

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
301 E. OCEAN BLVD, SUITE 300
LONG BEACH, CA 90802-4325
VOICE (562) 590-5071
FAX (562) 590-5084



W12b

Filed: 10/24/2022
49th Day: Waived
Staff: M. Vaughn - LB
Staff Report: 3/30/2023
Hearing Date: 4/12/2023

STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE & DE NOVO

Appeal No.: A-5-LGB-22-0061

Applicant: Jack Corwin

Agents: Paul Beard II, FisherBroyles LLP
Larry Nokes, Nokes & Quinn, Lawyers
Todd Skenderian, Architect

Local Government: City of Laguna Beach

Local Decision: Approval with Conditions

Appellant: Mark Fudge

Project Location: 31351-31355 Coast Highway, Laguna Beach, Orange County
APNs: 056-032-04 at 31351 Coast Hwy
056-032-07 at 31355 Coast Hwy

Project Description: Appeal of City of Laguna Beach Local Coastal Development Permit No. 19-4321 for construction of new perimeter fencing on a residential coastal bluff lot.

Staff Recommendation: Determine that a substantial issue exists and deny a Coastal Development Permit.

IMPORTANT HEARING PROCEDURE NOTE: The Commission will not take public testimony during the “substantial issue” phase of the appeal hearing unless at least three Commissioners request it. If the Commission finds that the appeal raises a substantial issue, the “de novo” phase of the hearing will follow, during which the Commission will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

This matter was originally scheduled for the Coastal Commission's December 14, 2022 hearing, within the required 49 working days following receipt of the appeal. The staff report with recommendation of substantial issue and denial was published on December 1, 2022. However, the applicant requested a postponement. Since an applicant has a right to one postponement, the postponement requested by the applicant was granted. A waiver of the 49 working day deadline to schedule the appeal for hearing was signed by the applicant and received by the Commission prior to the 49th working day ([Exhibit 11](#)).

The subject site is an oceanfront, bluff lot located between the sea (West Street Beach) and the first public road (Coast Highway) in Laguna Beach. The subject site is currently developed with a 4,092 square-foot single-family dwelling and attached two-car garage and historic gazebo. The subject site is comprised of two lots; the larger is an irregularly shaped area (31351 Coast Highway), and the smaller lot is a long, narrow rectangle (31355 Coast Highway). The residence is located on the larger lot. The two lots total approximately 27,706 square feet ([Exhibit 1](#)).

The City's action on local CDP No. 19-4321 authorized perimeter fencing around the two lots, including two pedestrian gates and one driveway gate. The seaward most portion of the proposed fence would be located approximately 10 feet landward of the public beach, roughly five vertical feet above the elevation of the beach, along the subject site's beach frontage. No development other than the fencing and gates is proposed. In support of the proposed project, the applicant's consultant prepared an Updated Discussion of Geomorphology and Bluff Edge Determination (GeoSoils, 6/2/2022). And, in response to the staff report prepared for the December 2022 hearing, the applicant's consultant prepared another memorandum (GeoSoils, 1/13/2023). Based on the applicant's bluff edge determination, accepted by the City, the proposed seaward-most portion of the fencing and gate would be setback 10 feet from the bluff edge.

The appeal contends that the project is not consistent with the bluff edge definition and is not consistent with the LCP policy that prohibits development on a bluff face. The appeal asserts that because the applicant's determination of bluff edge location does not correctly apply the certified LUE definition of oceanfront bluff edge, the fence would be located on the bluff face.

The Commission's staff geologist has evaluated information regarding the site to determine the correct bluff edge location based on correct application of the certified LCP definition of oceanfront bluff edge, contained in the Land Use Element (LUE) of the LCP. When determined in a manner consistent with the certified LUE definition, the bluff edge location is properly placed at or near the inland property line, significantly landward of the bluff edge location identified by the applicant and accepted by the City. Based on the correct bluff edge location, the proposed fence would actually be located on the bluff

face.

LUE Policy Action 7.3.5 prohibits development on a bluff face, with only limited exceptions for public improvements that provide public access or public safety, or to protect coastal resources, and then only when no feasible alternative exists and coastal resource impacts are minimized. The appellant contends the project approved by the City is inconsistent with the LCP requirements regarding bluff development, specifically with the LUE definition for oceanfront bluff edge and with the Policy Action 7.3.5. The proposed fencing is inconsistent with these sections of the certified LCP. Therefore, the project approved by the City raises a substantial issue on the grounds upon which the appeal was filed.

It is also important to note that if the bluff edge identified by the applicant is accepted in conjunction with this request to install a fence, that would have significant consequences to potential future development should the property owner propose future additions to the existing residence or demolition of the existing residence (built in 1930) and construction of a new residence at the site. If the applicant's bluff edge location were accepted, even though it was not determined consistent with the LCP requirements, it could result significantly more development on the site and in a location much closer to the public beach than currently exists. Such potential future development would also adversely impact public access, public recreation, public views, and natural resources, to an even greater degree, setting a negative precedent for future bluff development at the site.

The applicant asserts the fence is necessary to address trespass, vandalism and burglary on the property. A letter to the City of Laguna Beach from the applicant's attorney was forwarded to Commission staff by City staff ([Exhibit 7](#), with police reports attached). Attached to that letter were 44 pages of police Call for Service Reports and Incident/Investigation Reports, dating from 7/26/2009 to 6/12/2022, with the majority dated in 2015 (5), 2018 (6) and 2019 (6). However, with the exception of two incidents that occurred in 2009, the reports do not demonstrate a need for a private fence on the bluff face for security reasons. Many of the reports are related to neighbor disputes involving private view issues or property lines, reports of untended alarms going off excessively at the site, and extended periods of vacancy at the site. Five of the reports refer to the site as an abandoned or vacant home. Only two of the Call for Service Reports required follow up reports (the two 2009 incidents). None of the other Call for Service Reports reported any damage, or missing/stolen items, etc. The two incidents that resulted in follow up investigation (Incident/Investigation Report) occurred in 2009. These events occurred fourteen years ago, and nothing further has been provided that substantiates that unauthorized people are routinely and frequently accessing the site due to lack of a fence within the fourteen years since those incidents. This raises the question of why the applicant waited 14 years to propose a fence, as well as whether a barrier of any kind is actually needed at this site.

