

W12a

**A-5-LGB-22-0060 (City of Laguna Beach)
April 12, 2023**

EXHIBITS

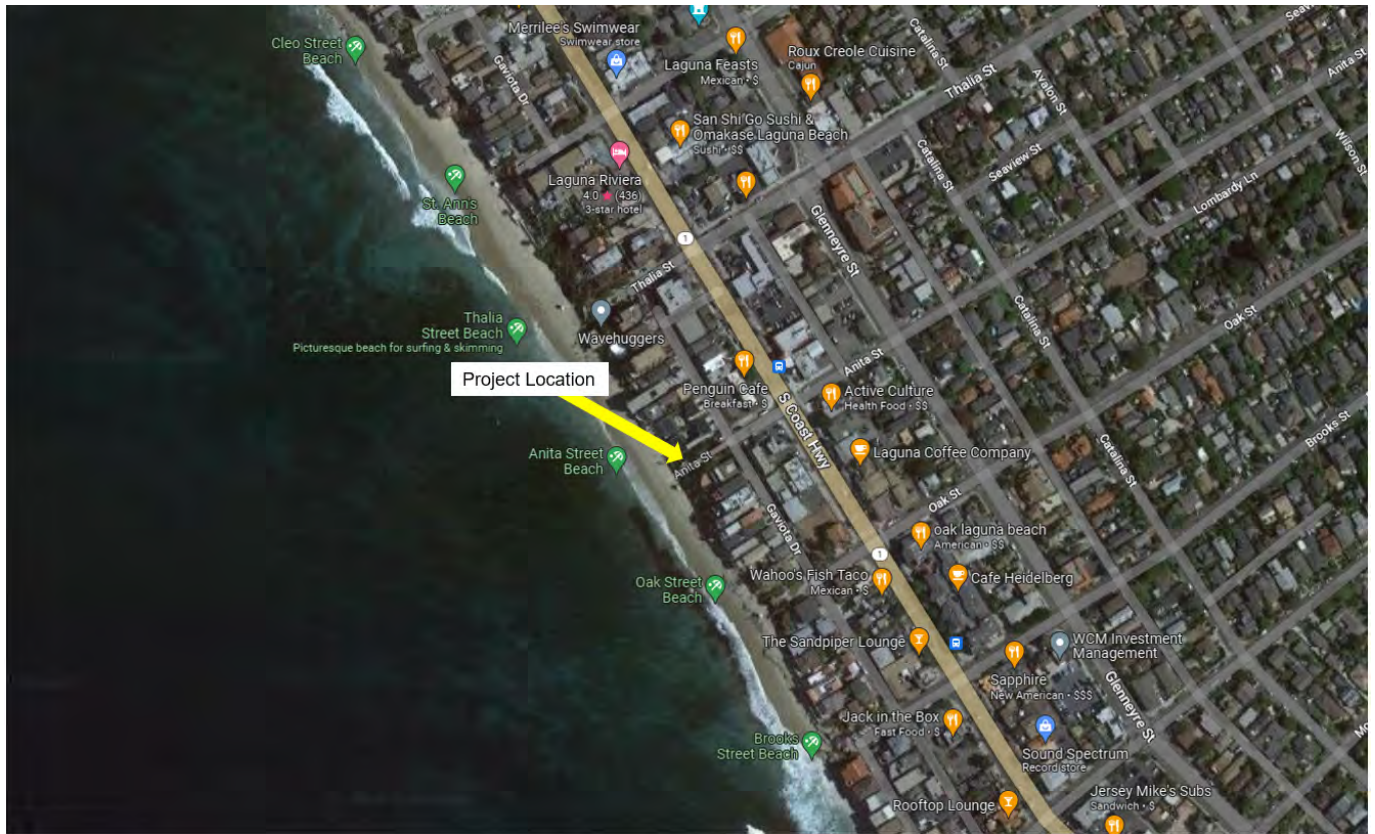
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EXHIBIT 1—Vicinity Map

EXHIBIT 2—Site plan

EXHIBIT 3—Appeal

EXHIBIT 4—Current Encroachment and Renderings of Stairway



CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
301 E. OCEAN BLVD., SUITE 300
LONG BEACH, CA 90802
(562) 590-5071
SOUTHCOAST@COASTAL.CA.GOV

Received

South Coast Region

10/21/2022

**California Coastal Commission
APPEAL FORM****Appeal of Local Government Coastal Development Permit****Filing Information (STAFF ONLY)**

District Office: South Coast

Appeal Number: _____

Date Filed: _____

Appellant Name(s): _____

APPELLANTS

IMPORTANT. Before you complete and submit this appeal form to appeal a coastal development permit (CDP) decision of a local government with a certified local coastal program (LCP) to the California Coastal Commission, please review [the appeal information sheet](#). The appeal information sheet describes who is eligible to appeal what types of local government CDP decisions, the proper grounds for appeal, and the procedures for submitting such appeals to the Commission. Appellants are responsible for submitting appeals that conform to the Commission law, including regulations. Appeals that do not conform may not be accepted. If you have any questions about any aspect of the appeal process, please contact staff in the Commission district office with jurisdiction over the area in question (see the Commission's [contact page](#) at <https://coastal.ca.gov/contact/#/>).

