

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
301 E. Ocean Boulevard, Suite 300
Long Beach, CA 90802
(562) 590-5071



W12a

A-5-LGB-22-0060 (City of Laguna Beach)

April 10, 2023

Correspondence

Thank you for the opportunity to respond to concerns that have been raised by the Sierra Club Orange County Conversation Committee. The City of Laguna Beach takes pride in its ADA accessibility and public coastal access and offers the following comments.

Issue #1: The Sierra Club Orange County Conservation Committee is concerned that this project not only will deny full public access, but may set a bad precedent for other stairways and paths to access the coast. In this project, approved by the City of Laguna Beach, maximum access was not provided as required by the California Constitution and the Coastal Act. Providing maximum access is for all the people, by definition, including people with disabilities. Yet, there is nothing in the City decision that addresses the needs of the disabled community.

Response:

The City provides ADA accessibility to beaches:

<https://www.lagunabeachcity.net/government/departments/marine-safety/visiting-our-beaches/beaches>. Specifically, Main Beach and Treasure Island provide ADA access to the beach sand and shoreline. In addition to these access points, the City provides many ADA accessible “viewpoints,” pocket parks, street-ends, and coastal-adjacent boardwalks/pathways. The proposed project does not set a negative precedent in terms of ADA accessibility, which is provided wherever technically feasible.

The proposed project is consistent with providing ADA accessibility at the top of the stairs, which is the same approach that the City took during construction of the Pearl Street beach stairs. During review of the Pearl Street stairs application, the Coastal Commission made findings that the improvements to the site at the top of the stairway improved ADA accessibility on the site. An ADA compliant direct accessway from the top of the street to the beach below was not feasible on Pearl street, and it is not technically feasible at Anita street. Regardless, the project does significantly improve ADA accessibility to the area, as described in more detail below.

Issue #2: Planning Commissioners were hopeful that a view bench or viewing area could be provided in the proposed design but were told it was not possible. In reality, it was only ‘impossible’ because the proposed design failed to incorporate the area most suited to those amenities into the project plan (the encroachment area). Due to the challenging topography of the site, the only place to provide amenities that can be used by people with disabilities is the area where the driveway of the adjacent property was located. This would be the perfect location for a handicapped parking space, picnic tables or a level viewing area on the site.

As proposed, the Anita street-end will be ADA accessible and represents an improvement over the current condition. The current street-end grade is a steep slope down toward the stairs, which is not wheel-chair safe. The project includes leveling of the street end to improve the grade and provide a street end and viewing point that is ADA compliant. The fact that benches are not proposed is not relevant to the ADA accessibility of the site. When the City developed the Pearl street stairway, proposed benches were relocated out of the way in order to *improve* ADA accessibility to the viewpoint/top of the stairs. Placement of a bench was discussed at the Planning Commission meeting and the constraints revolved around a vault/access hatch for the lift station.

The design of the City project is not impacted by the adjacent driveway and landscaped area. The City's design provides all of the improvements required to provide and maintain enhanced access to the coast and significantly improves access over the current condition.

The beach access and the REP area (driveway and landscaped hillside) are at different elevations separated by an existing wood retaining wall and slope as shown in Exhibit 1. In order to eliminate the grade difference and maximize usable space, a large cast-in-place concrete or masonry retaining wall would be required between the Anita Street right of way and the property at 1007 Gaviota. In doing so, the site grading would result in the loss of at least four (4) existing mature trees. This type of development would be destructive to the slope stability and would conflict with the goal of preserving and maintaining the existing trees.



Exhibit 1: View of REP area, currently a driveway, and beach access from Gaviota Drive

In addition, the effort would not improve ADA accessibility to the beach itself or provide enhanced viewing platforms because the area is directly behind the proposed electrical shed and lift station as shown in Exhibit 2 below. Realistically this area could be a temporary drop-off zone, public parking, or a pocket park which may be ADA accessible itself, but would not necessarily enhance or create new ADA access related to the beach.