Alternatives to construction of a fence on the bluff face should be considered if it can be demonstrated that a verified safety risk is present. However, these options have not been evaluated. Potential, non-development alternatives might include installing more secure locks and a high quality electronic security system, measures to make the house look

A-5-LGB-22-0061 (Corwin)
Appeal – Substantial Issue & De Novo
4/12/2023

more occupied and less abandoned, installation of natural, native vegetative barriers, and removal of the bluff stairs. There may be other possible options. No evidence that any alternatives were considered has been provided. It has also not been definitively demonstrated that any barrier is necessary.

Development on a bluff face is prohibited (with the few exceptions mentioned above) by the LCP because of the adverse impacts such development has on public access, public recreation, public views, and natural resources, among other impacts. The proposed fence would result in adverse impacts to all of these resources, as described in greater detail in the findings.

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which appeal number A-5-LGB-22-0061 was filed.

For the reasons stated above, Commission staff also recommends that, after a public hearing, the Commission **deny a Coastal Development Permit** for the proposed fencing on the bluff face. The motion and resolution can be found on Page13 of the staff report.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE	6
II. APPELLANT’S CONTENTIONS	6
III. LOCAL GOVERNMENT ACTION	6
IV. APPEAL PROCEDURES.....	7
V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE	8
A. PROJECT DESCRIPTION AND LOCATION	8
B. LOCAL COASTAL PROGRAM CERTIFICATION	9
C. SUBSTANTIAL ISSUE ANALYSIS.....	9
VI. MOTION AND RESOLUTION – DE NOVO.....	13
VII. FINDINGS AND DECLARATIONS – DE NOVO.....	13
A. PROJECT DESCRIPTION	13
B. STANDARD OF REVIEW	14
C. BLUFF EDGE LOCATION AND SETBACK.....	14
D. ADVERSE IMPACTS OF FENCING ADJACENT TO PUBLIC BEACH.....	22
E. UNPERMITTED DEVELOPMENT.....	26
APPENDIX A – SUBSTANTIVE FILE DOCUMENTS	27

EXHIBITS

Exhibit 1 – Vicinity Map

Exhibit 2 – Project Plans

Exhibit 3 – Design Review Board Resolution No. 19-4320 Approving Project with
Conditions

Exhibit 4 – Appeal of CDP 19-4321 by Mark Fudge

Exhibit 5 – Coastal Commission Staff Geologist Memo, December 2022

Exhibit 6 – Local Hearing Public Comments

Exhibit 7 – Letter from Applicant’s Attorney Nokes & Quinn (with attached Police
Report information attached)

Exhibit 8 – Letter from Applicant’s Attorney Fisher Broyles (with GeoSoils report)

Exhibit 9 - Stone Steps Photo and Site Plan

Exhibit 10 – Tract 831 Map

Exhibit 11 – 49 Day Waiver

Exhibit 12 – Public Comments Received on December 2022 Staff Report

Exhibit 13 - Coastal Commission Staff Geologist Memo, March 2023

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

Motion: I move that the Commission determine that Appeal No. A-5-LGB-22-0061 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

Staff recommends a **NO** vote. Following the staff recommendation on this motion will result in the Commission proceeding to conduct a de novo review of the application, and adoption of the following resolution and findings. Conversely, passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution: The Commission hereby finds that Appeal No. **A-5-LGB-22-0061** presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access policies of the Coastal Act.

II. APPELLANT'S CONTENTIONS

On October 24, 2022, Mark Fudge filed an appeal of the City's approval of CDP 19-4321 ([Exhibit 4](#)). The appellant contends:

1. The location of the bluff edge was incorrectly determined, based on the definition of Oceanfront Bluff Edge included in the certified LCP Land Use Element. As a result of the City's acceptance of the incorrect bluff edge location, the development (fencing and gates) will be located seaward of the bluff edge, on the bluff face.
2. LUE Policy 7.3.5 expressly prohibits development on a bluff face unless it is a public improvement or for public safety.
3. Approval of this CDP and its bluff edge location will set a negative precedent for future bluff development.

III. LOCAL GOVERNMENT ACTION

On September 22, 2022, the City of Laguna Beach Design Review Board conditionally approved Coastal Development Permit No. 19-4321 ([Exhibit 3](#)). On October 10, 2022, the Coastal Commission received the City's Notice of Final Action and the Commission's 10 working day appeal period was established, extending to October 24, 2022. On October 24, 2022, prior to the 5:00 pm close of business, the Commission received Mark Fudge's appeal ([Exhibit 4](#)). No other appeals were received. On October 24, 2022, a Notification of Appeal was sent to the Laguna Beach Community Development Department and the applicant, notifying each party of the appeal of the City's coastal development permit. The City's decision was automatically stayed, pursuant to Public Resources Code Section

30623, pending Commission action on the appeal.

IV. APPEAL PROCEDURES

After certification of LCPs, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on CDPs. Development approved by cities or counties may be appealed if it is located within certain geographic appealable areas, such as those located between the sea and the first public road paralleling the sea or within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of a coastal bluff.

Section 30603 of the Coastal Act states in relevant part:

- (a) After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:
 - (1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.
 - (2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.

The project site is in an appealable area because it is located between the sea and the first public road paralleling the sea, and within 300 feet of the inland extent of any beach. The project site also qualifies as an appealable area based on Section 30603(a)(2) because of its location on the bluff. The issues raised in the subject appeal, on which the Commission finds there is a substantial issue as described further below, apply to proposed development located in the appeals area.

Grounds for Appeal

The grounds for appeal of an approved local CDP in the appealable area are stated in Section 30603(b)(1):

- (b)(1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.

