archaeological or paleontological resources...

...

(8) The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; ...

LUE Policy 7.7 and OSCE Policies 4-A, 4-D, 4-E, 4-I, 4-J, 7-K, and 9-K require the protection of marine resources and other water resources, and OSCE Policies 1-B, 1-C, 1-D, 4-B, 4-C, and 9-I require that measures be implemented to reduce onsite runoff. Section 25.07.012(F) of the certified IP also requires that the proposed development not adversely affect marine resources and that adequate drainage be provided onsite.

Although the proposed development is not anticipated to adversely affect marine resources or other water resources, since the subject site is adjacent to the ocean, the proposed development still has the potential to discharge polluted runoff from the project site into a geologically sensitive coastal bluff, and/or beach, and into coastal waters, either directly or via the community's storm drains, which ultimately flows to the sea. Furthermore, storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain or wind would result in adverse impacts upon the marine environment that could reduce the biological productivity of coastal waters. For instance, construction

debris entering coastal waters may cover and displace soft bottom habitat. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species' ability to see food in the water column.

In order to avoid adverse construction-related impacts upon marine resources, the Commission imposes **Special Condition 6**, which outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. This condition requires the applicants to remove any and all debris resulting from construction activities within 24 hours of completion of the project. In addition, all construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

Therefore, the Commission finds that the proposed development, as conditioned, is consistent with the certified LCP regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

H. Deed Restriction

The permit the Commission previously granted for construction of the retaining walls on the bluff face (CDP A-80-7442, Langman) included a special condition requiring the applicant to record a document, in a form and content approved by the Executive Director, offering to dedicate a public access easement over the area between the seaward bulkhead and the mean high tide line to a public agency or private association approved by the Executive Director. A document was recorded by the original permittee and the sandy beach area is used by the public today. The subject CDP would have no effect on the existing retaining walls or the public's use of the sandy beach area. If the retaining walls are proposed to be improved in the future or are required to be removed pursuant to **Special Condition 2**, a follow up CDP will be required and public access impacts will be analyzed and mitigated through that permit action.

If existing or proposed development is determined to be not on the applicants' property, either now or in the future, then it must be evaluated under the Coastal Act in order to protect the public's right to access public Tidelands. In order to ensure that private development does not preclude the public from using the public Tidelands, **Special Condition 9** requires that the Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property, the permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property now or in the future, and that this development approval does not permit encroachment onto public trust land; any current or future encroachment must be addressed through an amendment to this permit such that the Coastal Commission may determine whether the encroachment is legally permissible pursuant to the Coastal Act.

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition 10** requiring that the property owner record a deed restriction against the

property, referencing all of the above special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

I. Local Coastal Program (LCP)

Section 30604 (a) of the Coastal Act states:

Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section

30200) of this division and that the permitted development 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 (commencing with Section 30200).

The City of Laguna Beach LCP was certified with suggested modifications, except for the areas of deferred certification, in July 1992. In February 1993 the Commission concurred with the Executive Director's determination that the suggested modification had been properly accepted and the City assumed permit issuing authority at that time. The Land Use Plan of the LCP consists of the Coastal LUE, Open Space/Conservation Element, Coastal Technical Appendix, and Fuel Modification Guidelines (of the Safety Element of the City's General Plan as adopted by Resolution 89.104). The Coastal LUE of the LCP was updated and replaced in its entirety via LCPA 1-10 in 2012. The certified IP of the LCP is comprised of a number of different documents, but the main document is the City's Title 25 Zoning Code. The Open Space/Conservation Element and Title 25 have been amended a number of times since original certification. Laguna Beach has a certified LCP, but there are four areas of deferred certification in the City: Irvine Cove, Blue Lagoon, Hobo Canyon, and Three Arch Bay.