The City's proposed design does in fact provide a large viewing area prior to reaching the stairways. This viewing area is approximately thirty-five feet (35') above the bottom step. In order to construct an accessible ramp to the beach level from this point, the design would require a ramp at least 400' in length. Constructing a ramp of this length is not feasible in this location. In order to improve accessibility to people with disabilities other than mobility, the City's design incorporates improvements such as new handrailing, wider stairways, maximum step heights, landings for resting, a bench, and warning stripes.



Rendering of street-end upper landing. Note the level pavement (ADA Compliant) and retaining wall to the left.

The proposed project provides three levels with large viewing areas. The highest area is ADA accessible from Gaviota and the Anita street-end. The lower areas require stairs to access as a result of the steep terrain. The proposed REP area would not provide an opportunity to improve access to the lower viewing areas. As shown in Exhibit 2, the project does incorporate an area with a bench at a lower landing. The reason benches are not provided at the upper landing areas is because the areas need to provide sufficient space for maintenance staff and their vehicles in order to be able to safely maintain and operate the lift station.

Issue #3: In this case the REP benefits the owners of 1007 Gaviota but has precluded the city from incorporating a superior set of amenities in coordination with the work currently being proposed at the public accessway adjacent. It only makes sense that the city incorporates a complete project NOW and that they will be responsible for its timely completion and ultimate maintenance.

Response: The REP (Revocable Encroachment Permit) area has been mischaracterized as a private encroachment area. The purpose of the REP approved by the Design Review Board was



Exhibit 2.

not to grant private access to public land to the adjacent homeowners. The purpose of granting the REP was solely so that the adjacent homeowners could construct amenities on public property. The public amenities off Gaviota are proposed to be for the public benefit and the landscaped area down the slope beyond the public amenities is proposed to be a public landscaped area.

The City's proposed design improves and enhances public access to the Anita Street Beach and provides an accessible viewing area. The proposed amenities off Gaviota within the REP area have been proposed by the adjacent property owner for the public benefit. The project does expand the footprint of the stairway into the existing REP landscaped area and maintains and enhances landscaping down the slope. While the proposed public amenities off Gaviota are outside of the City's scope of work, they have been evaluated and found to work cohesively with the City's proposed project. Therefore, the City has supported the proposed improvements because they will improve the public experience at the Anita Street Beach and they 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 area.

Issue #4: At this location, the areas easily accessible to the disabled community, including a bench or viewing area, would only be available on the portion of the ROW that has been granted to the adjacent landowner.

Response: Again, this is a misunderstanding. The approval by the Design Review Board for the adjacent property did not grant or give away public land to a private party. Further, as shown in Exhibit 2, there is an accessible viewing area provided at the top landing street end. This area provides a better viewing experience than the REP area because the REP area would be screened by existing trees that are to remain and would be located behind the proposed electrical shed.

Issue #5: The priorities of public access are superior to private needs when considering development on a public site - especially one related to coastal access. If this project is approved as presented, the opportunity to provide a better public experience will be lost - forever.

Response: Fundamentally, the proposed Lift Station and public access stairway is a public access improvement project. The proposed project does not preclude any additional or future public access to the public right-of-way. The proposed project does not prohibit any public access to the existing public right-of-way.

As stated in Issue #4 above, the proposed improvements on the REP site provide significant public improvements to improve the public's experience. The City has found that the proposed improvements in the REP are complementary to the City's proposed beach access improvements. In addition, the proposed beach access improvements significantly improve access to the coast by providing features such as wider stairways, open handrails in place of block walls, continued access to beach level when sand levels drop, and enhanced architectural finishes.

Issue #6: This 'giveaway' of public land use is egregious and should not be advanced. Providing public use of the FULL public right of way is the correct and lawful decision to make, and would uphold the policies of the Coastal Act.