Section 30625(b)(2) of the Coastal Act requires a de novo review of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a). If Commission staff recommends a finding of substantial issue, and there is no motion from the

Commission to find no substantial issue, the substantial issue question will be considered presumed, and the Commission will proceed to the de novo portion of the public hearing on the merits of the project. A de novo review of the merits of the project uses the certified LCP as the standard of review. (Section 30604(b).) In addition, for projects located between the first public road and the sea, a specific finding must be made at the de novo stage of the appeal that any approved project is consistent with the public access and recreation policies of the Coastal Act. (Section 30604(c).) Sections 13110-13120 of Title 14 of the California Code of Regulations further explain the appeal hearing process.

Qualifications to Testify before the Commission

If the Commission, by a vote of three or more Commissioners, decides to hear arguments and vote on the substantial issue question, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. The time limit for public testimony will be set by the chair at the time of the hearing. As noted in Section 13117 of Title 14 of the California Code of Regulations, the only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. In this case, the record reflects that Mark Fudge spoke in opposition to the project at the local hearing, and qualifies as an aggrieved party pursuant to Section 30625 of the Coastal Act. In addition to Mr. Fudge, persons qualified to testify at the hearing include Ron and Deborah Marshall, Algis Ratkelis, and Mr. Muche.

Upon the close of the public hearing, the Commission will vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will immediately follow, during which the Commission will take public testimony.

V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

A. Project Description and Location

The applicant is proposing to install perimeter fencing around a residential coastal bluff lot developed with a single-family residence in Laguna Beach. The lot is located between the sea (near the northern end of West Street Beach) and the first public road (Coast Highway) ([Exhibit 1](#)). The proposed fence would be located approximately 10 feet landward of the public beach, roughly five vertical feet above the elevation of the beach, along the subject site's beach frontage. The perimeter fencing approved by the City includes three gates: one vehicular gate across the driveway near the existing residence; one pedestrian gate to be located on the eastern side of the property, near the rear of the existing garage; and, the third pedestrian gate to be located on the western/seaward side of the property. The project includes approximately 460 linear feet of 6-foot-high steel fencing along the side and rear property lines, and approximately 110 linear feet of 4-foot-high steel fencing within the front seaward area ([Exhibit 2](#)). No other development, including changes to the

existing residence, site lighting, or landscaping, is proposed. The project originally included two additional pedestrian gates and 4-foot-high fencing within the triangular (landward) portion of parcel APN 056-032-07 (31355 Coast Highway), but a condition of the City's approval required removal of those features from the project. These features are depicted on the project plans ([Exhibit 2](#)) subject to this appeal, but are not a part of the project approved by the City.

The subject site is currently developed with a 4,092 square-foot single-family residence and an attached two-car garage and courtyard, driveway, decks, historic gazebo, and potting shed. The existing residence was originally constructed in 1930. The subject site is comprised of two lots; the larger is an irregularly shaped area (31351 Coast Highway), and the smaller lot is a long, narrow rectangle (31355 Coast Highway). The existing residence and majority of site development are located on the irregularly shaped lot at 31351 Coast Highway. The gazebo is located near the seaward end of the narrow rectangular lot at 31355 Coast Highway. The two lots total approximately 27,706 square feet.

B. Local Coastal Program Certification

The City of Laguna Beach Local Coastal Program (LCP) was certified on January 13, 1993. The City's LCP is comprised of a Land Use Plan (LUP) and an Implementation Plan (IP). The City's Land Use Plan is comprised of a variety of planning documents including the Land Use Element (LUE), Open Space/Conservation Element (OSC), Coastal Technical Appendix, and Fuel Modification Guidelines (of the Safety General Element of the City's General Plan as adopted by Resolution 89.104). The Implementation Plan (IP) of the City of Laguna Beach certified Local Coastal Program (LCP) is comprised of over 10 documents, including Title 25, the City's Zoning Code. The Coastal Land Use Element of the LCP was updated and replaced in its entirety via LCPA 1-10 in 2012. The Open Space/Conservation Element and Title 25 have been amended a number of times since original certification. Although Laguna Beach has a certified Local Coastal Program (LCP), there are four areas of deferred certification in the City: Irvine Cove, Blue Lagoon, Hobo Canyon, and Three Arch Bay. The project site is located within the City of Laguna Beach's certified jurisdiction and is subject to the policies of the certified LCP.

C. Substantial Issue Analysis

As stated in Section IV of this report, the grounds for an appeal of a CDP issued by the local government are the project's conformity with the policies of the LCP and the project's conformity with the public access and recreation policies of the Coastal Act. The Commission shall hear an appeal unless it determines that no substantial issue exists as to conformity with the policies of the LCP and the project's conformity with the public access policies of the Coastal Act.

Section II of this staff report outlined the appellants' contentions regarding the project – namely that the project does not conform to the bluff edge setback requirements because the determination of the bluff edge location, applied in conjunction with approval of the project, was not performed consistent with the requirements of the LCP. Based on the correct bluff edge location, the fencing project is located on the bluff face. Further, the appellant alleges, acceptance of this incorrectly determined bluff edge location would set a negative precedent for future bluff development.

The City of Laguna Beach certified Local Coastal Program (LCP) Land Use Plan (LUP) Land Use Element (LUE) includes the following definition and policy:

Oceanfront Bluff Edge or Coastal Bluff Edge - The California Coastal Act and Regulations define the oceanfront bluff edge as the upper termination of a bluff, cliff, or seacliff. In cases where the top edge of the bluff is rounded away from the face of the bluff, the bluff edge shall be defined as that point nearest the bluff face beyond which a downward gradient is maintained continuously to the base of the bluff. In a case where there is a step like feature at the top of the bluff, the landward edge of the topmost riser shall be considered the bluff edge. Bluff edges typically retreat over time as a result of erosional processes, landslides, development of gullies, or by grading (cut). In areas where fill has been placed near or over the bluff edge, the original bluff edge, even if buried beneath fill, shall be taken to be the bluff edge.

Action 7.3.5 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. (*Ongoing implementation.*)

In support of the proposed fence project, the applicant's consultant prepared an Updated Discussion of Geomorphology and Bluff Edge Determination (GeoSoils, 6/2/2022). Based on the applicant's bluff edge determination, accepted by the City and the City's consulting geologist, the proposed seaward most portion of the proposed fence would be setback 10 feet from the bluff edge. However, the applicant's determination of the bluff edge location does not correctly apply the certified LUE definition of oceanfront bluff edge (cited above).