Note regarding emailed appeals. Please note that emailed appeals are accepted ONLY at the general email address for the Coastal Commission district office with jurisdiction over the local government in question. For the South Coast district office, the email address is SouthCoast@coastal.ca.gov. An appeal emailed to some other email address, including a different district's general email address or a staff email address, will be rejected. It is the appellant's responsibility to use the correct email address, and appellants are encouraged to contact Commission staff with any questions. For more information, see the Commission's [contact page](#) at <https://coastal.ca.gov/contact/#/>.

Appeal of local CDP decision

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1. Appellant information¹

Name: _____

Mailing address: _____

Phone number: _____

Email address: _____

How did you participate in the local CDP application and decision-making process?

Did not participate

Submitted comment

Testified at hearing

Other

Describe: _____

If you did *not* participate in the local CDP application and decision-making process, please identify why you should be allowed to appeal anyway (e.g., if you did not participate because you were not properly noticed).

Describe: _____

Please identify how you exhausted all LCP CDP appeal processes or otherwise identify why you should be allowed to appeal (e.g., if the local government did not follow proper CDP notice and hearing procedures, or it charges a fee for local appellate CDP processes).

Describe: _____

¹ If there are multiple appellants, each appellant must provide their own contact and participation information. Please attach additional sheets as necessary.

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2. Local CDP decision being appealed²

Local government name: _____

Local government approval body: _____

Local government CDP application number: _____

Local government CDP decision: ☒ CDP approval CDP denial³

Date of local government CDP decision: _____

Please identify the location and description of the development that was approved or denied by the local government.

Describe: _____

² Attach additional sheets as necessary to fully describe the local government CDP decision, including a description of the development that was the subject of the CDP application and decision.

³ Very few local CDP denials are appealable, and those that are also require submittal of an appeal fee. Please see the [appeal information sheet](#) for more information.

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Applicant name(s): _____

Applicant Address: _____

For appeals of a CDP approval, grounds for appeal are limited to allegations that the approved development does not conform to the LCP or to Coastal Act public access provisions. For appeals of a CDP denial, grounds for appeal are limited to allegations that the development conforms to the LCP and to Coastal Act public access provisions. Please clearly identify the ways in which the development meets or doesn't meet, as applicable, the LCP and Coastal Act provisions, with citations to specific provisions as much as possible. Appellants are encouraged to be concise, and to arrange their appeals by topic area and by individual policies.

[illegible]

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5. Identification of interested persons


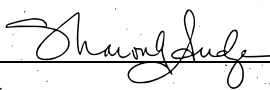
On a separate page, please provide the names and contact information (i.e., mailing and email addresses) of all persons whom you know to be interested in the local CDP decision and/or the approved or denied development (e.g., other persons who participated in the local CDP application and decision making process, etc.), and check this box to acknowledge that you have done so.

Interested persons identified and provided on a separate attached sheet

6. Appellant certifications

I attest that to the best of my knowledge, all information and facts in this appeal are correct and complete.

Print name _____

 
Signature _____

Date of Signature _____

7. Representative authorizations⁶

While not required, you may identify others to represent you in the appeal process. If you do, they must have the power to bind you in all matters concerning the appeal. To do so, please complete the representative authorization form below and check this box to acknowledge that you have done so.

I have authorized a representative, and I have provided authorization for them on the representative authorization form attached.

⁵ If there are multiple appellants, each appellant must provide their own certification. Please attach additional sheets as necessary.

⁶ If there are multiple appellants, each appellant must provide their own representative authorization form to identify others who represent them. Please attach additional sheets as necessary.