Response: This comment is not related to the proposed project, and instead should be better addressed by the approval of the REP for the adjacent landowner. The City continues to own and control all City property, even with an REP. An REP is not a vacation of the public right-of-way and is not an abandonment or sale of City government land to a private party. The fact that an REP has been approved is immaterial to the City's ability to plan for the area because the permit itself is revocable and can be revoked at any point. Should the REP be revoked or voided, all improvements with the right of way would be removed or demolished. Regardless, as explained above, the purpose of the REP was to grant the adjacent landowner the right to perform construction within a public area for public benefit, not to "giveaway" public land. Additional public amenities accessible from Gaviota would enhance access to the area, but ultimately are not necessary to implement the public stairway project and are not at all related to the lift station replacement.

W11b and W12a

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

Dear Chair Brownsey, Commissioners and Staff,

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

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

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

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

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

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

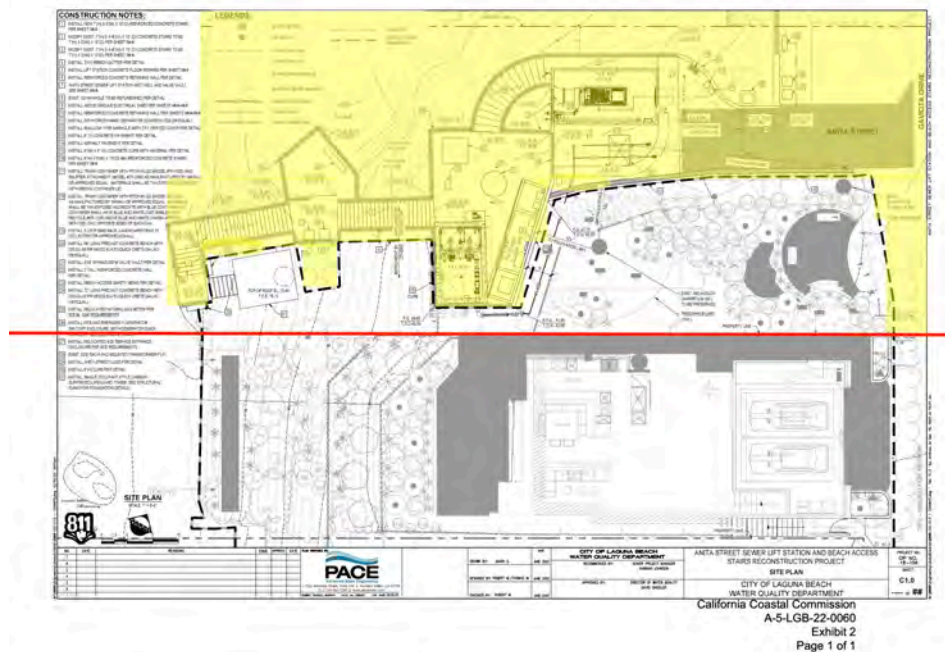
None of the City's plans for this project (beyond the site plan) are shown in the exhibits in the staff report. Upon review of the City's records, it became evident that a 2016 coastal hazards (wave run-up) study for a property in the area (at 1061 Gaviota) was the document used to analyze the conditions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