The Commission's staff geologist has evaluated the site to determine the correct bluff edge location based on correct application of the certified LUE definition of oceanfront bluff edge ([Exhibit 5](#)). The Staff Geologist's memo states:

"The bluff slope extends from the back beach at approximately +20 ft elevation¹ to approximately +88 ft at the inland property line, and to approximately +100 – 110 ft at Coast Hwy (depending on location)."

The bluff edge determined by the applicant's consultant does not represent the bluff edge, but rather the landward edge of a steeply eroded bank and of the seacliff. The Staff Geologist's memo states:

"Across much of the site the seaward toe of the colluvium has been eroded by wave action into a steeper bank, the top of which is at elevations of approximately 22 - 23

¹ No vertical datum was indicated in Ref. 1; elevations are assumed to be relative to mean sea level.

feet. The bluff edge determination submitted by the applicant (Ref. 1) identifies the top of this lower bank as the bluff edge, except in the southernmost part of the site, where the bluff edge is identified as the top of the San Onofre breccia sea cliff (**Figs. 1, 2**). However, as noted above, the LUE definition of “Oceanfront/Coastal Bluff” expressly includes the entire slope between the upland area and the sea, not just the lower sea cliff. The applicant’s analysis does not account for the considerable elevation change that occurs between the identified bluff edge (at ~22 – 23 ft elevation), the inland edge of the subject lot (at ~88 ft) and Coast Highway (at ~100 – 110 ft), nor the significant slope of the upper bluff, which based on the applicant’s topographic survey averages about 25° on the northern part of the lot and 30° on southern part of the lot, with portions of the bluff approaching 40°.² The upper bluff slope at the site significantly exceeds the general slope of the upland/terrace area (~10°, 6:1 h:v) immediately inland, as estimated from the OCPW topographic data.”

Correct application the LUE bluff edge definition considers the entire slope between the upland area and the sea, not just the sea cliff. When determined in a manner consistent with the LUE definition, the bluff edge location is properly placed near the level of Coast Highway, significantly landward of the bluff edge location identified by the applicant and accepted by the City. Based on the correct bluff edge location, the approved fence would actually be located on the bluff face ([Exhibit 5](#)).

LUE Policy Action 7.3.5 (cited above) prohibits development on a bluff face, with only limited exceptions for public improvements that provide public access or public safety, and to protect coastal resources. And even for the listed development that may be allowed on a bluff face, it is only allowed when no feasible alternative exists and coastal resource impacts are minimized. The applicant’s determination of bluff edge location is inconsistent with the LUE definition of oceanfront bluff edge. The proposed project is the installation of private fencing on a coastal bluff face. The proposed private fencing is not a public development and does not serve any of the specified allowable uses. Thus, the proposed fencing is not consistent with the certified LUE policy that prohibits development on the bluff face. Therefore, the project approved by the City does raise a substantial issue on the grounds upon which the appeal was filed.

SUBSTANTIAL ISSUE FACTORS:

The Commission typically applies five factors in making a determination whether an appeal raises a substantial issue pursuant to Section 30625(b)(2).

1. The degree of factual and legal support for the local government’s decision that the development is consistent or inconsistent with the certified LCP.

The City’s approval of the fence project relies on an incorrect determination of the bluff edge location. The bluff edge location is incorrect because it was not determined in accordance with the certified LUE definition of oceanfront bluff edge. Therefore, there is

² These slope values are roughly consistent with an upper bluff slope of approximately 33 degrees (1.5:1 h:v) between elevations 20 – 120 ft indicated in the 1885 U.S. Coast and Geodetic Survey T-Sheet map cited by Ref. (1).

inadequate factual and legal support for the local government’s decision, and this factor supports a substantial issue finding.

2. The extent and scope of the development as approved or denied by the local government. The fence project approved by the local government may appear to be minor in scope, but the location of the approved development on the bluff face would set an adverse precedent for future development on oceanfront bluff properties, which encompasses a large portion of the appealable land in the city. The LCP limits development on a bluff face due to issues potentially raised by such development, including adverse hazard impacts, adverse impacts to habitat, visual resources, and public access. Therefore, this factor supports a finding of substantial issue.

3. The significance of the coastal resources affected by the decision. The subject site is an oceanfront bluff lot, which may raise specific concerns that are not routinely raised on interior, in-fill lots. California’s coastal bluffs are a significant resource, and represent a rare and visually pleasing landform which California citizens and governments have historically sought to preserve. Coastal bluffs are dynamic geologic formations, and development on them increases the potential for geologic hazards. Development on coastal bluffs and adjacent to public beaches also can have significant impacts on scenic resources and public access opportunities. The LCP and the Coastal Act provide coastal bluffs with special protections. This factor supports a finding of substantial issue.

4. The precedential value of the local government’s decision for future interpretations of its LCP. The majority of ocean-fronting development in Laguna Beach is located on bluff top properties, and approval of this project may influence the City’s decisions on future CDP applications – specifically regarding the correct location of the bluff edge. Allowing the local government’s decision to authorize private development on the bluff face would set an incorrect precedent for future LCP interpretations. If the subject fence project is found to be consistent with the LCP, future project applicants may reference this action in an attempt to determine the bluff edge location in a manner inconsistent with the correct LCP bluff edge definition. There are hundreds of these potential project locations in Laguna Beach. This factor supports a finding of substantial issue.

5. Whether the appeal raises local issues, or those of regional or statewide significance. Bluff developments, and correct application of permit requirements pursuant to a certified LCP, are an issue of statewide significance, given that bluff top and bluff face structures are present and desired throughout the state. Requiring local governments to make decisions consistent with their certified LCP is a matter of statewide importance. Incorrect application of these LCP policies could have regional or statewide ramifications regarding similar LCPs and their policies regarding bluffs (e.g. limitations on bluff face development). This factor supports a finding of substantial issue.