The proposed development that is subject to this permit application (CDP No. A-5-LGB-22-0025) is located within the City of Laguna Beach's certified jurisdiction. As discussed above, the proposed development, as conditioned, will not adversely impact coastal resources and public access. Therefore, the Commission finds that approval of this project, as conditioned, is consistent with the City's certified LCP and would not prejudice the ability of the City of Laguna Beach to prepare a Local Coastal Program for the areas of deferred certification that conforms with and is adequate to carry out the Chapter 3 policies of the Coastal Act.

J. Unpermitted Development

A violation of the Coastal Act and LCP exists on the subject property consisting of, but not necessarily limited to unpermitted partial demolition of the residential structure on site. The applicant is requesting after-the-fact approval of said demolition. Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent performance of the work authorized by the permit in compliance with all of the terms and conditions of the permit will result in resolution of the violation specifically described herein.

Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act and the LCP.

Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations), nor does it constitute an implied statement of the Commission's position regarding the legality of the development undertaken on the subject site without a coastal permit, or of any other development, except as otherwise expressed herein. In fact, approval of this permit is possible only because of the conditions included herein, and the applicant's presumed subsequent compliance with said conditions, and failure to comply with these conditions in conjunction with the exercise of this permit would also constitute a violation of this permit and of the Coastal Act and LCP. Accordingly, the applicant remains subject to enforcement action just as it was prior to this permit approval for engaging in the unpermitted development described herein, unless and until the conditions of approval included in this permit are satisfied.

K. California Environmental Quality Act

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

The City of Laguna Beach is the lead agency responsible for certifying that the proposed project is in conformance with the California Environmentally Quality Act (CEQA). The City's Design Review Board determined that in accordance with CEQA, the project is Exempt from Provisions of CEQA citing Section 15301, Class 1(a) (existing facilities) and Section 15303, Class 3 (New Construction), which "allows repair, maintenance, permitting, or minor alteration of existing public or private structures, mechanical equipment involving negligible or no expansion of use beyond that existing at the time of determination." However, Section 13096(a) of the Commission's administrative regulations requires Commission approval of coastal development permit

applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA).

The proposed project has been conditioned in order to be found consistent with the certified LCP and the Coastal Act Chapter 3 public access and recreation policies. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and complies with the applicable requirements of the Coastal Act to conform to CEQA.

APPENDIX A – Substantive File Documents

- 1) Appeal No. A-5-LGB-22-0025 and associated file documents.
- 2) Geofirm, Inc. and E. J. Miller, Inc., 1980, “Limited Geotechnical Investigation, Slope Instability and Remedial Design Recommendations, 1021 and 1031 Gaviota Street, Laguna Beach, California”, May 30, 1980, signed by H. Lawrence and E. J. Miller.
- 3) E. J. Miller, Inc., 1980, “Proposed Design Scheme for Stabilizing the Failed Slope on the Seaward Side of the Residence at 1007 Gaviota Drive, Laguna Beach, California”, October 23, 1980, signed by E. J. Miller.
- 4) E. J. Miller, Inc., 1981, “Final Report of Observations and Tests during Repair of the Slope on the Seaward Side of the Residence at 1007 Gaviota Drive, Laguna Beach, California”, May 19, 1981, signed by E. J. Miller.
- 5) Geofirm, Inc., 2015, “Geotechnical Bluff Top Evaluation, 1007 Gaviota Dr., Laguna Beach, California”, May 8, 2015, signed by H. H. Richter and K. A. Trigg.
- 6) Geofirm, Inc., 2016, “Preliminary Geotechnical Investigation For Residence Remodel and Additions, 1007 Gaviota Dr., Laguna Beach, California”, July 20, 2016, signed by E. Hilde and E. J. Aldrich.
- 7) Geofirm, Inc., 2019a, “Geotechnical Slope Stability Determination, 1007 Gaviota Dr., Laguna Beach, California”, April 8, 2019, signed by Z. Wang and K. A. Trigg.
- 8) Geofirm, Inc., 2019b, “Updated Preliminary Geotechnical Investigation For Residence Remodel and Additions and Response to Review Dated June 17, 2019, 1007 Gaviota Dr., Laguna Beach, California”, July 16, 2019, signed by K. A. Trigg and Z. Wang.
- 9) Geofirm, Inc., 2019c, “Clarification of Bluff Edge Determination, 1007 Gaviota Dr., Laguna Beach, California”, September 18, 2019, signed by K. A. Trigg.