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

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

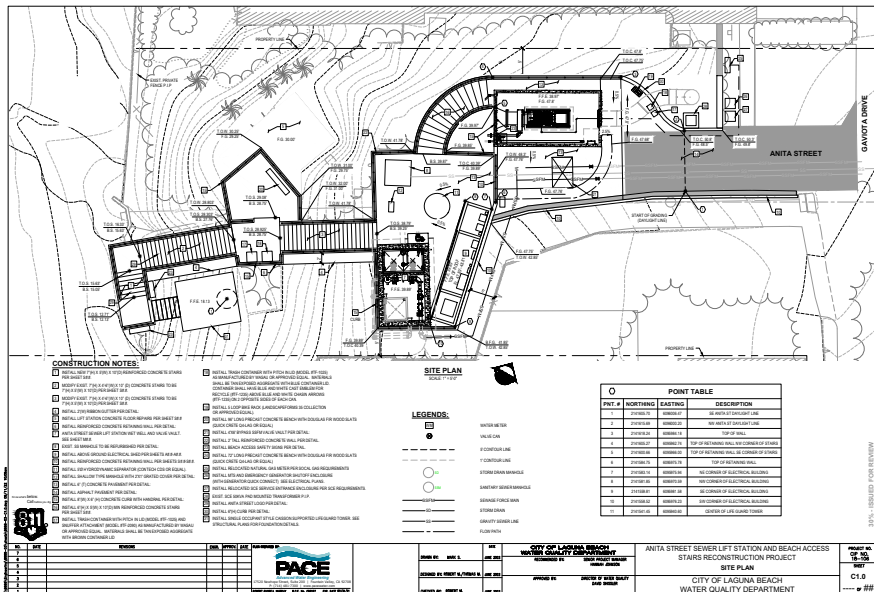
Anita Street Project plan does not provide Maximum Public Access

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



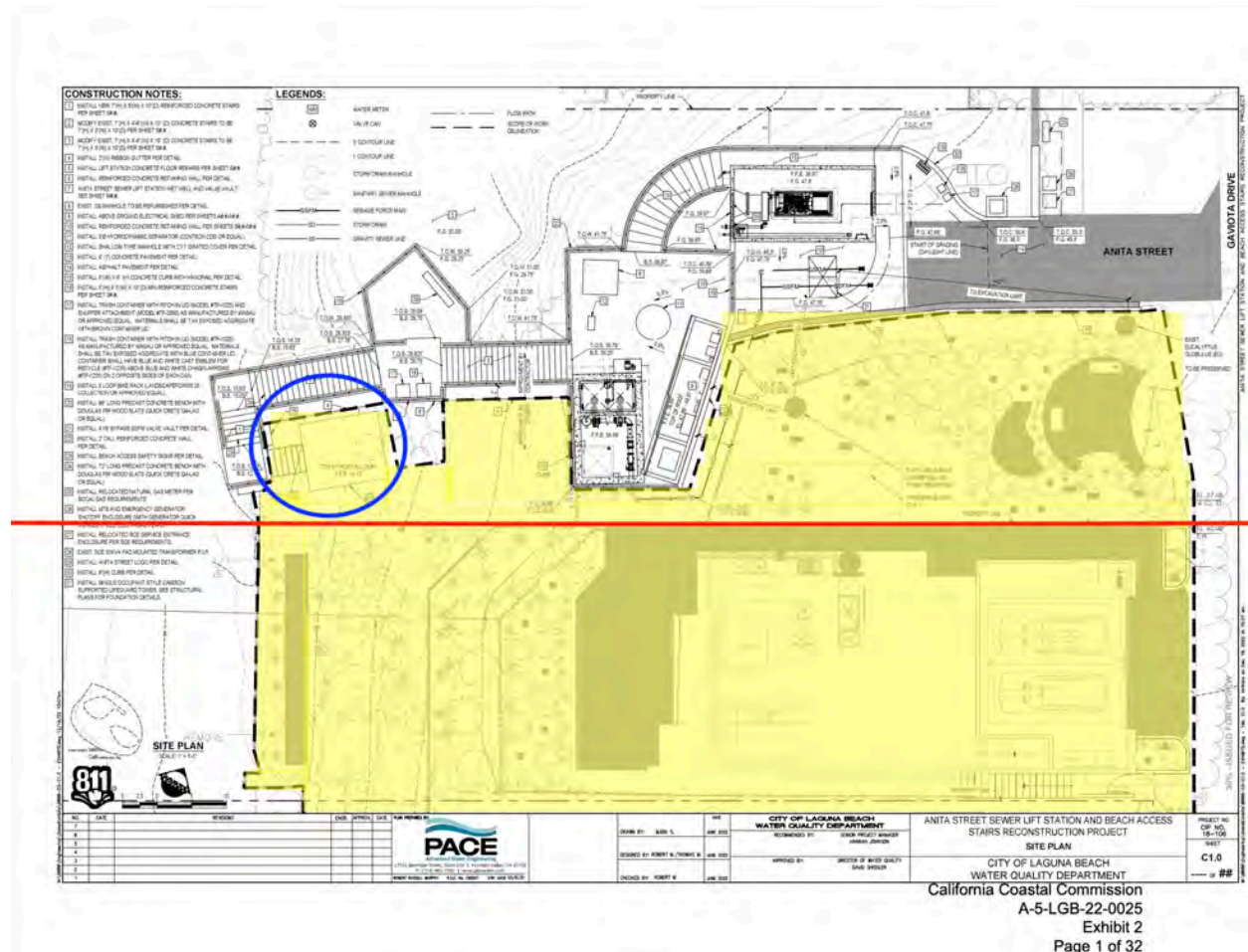
In contrast, to the left are the plans provided to the City's Planning Commission for their deliberation, which do not consider the Gray's property or the REP at all. This plan - nor any plans considered by the Planning Commission - was not included in the CCC staff report.