Conclusion

The Commission finds that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a) of the Coastal Act.

VI. MOTION AND RESOLUTION – DE NOVO

MOTION: I move that the Commission approve Coastal Development Permit No. A-5-LGB-22-0061 for the development proposed by the applicant.

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY THE PERMIT:

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform with the certified Local Coastal Program or with the public access and recreation policies of Chapter 3 of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

VII. FINDINGS AND DECLARATIONS – DE NOVO

Note: The Findings and Declarations in the Substantial Issue section of this staff report are hereby adopted by reference into the Findings and Declarations for the De Novo review.

A. Project Description

The applicant is proposing to install perimeter fencing around a coastal bluff lot (two parcels) developed with a single-family residence. The lot is located between the sea (West Street Beach) and the first public road (Coast Highway). The proposed fence would be located approximately 10 feet landward of the public beach, roughly five vertical feet above the elevation of the beach, along the subject site's beach frontage. The perimeter fencing approved by the City includes three gates: one vehicular gate across the driveway near the existing residence; one pedestrian gate is to be located on the eastern side of the property, near the rear of the existing garage; and the second pedestrian gate is to be located on the western/seaward side of the property. The project includes approximately 460 linear feet of 6-foot-high steel fencing along the side and rear property lines, and approximately 110 linear feet of 4-foot-high steel fencing within the front seaward area. No other development is proposed, including no changes to existing residence, site lighting, or landscaping. The project originally included two additional pedestrian gates and 4-foot-high fencing within the triangular (landward) portion of parcel APN 056-032-07 (31355 Coast Highway), but a condition of the City's approval required removal of those features from the project. These features are depicted on the project plans, but were not a part of the project approved by the City and are longer proposed by the applicant. This also means that the linear feet of 4-foot high fencing is less than 110 feet.

The subject site is currently developed with a 4,092 square-foot single-family residence and an attached two-car garage, courtyard driveway, decks, historic gazebo, and potting shed. The existing residence was originally constructed in 1930. The subject site is comprised of two lots, the larger is an irregularly shaped area (31351 Coast Highway, APN 056-032-07), and the smaller lot is a long, narrow rectangle (31355 Coast Highway, APN 056-032-04). The existing residence and majority of site development are located on the irregularly shaped lot at 31351 Coast Highway. The gazebo is located near the seaward end of the narrow rectangular lot at 31355 Coast Highway. The two lots total approximately 27,706 square feet ([Exhibit 1](#)). The project is located seaward of Coast Highway in the South Laguna area of the City of Laguna Beach, Orange County.

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).

Therefore, 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 Local Coastal Program and the public access and public recreation policies of the Coastal Act. The City of Laguna Beach Local Coastal Program was certified by the Commission on January 13, 1993 (except for the areas of deferred certification: Three Arch Bay, Blue Lagoon, 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 Land Use Element (LUE), Open Space/Conservation Element (OSC), and the Coastal Technical Appendix. The Implementation Plan portion of the LCP is comprised of a number of documents including Title 25 Zoning.

C. Bluff Edge Location and Setback

The City of Laguna Beach certified Local Coastal Program (LCP) Land Use Plan (LUP) Land Use Element (LUE) includes the following definition and policy:

Oceanfront Bluff Edge or Coastal Bluff Edge - The California Coastal Act and Regulations define the oceanfront bluff edge as the upper termination of a bluff, cliff, or seacliff. In cases where the top edge of the bluff is rounded away from the face of the bluff, the bluff edge shall be defined as that point nearest the bluff face beyond

which a downward gradient is maintained continuously to the base of the bluff. In a case where there is a step like feature at the top of the bluff, the landward edge of the topmost riser shall be considered the bluff edge. Bluff edges typically retreat over time as a result of erosional processes, landslides, development of gullies, or by grading (cut). In areas where fill has been placed near or over the bluff edge, the original bluff edge, even if buried beneath fill, shall be taken to be the bluff edge.

Action 7.3.5 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. (Ongoing implementation.)

Bluff Edge Location

In support of the proposed fence project, the applicant's consultant prepared an Updated Discussion of Geomorphology and Bluff Edge Determination (GeoSoils, Inc., 6/2/2022). Subsequent to the appeal of this project, the applicant's consultant has prepared a further evaluation, a Memorandum prepared by GeoSoils, Inc., dated 1/13/2023. Based on the applicant's bluff edge determination, the proposed seaward-most portion of the proposed fence would be setback 10 feet from the bluff edge. However, the applicant's bluff edge determination, as reflected in both the 6/2/2022 and 1/13/2023 GeoSoils reports, does not correctly apply the certified LUE definition of Oceanfront Bluff (cited above).

After review of both GeoSoils reports, the Commission's staff geologist evaluated the site to determine the correct bluff edge location based on correct application of the certified LUE definition of oceanfront bluff edge ([Exhibit 13](#)). The bluff edge definition states that "where fill has been placed near or over the bluff edge, the original bluff edge, even if buried beneath fill, shall be taken to be the bluff edge." The more recent information from GeoSoils suggests that fill placed on the subject site during construction of the current location of Coast Highway created only the appearance of a step-like feature that would affect the bluff edge location. The consultant argues that the topography prior to the placement of the fill on the site gently sloped to the location of the applicant's bluff edge location, and that the top-most riser identified by the Commission's staff geologist as the bluff edge location, is based on a step-like feature created by the artificial fill. The consultant further asserts that the slope above this scarp/sea cliff at the seaward side of the property is uniform (at ~27 degrees) all the way inland to Coast Highway and beyond, such that no "bluff face" at higher elevations at the site is distinguishable. Based on this understanding of the slope, the consultant identifies the bluff edge as the top of the scarp/sea cliff near the seaward edge of the property. This is based upon the change in gradient at the scarp/sea cliff, and the allegation that there is no discernable break in slope above scarp/sea cliff across the site and even inland of Coast Highway. Based on the uniform slope identified by the applicant's consultant, the consultant places the bluff edge location at the top of the scarp/sea cliff rising from the bluff toe as the "point nearest the

bluff face beyond which a downward gradient is maintained continuously to the base of the bluff.”