- 10) GeoSoils, Inc., 2021, “Discussion of Coastal Hazards and Wave Runup, 1007 Gaviota Drive, City of Laguna Beach, Orange County, California”, October 8, 2021, signed by D. W. Skelly.
- 11) Geofirm, Inc., 2021, “Review of Slope Retaining Walls and Bluff Edge Determination, 1007 Gaviota Dr., Laguna Beach, California”, October 22, 2021, signed by K. A. Trigg.
- 12) GeoSoils, Inc., 2022, “Final Coastal Bluff Edge Evaluation, 1007 Gaviota Drive, Laguna Beach, Orange County, California 92651”, dated February 22, 2022, signed by J. P. Franklin and D. W. Skelly.
- 13) Stoney Miller and Geofirm Consultants, Inc., 2022, “Review of Revised Residence Plans and Slope Stability, Response to Coastal Commission Comments, 1007 Gaviota Dr., Laguna Beach, California”, October 3, 2022, signed by K. A. Trigg and H. H. Richter.
- 14) Stoney Miller and Geofirm Consultants, Inc., 2023, “Response to Coastal Commission Email dated January 4, 2023, 1007 Gaviota Dr., Laguna Beach, California”, January 13, 2023, signed by K. A. Trigg.
- 15) Stoney Miller and Geofirm Consultants, Inc., 2023, “Response to Bluff Edge & Geologic Setback Review Memorandum dated February 24, 2023, Exhibit 5 to De Novo Appeal A-5-LGB-22-0025, 1007 Gaviota Drive, Laguna Beach, California”, dated March 3, 2023, signed by K. A. Trigg.

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	5-84-012		4,792	2,101	25	https://lagunabeachgis.net/PublicAccess/api/Document/AetgkoDjIncSlof7XnuluFik1d4TyFiQAFs9G3IaxOUUt9s2z2t8BoSoX4UclYEm5CFul%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/AYSOVx2p4AzJP7k5vpspsTUm181ymQZB2tkZFP7DDPSf32uvvm9t7Vca0zMxUtuGOw0aU1o8Nx4H%C3%811BDE%C3%89FDEQ%3D/
941 Gaviota Dr, Laguna Beach, CA 92651			7,613	NA	25	https://lagunabeachgis.net/PublicAccess/api/Document/AYSOVx2p4AzJP7k5vpspsTUm181ymQZB2tkZFP7DDPSf32uvvm9t7Vca0zMxUtuGOw0aU1o8Nx4H%C3%811BDE%C3%89FDEQ%3D/
955 Gaviota Dr, Laguna Beach, CA 92651		3		2,415	10	https://lagunabeachgis.net/PublicAccess/api/Document/ASacRbWh%C3%89b2tAgiULbWEsKiOkw6oggQ%C3%89INoInXFOfmV8jLhiihjZukkpTbQ%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		

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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-PADR	4	4,180	3,091	10	https://lagunabeachgis.net/PublicAccess/api/Document/AdgHtoIrHdlypwYXRgnMIE4RdnRsU8xsqshmkgKnmdq%C3%815CYcNhW%C3%811AVT7T1HnJpdVHj0GfnsV24zRUoyBJlLzo%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

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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		
1085 Gaviota Dr, Laguna Beach, CA 92651	5-LGB-22-0191 / 5-LGB-22-0759	2	3,250	1,136	122.83'	
1091 Gaviota Dr, Laguna Beach, CA 92651		3	3,485	2,939		
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%8117s8k5IFccmgbWaYESmDCMml%C3%89YaxYE%3D/
Average Square Footage not including Multifamily			2,513.9 sq. ft.			
Average Height (From info we have)			2.7			
Average Bluff Edge Setback (From info we have)			33.4 ft			