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



Question related to responsible party for the Lifeguard Tower maintenance

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



As you can see, the area of the REP (yellow highlighted) is substantial. What is of concern in this image is that the proposed Lifeguard Tower (circled in dark blue) is placed entirely in the REP area. This brings to question - what party is responsible for the construction and maintenance of the tower? Since no plans have been provided for the City's Anita Street project other than this one (i.e. landscape, demolition, etc.) it does cause confusion.

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

Appellant proposed viewing area

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

In conclusion

A-5-LGB-22-0025

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

OR to

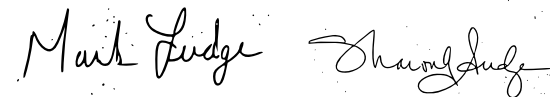
AMEND the conditions: 1) to require removal of the seawalls; and 2) to limit development to the boundaries of the applicant's parcel (i.e. no development in the public Right of Way).

A-5-LGB-22-0060

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

We thank you for your consideration.

Sincerely,

Handwritten signatures of Mark and Sharon Fudge in black ink.

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

Th11a & Th12a

March 3, 2023

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

From: Mark and Sharon Fudge, Laguna Beach

Dear Chair Brownsey, Coastal Commissioners and Staff,

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

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

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

A little bit of history might be helpful here -

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

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

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

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

¹ LBMC 11.50

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

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

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

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

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

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

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

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

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

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

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

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

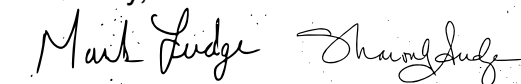
In this case the REP benefits the owners of 1007 Gaviota but has precluded the city from incorporating a superior set of amenities in coordination with the work currently being proposed at the public accessway adjacent. It only makes sense that the city incorporates a complete project NOW and that they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

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

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

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

Sincerely,



Mark and Sharon Fudge

P.O. Box 130

Laguna Beach CA 92652-0130

fudge1@cox.net

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

comments:

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

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

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

Our Request:

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

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

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

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

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

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

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

The 1007 Gaviota project comments:

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

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

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

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

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

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

Requests -

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

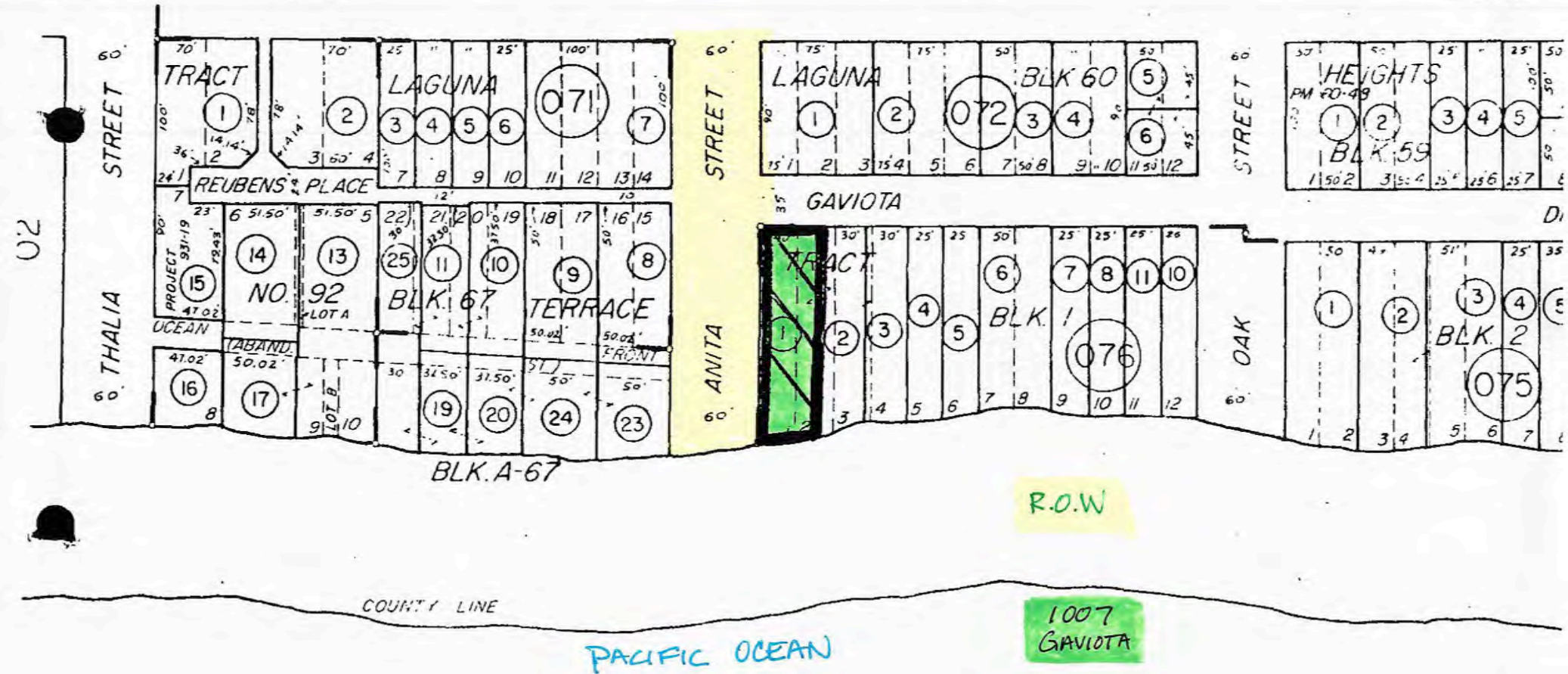
If the permit is approved:

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

SOUTH

COAST

HIGHWAY



MARCH 1974

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

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

NOTE ASS
 PAR

Apita St. Stairs, Laguna Beach

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



R.O.W

City development

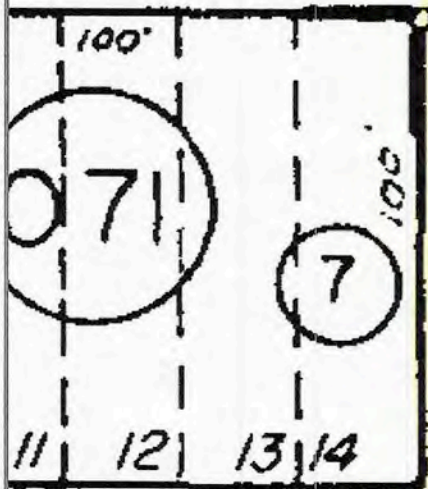


ENCROACHMENT INTO R.O.W. (private party)