However, the Commission’s staff geologist reviewed the geologic information submitted on behalf of the applicant, including the two GeoSoils documents, the applicant’s topographic survey, as well as Orange County topographic maps, and disagrees with the consultant’s conclusions regarding the location of the bluff edge. The Commission’s staff geologist determined the:

“... bluff slope at the site is not uniform, and can be distinguished from the slope of the upland areas immediately inland of the site and of Coast Highway. The upland area immediately inland of the site is characterized by slopes ranging from 9 – 12 degrees, forming an inclined terrace about 300 – 400 feet in width (approximately between Coast Highway and Brooks Street). On the southern portion of the site and to the south, this more gently sloped blufftop extends seaward of Coast Highway. On the northern and central portions of the site, as shown in **Figs. 2** and **5**, the lower slope of the colluvium is relatively gentle, with slopes ranging from approximately 10° – 15°, but steepens markedly, to about 25° – 40°, moving inland, where the mantle of colluvium covers the former bedrock sea cliff (see **Fig. 2**). Thus, the slope of middle bluff face, even along the less steep northern cross-sections, significantly exceeds that of the upland areas immediately inland of the site. Along the southern cross sections (**Fig. 5, #7-8**), colluvium is not present, the position of the steep seacliff is evident, and there is a clear slope break between the upper bluff (~27 deg.) and the upland terrace (~10 deg.).

The Commission’s staff geologist further finds:

“While the face of this scarp may be the point on the bluff beyond which a *single* gradient (e.g., a slope of ~60 degrees) is maintained continuously to the base of the bluff, it is evident from **Figs. 1 - 5** that the entire project site consists of land with a downward gradient (i.e., it is sloped at some angle), and while the specific gradient varies, it is always downward – moving seaward from Coast Highway, there are no significant “discontinuities” where the land is flat or sloped upward. Indeed, except for the artificial flat areas constructed to allow for roads (Coast Highway and other streets), a continuous downward gradient extends far inland of the project site. In such situations, the Commission’s approach in numerous Laguna Beach cases has been to delineate the bluff edge (the point beyond which a downward gradient is maintained continuously) where the gradient of the coastal slope begins to exceed that of the inland terrace area.”

Fill was placed on the site during the construction of the modern alignment of Coast Highway in the late 1920s is not continuous across the entire site, but where it is present clearly influences the topography of the upper slope and accentuates the slope break at the seaward edge of the road. GeoSoils notes that the fill extends approximately 10 – 20 feet down the face of the bluff, but the depth of fill and its areal extent moving inland is not

known. Had GeoSoils performed geological borings in the area of fill and prepared geologic cross section based on such borings, the effect of the fill on the location of the bluff edge could have been determined with greater precision. But, based on the information provided, the Commission's staff geologist:

“... constructed multiple topographic cross-sections of the site (**Fig. 5**) and conservatively assumed that the first 20 feet of elevation below the Coast Highway are composed of fill, drawing a straight line from the assumed bottom elevation of fill (i.e., Coast Hwy elevation minus 20 ft) to the approximate midpoint of the road to represent the bottom surface of the fill. I then determined where, if anywhere, the slope of the bluff face exceeded the average slope of the upland area above Coast Highway (~10 degrees). Along the five northern cross-sections (# 1-5), the assumed fill would have influenced my prior bluff edge delineation; the fill accentuates the slope break just seaward of the road. However, in each cross-section there was also a point, at an elevation below the assumed fill, where the slope of the bluff surface exceeded the average slope of the upland area/terrace above Coast Highway. These points are labeled as the “alternate LUE bluff edge” on the **Fig. 5** cross-sections, and occur at elevations between 60 – 86 feet, well above the applicant's bluff edge delineation.”

Finally, the CCC's staff geologist concludes:

“In summary, it appears likely that the presence of fill seaward of Coast Hwy could influence the LUE bluff edge delineation along the northern and central portions of the project site, but there is currently insufficient information about the depth and extent of the fill to make an accurate assessment. However, based on the analysis described above and illustrated in **Figure 5**, even accounting for the fill the middle bluff face (below 80 – 85 feet elevation) at the project site is significantly steeper than the upland/terrace area immediately inland. Thus an alternate LUE bluff edge line could be delineated that is well above the bluff edge provided by the applicant.”

Thus, the correct bluff edge location is at or near the inland property line, meaning the proposed fence is located on the bluff face. Although, more information is needed in order to conclusively determine the effect of the on-site fill on the location of the bluff edge, the location can still be found to be well landward of the applicant's geologic consultant's identified location, placing the proposed fence on the bluff face. As such, the proposed fence is inconsistent with the certified LCP policy prohibiting development on the bluff face.

Need for Fencing on Bluff

LUE Policy Action 7.3.5 (cited above) prohibits development on a bluff face, with only limited exceptions for public improvements that provide public access and public safety and to protect coastal resources. Even for the listed public development that may be allowed on a bluff face, it is only allowed when no feasible alternative exists and coastal resource impacts are minimized. The proposed project involves private fencing on a bluff face. Thus, because it will not provide public access or public safety, and does not protect coastal resources, the proposed fencing is not consistent with the certified LCP.

A-5-LGB-22-0061 (Corwin)
Appeal – Substantial Issue & De Novo
4/12/2023

Specifically, the proposed development is inconsistent with certified LCP Policy Action 7.3.5 which prohibits development on the bluff face.

The applicant has indicated that the proposed fencing is necessary for security purposes due to incidents of trespass, vandalism and burglary. The City's record for the project includes, in the public commentary file, a list labeled "30 Reports Issued by Laguna Beach PD of Trespassing, Vandalism and Burglary at 31351 Coast Highway." At the time of the appeal, it was not clear how this list was compiled or by whom it was submitted and no actual police records were provided.

Since the time of the appeal, a letter was sent to the City from one of the applicant's agents, which included as attachments, the same list and also newly included 44 pages of Laguna Beach Police Department Call for Service Reports (29) and Incident/Investigation Reports (4). These reports were eventually also sent by the applicant's agent to Commission staff. In any case, the City forwarded the letter with attachments to Commission staff ([Exhibit 7](#)). The dates of the attached Call for Service records and Incident/Investigation Reports ranged from 7/26/2009 to 6/12/2022, with the majority dated in 2015 (5), 2018 (6) and 2019 (6).