CALIFORNIA COASTAL COMMISSION

455 MARKET STREET, SUITE 300
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400

**DISCLOSURE OF REPRESENTATIVES**

If you intend to have anyone communicate on your behalf to the California Coastal Commission, individual Commissioners, and/or Commission staff regarding your coastal development permit (CDP) application (including if your project has been appealed to the Commission from a local government decision) or your appeal, then you are required to identify the name and contact information for all such persons prior to any such communication occurring (see Public Resources Code, Section 30319). The law provides that failure to comply with this disclosure requirement prior to the time that a communication occurs is a misdemeanor that is punishable by a fine or imprisonment and may lead to denial of an application or rejection of an appeal.

To meet this important disclosure requirement, please list below all representatives who will communicate on your behalf or on the behalf of your business and submit the list to the appropriate Commission office. This list could include a wide variety of people such as attorneys, architects, biologists, engineers, etc. If you identify more than one such representative, please identify a lead representative for ease of coordination and communication. You must submit an updated list anytime your list of representatives changes. You must submit the disclosure list before any communication by your representative to the Commission or staff occurs.

Your Name _____

CDP Application or Appeal Number _____

Lead Representative

Name _____

Title _____

Street Address. _____

City _____

State, Zip _____

Email Address _____

Daytime Phone _____

Your Signature _____

Date of Signature _____

Additional Representatives (as necessary)

Name _____
Title _____
Street Address. _____
City _____
State, Zip _____
Email Address _____
Daytime Phone _____

Name _____
Title _____
Street Address. _____
City _____
State, Zip _____
Email Address _____
Daytime Phone _____

Name _____
Title _____
Street Address. _____
City _____
State, Zip _____
Email Address _____
Daytime Phone _____

Name _____
Title _____
Street Address. _____
City _____
State, Zip _____
Email Address _____
Daytime Phone _____

Your Signature _____

Date of Signature _____

To: Coastal Commissioners and Staff
From: Mark and Sharon Fudge
Date: October 20, 2022
Re: New appeal of Anita Street improvements in Laguna Beach (CDP 22-1722)

Dear Commissioners and Staff,

We are appealing a recent decision of the Laguna Beach Planning Commission to approve a project meant to improve public access at a public access point in Laguna Beach. However, the project - as presented - prioritizes the private use of a public right of way by the adjacent landowner at 1007 Gaviota (Mike and Lori Gray "Gray") over the consideration of expanding the scope of the current access for the benefit of the public.

We have been vocal at the local level about this project since May of 2018 when the City attempted to 'sell' the public right of way to the landowner at 1007 Gaviota (Gray). This attempt was eventually abandoned by the City after our, and the CCC's, objections.

The Grays have been in the process of remodeling their duplex located at 1007 Gaviota for many years and desired to maintain an encroachment of his driveway into the public right-of-way. When the City approved that project in 2021, we appealed it to the CCC (A-5-LGB-21-0043). The staff report for the August 2021 hearing recommended the Commission find our appeal presented a 'substantial issue', but before the hearing could take place, the applicant withdrew the project.

Subsequently, the Grays redesigned the house to eliminate the need for the driveway to encroach into the public right-of-way, but still desired to maintain that area (approximately 2000 square feet) as an extension of their private yard (as defined by the Municipal Code). The City granted a revocable encroachment permit as part of the project approvals, despite the knowledge that the adjacent property (the subject property of this appeal) was undergoing a design process to improve the balance of the public right of way. We again appealed the project to the CCC in June of 2022 (A-5-LGB-22-0025). Substantial Issue was found by the Commissioners on 7/13/22 and the de novo hearing is pending.

We have multiple emails from CCC staff to the City and the applicant expressing concerns about the inappropriate nature of allowing a private use to expand into the public right of way. Copies are available if needed.

In the subject project, the City failed to consider revocation of the Revocable Encroachment Permit at this time and therefore approximately half (30 feet of 60 foot wide) of the public right-of-way was not utilized in the project design. The City was fully aware of the redesign of the Gray's project that eliminated the need for that driveway encroachment, but did nothing to take advantage of the newly available area for public improvements. These projects need to be reviewed together to ascertain the total impact and/or benefit of the projects.

We ask that staff recognizes that the project, as proposed, does not maximize access to the coast as required by the Coastal Act and the certified LCP and that you recommend a finding that our appeal presents a substantial issue of non-compliance with the Coastal Act and the LCP.

Thank you for your consideration.