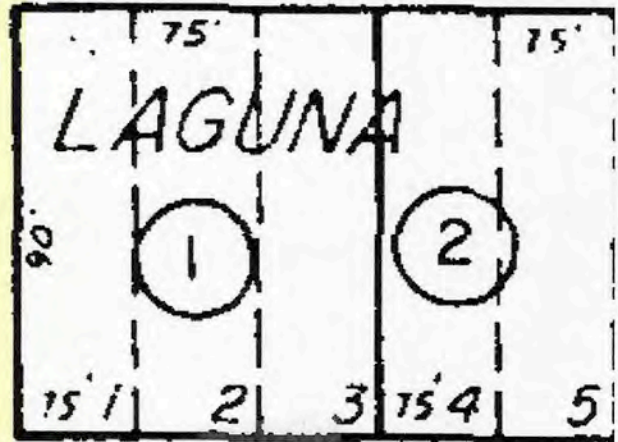
1007 Gaviota

private party development

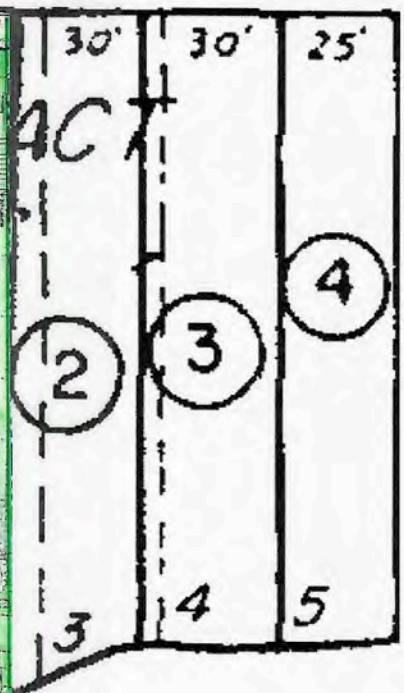
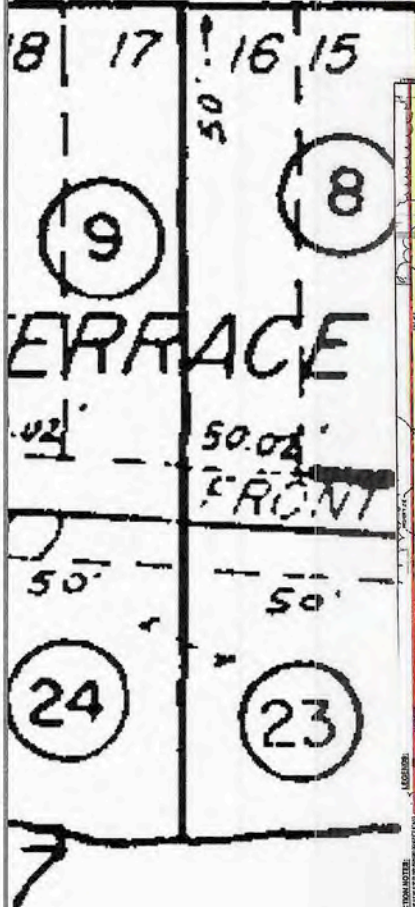
PACIFIC COAST HIGHWAY



ANITA STREET



GAVIOTA



R.O.W.


EXTENT OF 1007 DEVELOPMENT

PACIFIC OCEAN



Private Party
Project area

City Project area



Approximate location
of property line

Approximate area of
encroachment



April 7, 2023

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

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

Dear Chair Brownsey and Commissioners:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Nancy Okada

Nancy Okada

Chair

Sierra Club Coastal Subcommittee



March 3, 2023

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

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

Dear Chair Brownsey and Commissioners:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

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

Ray Heimstra, Chair
Sierra Club Orange County Conservation Committee