A number of the reports refer to the sub-quality locks or security system at the site. Moreover, many of the reports reflect disputes between the applicant and neighbor(s), including one report that alleges removal of trees without permission and references a dispute between the applicant and a neighbor about private views, and other neighbor disputes regarding the property line location. Many of the reports complained of alarms going off at the subject site for hours. In at least one report, the applicant's representative states that the home is only used in the summer, other reports indicate the home is often vacant for long periods, some reports describe the residence as an "abandoned house." Another report alleges that an unknown person was suspected of having showered in one of the home's bathrooms. No person was reported to have actually been seen. In a related follow up report, LBPD was going to run DNA testing on a hair that had been found in the shower, but the applicant's representative who reported of the incident declined to cooperate, so no further action was taken. In the Incidence Reports, most are blank in the space for "victim or caller."

Of the twenty nine Calls for Service reports provided, only four were associated with follow up Incident/Investigation Reports (and two of those involved neighbor disputes):

Case Number 09-03205 - incident occurred on 8/9/2009 and was reported on 8/21/2009; reported forced entry and burglary involving left of a \$1,000 flatscreen television; report states that a contractor at the site reported that between the hours of 1700 (5 pm) and 2000 (8 pm), a sliding door to the primary bedroom had been left ajar, sand was found all over the bedroom, and glasses and half a bottle of gin were discovered where they had not previously been. The report notes that, although there were a number of other television sets and other items of value, nothing else had been taken. The report also notes: "***The sliding door locks were very old and could easily be opened. No damage or forced entry to any of the sliding doors was observed.***" The reporting

officer further notes: “I did not take any photographs or conduct CSI because the door locks had already been replaced and the scene had been contaminated by construction workers.” This reported incident did not lead to any further action. [emphasis added].

Case Number 09-03427 – incident occurred and was reported on 9/3/2009; reported forced entry and burglary involving theft of a \$500 television; report states that a caretaker of the site said that between the hours of 1700 (5 pm) and 1900 (7 pm), she noticed that a downstairs shower had been used and left filthy, many interior doors in the house that are usually left open had been closed, a set of sheets had been left in a mess on the floor, and a flatscreen television was missing. The caretaker stated her belief that the unknown housebreaker was in the house while she was there. In this case, photos of the site were taken, a second level door was found ajar, two latent fingerprints were taken from the scene, and a hair from the shower was collected. No intruder was reported to have actually been seen. In addition, the report states: “They [victim] are not desirous of prosecution and only requested this report be taken for documentation purposes. At the time of this report I have still been unable to reach Corwin at home.” In the report, the caretaker is quoted as saying “***This is the second time this type of thing has happened and she stated it was most likely due to the fact that Corwin has not installed a security system for the home.***” Finally, the report states: “Upon reviewing this case, elimination DNA from victim was never received because of victims [sic] refusal to come in, therefore, the lab declined to analyze the pubic hair that was collected in the shower. Case will be closed/inactive.” [emphasis added].

Case Number 13-03309 – incident occurred and was reported on 9/11/2013; MIR informational report³ regarding overgrown vegetation at the subject site. This call appears to have been made by a neighbor to complain about the condition of Mr. Corwin’s property, not a report of criminal activity at the site. The report indicates that Mr. Corwin had hired someone to “clean up the property.” Also, the report indicates that Mr. Corwin told the officer that “an unknown suspect has cleared an area of vegetation on the property without permission.” The report further states: “Photos of the area were provided and attached to this report. It is unclear from the photos if there is permanent damage to the vegetation. One photo shows several plastic cups and aluminum cans. It appears as though people have been using this area to drink and hide out.” However, there is no evidence that the plastic cups and aluminum cans were deposited by trespassers and not left by people authorized to be on the property, including the applicant, guest, and on-site workers.

Case Number 15-03015 – incident occurred on 7/31/2015 and/or 8/2/2015 and was reported on 8/7/2015; reported vandalism in the form of cutting down approximately 20 trees, the cut trees were left on the property, the report ***identifies a neighbor as the suspect*** based on previous private view disputes. This case was follow up to - Call for Service Report Number E15 000920.

According to the police documents provided ([Exhibit 7](#)), the only confirmed damage or

³ City of Laguna Beach Police Dept. Mir Informational Report – domestic disputes, neighbor conflicts, etc. <http://southlaguna.org/LBPDMeetingJuly2016.pdf>

criminal activity at the site was the theft of two television sets on two separate occasions (both of which occurred in 2009, fourteen years ago), and an apparent intrusion into the home at the same time one of the thefts occurred.

Other than the incidents described above, the majority of the reports are related to acknowledged neighbor disputes (tossing of wine bottles, and cutting of trees related to private view issues), reports of untended alarms going off excessively, including the car alarm of a red Ferrari Spider parked in the subject site's driveway (follow up reports did not report any damage, or missing/stolen items, etc.), and broken irrigation lines that a crew hired to clean up the site admits they may have caused. Five of the reports refer the site as an abandoned or vacant home. During a staff site visit, the mailbox located at top of the driveway (visible from Coast Highway) was observed to be full to overflowing, supporting the appearance of an abandoned or at least unoccupied house. Two reports report that the temporary fence was damaged, but, it should be noted, that fence is unpermitted in any case. Other than a possible home intruder and the theft of two televisions, other reported incidents are unsubstantiated. For example, the report of a bonfire⁴ did not cite any evidence of remnants of a fire, even though the police arrived on scene within 16 minutes of receiving the call (according to Call for Service Report No. E18034165). In one of the wine bottle tossing incidents, the accused neighbor responded by accusing the reporting resident's representative of "parties and fires" at the gazebo at the subject site, to which the applicant's representative responds "activity at the gazebo is rare," suggesting some of the reported behavior may be by persons authorized to be onsite. Reports of trespass never confirm that police actually encountered any unauthorized people on the site. In one trespass report, the caller clarifies that the trespassers are on the site not in the "abandoned" house. Other than the two televisions reported stolen in 2009, none of the reports identify anything else that was stolen over the 14 years covered by the reports.