Mark and Sharon Fudge
P.O. Box 130
Laguna Beach, CA 92652
949-481-1100

Attachment: 9/21/22 Email from Fudges to Planning Commission spelling out basis for appeal to CCC

From: Fudge fudge1@cox.net
Subject: CDP 22-1722 (Westerly Terminus of Anita St)
Date: September 21, 2022 at 11:32 AM
To: Planning Commission pc@lagunabeachcity.net
Cc: Dobson, Amber CD adobson@lagunabeachcity.net, Jung, Wendy CD wjung@lagunabeachcity.net, Rehms, Zach@Coastal Zach.Rehms@coastal.ca.gov, Schwing, Karl@Coastal Karl.Schwing@coastal.ca.gov
Bcc: Mark Fudge markfudge@me.com, Denise Erkeneff denisedd@cox.net



Dear Commissioners,

Due to a last minute scheduling conflict, we may not be able to attend tonight's meeting to present our objection to the proposed project (Anita Street beach access improvements, etc.) in person, so we are emailing you to establish standing for our comments.

The City owns a 60 foot wide right-of-way on Anita Street. Primarily, the proposed project ignores a large area of public right of way (approximately 2000 square feet) that has been the subject of multiple previous appearances before the Planning Commission and the Design Review Board. Due to the lack of consideration of this area, the project does not provide maximum access to the coast as is required by our certified LCP and the project must be brought back for consideration and approval when it complies with the underlying law.

On April 4, 2018, the Planning Commission was to hear a proposal for the city to abandon 2000 square feet of the public right of way and to sell it to the adjacent property owner - Grey at 1007 Gaviota. This proposal (the sale of the ROW) was eventually abandoned after objections by the California Coastal Commission were entered - but the adjacent property owner never gave up the process to maintain an encroachment on that land. On April 28, 2022 that owner obtained approvals from the City to make public improvements (in addition to private improvements) on that ROW - and even into the areas being considered tonight- but that City approved CDP has been appealed to the Coastal Commission. A 'substantial issue' was found in July of 2022 thereby extinguishing that CDP and potentially extinguishing the corresponding revocable encroachment permit. We believe that the project presented to you is 'incomplete' as it does not address the improvements proposed by the private landowner directly to the south (Grey @ 1107 Gaviota). We do not know what the final project at 1107 Gaviota will be. Therefore, it is premature to hear this proposal tonight.

The Coastal Commission staff has already weighed in with this opinion related to the proposed private development at 1007 Gaviota (email June 10, 2020):

3) Encroachments on Anita Street cannot be justified as it is a public beach accessway. Any undeveloped portion of the right-of-way should be afforded to the public as a view corridor and and potentially improved with public parking, public benches, or landscaping - not sold or rented (via encroachment permit) to a private party. Encroachments on Gaviota Drive may be justified if they are mitigated by payment into a fund that improves public access Citywide, if they do not impede any existing public access feature (e.g. sidewalk, public parking space), and they are identified as revocable at any time in the future when the City may elect to improve the public-right-of-way.

These are our areas of concern related to the proposal tonight:

- The proposed project does not provide maximum access to the coast as is required by the Coastal Act as follows:
 - **Section 30001.5 Legislative findings and declarations; goals**

The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:

(c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.

(d) Assure priority for coastal-dependent and coastal-related development over other development on the coast.

- **Section 30210 Access; recreational opportunities; posting**

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 30255 Priority of coastal-dependent developments

Coastal-dependent developments shall have priority over other developments on or near the shoreline. Except as provided elsewhere in this division, coastal-dependent developments shall not be sited in a wetland. When appropriate, coastal-related developments should be accommodated within reasonable proximity to the coastal-dependent uses they support.

-
- The proposed project does not comply with the Land Use Element as follows:
 - **Land Use Element Policy 4.3** Maintain and enhance access to coastal resource areas, particularly the designated public beaches, by ensuring that access points are safe, attractive, and pedestrian friendly.
 - **Action 4.3.2** Maintain and improve public pedestrian access to and along beaches and oceanfront bluff using public rights-of-way and public easements. Protect, and where feasible, formalize, continued public use over areas used historically by the public (i.e. public prescriptive rights) to gain access to and along beaches, oceanfront bluffs, and other recreational areas.
- The proposed project does not comply with the Open Space/Conservation Element as follows:
 - **Open Space/Conservation Element Policy 3A** Retain and improve existing public beach accessways in the City, and protect and enhance the public rights to use the dry sand beaches of the City.
 - **Open Space/Conservation Element Policy 3M** The provision, maintenance and enhancement of public non-vehicular access to the accessway shall be of primary importance when evaluating future improvements, both public and private.

It is clear that the priorities of public access are superior to private access 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. Providing public use of the FULL public right of way is the correct and lawful decision to make. We ask that you make that decision.

Thank you for your consideration,
Mark and Sharon Fudge
fudge1@cox.net



View of REP area, currently a driveway, and beach access from Gaviota Drive.



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



Rendering of proposed beach access stairway.