The above account is a summary of the information provided by the applicant to the City in response to the Coastal Commission December 14, 2022 staff report. This information is available in [Exhibit 7](#). This summary is not intended to minimize the thefts and possible intruder event. Such events are significant and scary. Rather the summary is intended to point out the those events occurred fourteen years ago and that the applicant waited fourteen years to address illicit behavior by installing an unpermitted fence, rather than implementing alternative measures. No evidence has been provided that substantiates that unauthorized people are routinely and frequently accessing the site due to a lack of a fence. This raises the question of whether a fence or barrier of any kind is even needed at this site.

Alternatives to Fence on Bluff

In any case, even if there have been cases of illicit activity on the site, alternatives to installation of bluff face fencing to address the issue should be considered. For example,

⁴ The report states that the caller says the bon fire is on the property at 31351 Coast Highway, but then says he wants the beach checked to make sure the fire is contained, so it is unclear whether the fire would have been on the subject site or on the adjacent beach.

more secure locks could be installed to address the reports of faulty locks and security system described in the police reports. One non-development option that might be considered might be installation of one of the various high quality electronic home security systems available, which may employ use of lights and sound or other means to deter unwanted activity. Any such system must be properly maintained, however, to keep it functional and to avoid alarms sounding for hours, as has been described above.

Also, the extended periods that the residence is unoccupied increases its vulnerability. The applicant or the caretaker could be present at the residence more often and the maintenance of the home's appearance could be improved. Or the site could be rented out to keep it occupied and lively rather vacant for extended periods.

Another non-fence alternative, planting a vegetative barrier, should be considered. This may include planting something like locally native cactus or other native scrub, which could be effective in deterring trespass. In a letter ([Exhibit 8](#)) responding to the December 2022 staff report (which was posted on the Coastal Commission website, but postponed at the request of the applicant prior to hearing), the applicant's landscape architect states that the prickly pear (*Opuntia basilaris*), suggested in the December staff report, is not native to the "coast zone of Southern California," recommending instead the use of native cactus species such as *Opuntia littoralis* and *Cylindropuntia prolifera* as more appropriate to the site. However, the applicant's landscape architect states these must be transplanted at 6 inches tall and would take five to ten years to develop a thick and high enough barrier to deter human trespass.

However, the Commission's staff ecologist has reviewed the landscape architect's comments and disagrees. The plants in question would not be limited to 6 inches at time of transplant. Rather larger, more mature specimens could be purchased or contracted from native plant nurseries. In addition, the types of plants considered need not be limited to intimidating spiny cacti. Native shrubs, such as those suggested below, could also serve to establish a barrier to effectively deter trespass. Quail bush, also called salt bush (*Atriplex lentiformis ssp breweri*), lemonade berry (*Rhus integrifolia*), coyote bush (*Baccharis pilularis*) and/or California sunflower (*Encelia californica*) could all work. Using five gallon specimens would provide a quicker start to creating a vegetative barrier since they will be larger individuals than those in one gallon containers. A combination of the more quickly growing shrubs along with cacti could be a very effective fence alternative.

Whatever type of vegetative barrier considered must consist of native coastal bluff and/or coastal sage scrub species in addition to the cacti and shrubs listed above. However, no vegetation survey was prepared for the project, even though the fence would be constructed on a bluff face. A vegetative barrier alternative would require approval of a CDP (due to its location on a bluff face and the likely need for temporary irrigation).

A future CDP application for such work would need to include a vegetation survey of the site in order to best understand what type of plant(s) might be most appropriate and effective, and to assure compatibility. The landscape work could also include removal of the many non-native plants (century plants, agave, etc.) currently present on site. Native

landscaping that enhances the habitat value of the bluff would be allowable on the bluff face, but specifics regarding plant types and locations would be needed. The plants discussed above would work well. Other deterrent plants may be appropriate. This option should be considered, if some type of security barrier is demonstrated to be necessary.

Finally, another measure to address trespass at the site should include a request for a CDP to remove the existing stone steps that are present at the site ([Exhibit 9](#)). The steps end right at the public sandy beach and are very visible to the public. These may serve as an unintended invitation to ascend the property. If such a CDP were to be approved, removal of these steps and the related steps/pathway extending up from the beach, and restoring the area with appropriate native plants, may also contribute to deterring future potential trespass. A public access stairway is located immediately adjacent to the upcoast side property line, so the applicant would still have ready access to the public beach seaward of the subject site even if their private path/stairs to the beach were to be removed. It also appears, based on the topographical map included in the record, that the bottom two or three steps may actually be located on the public beach, further supporting removal of these steps as an alternative that should be analyzed.

There may be additional alternatives, in addition to those discussed above, but no evidence that any alternatives to the proposed fence were considered has been provided. It has also not been definitively demonstrated that any barrier is necessary. The proposed fencing would be located on the bluff face, inconsistent with the certified LCP. Possible alternatives to traditional fencing have not been considered or evaluated. A definitive need for fencing has not been demonstrated. For these reasons, the proposed project is inconsistent with the LCP and must be denied.

D. Adverse Impacts of Fencing Adjacent to Public Beach

Coastal Act Section 30210 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 (emphasis added):

- (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.

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

The certified LUP Open Space Conservation Element includes the following public access policy:

- 3-A 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.

The certified LUP Open Space Conservation Element (OSC) includes the following visual resource protection policies:

- 7-A Preserve to the maximum extent feasible the quality of public views from the hillsides and along the city's shoreline.
- 7-K Preserve as much as possible the natural character of the landscape (including coastal bluffs, hillsides and ridge lines) 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 recontouring and replanting where natural landscape has been disturbed.

The certified LUP Land Use Element (LUE) includes the following visual and natural resource protection policies:

- 7.3 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 natural landform alterations.
- 7.3.5 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.

- 10.3 Ensure that all new development, including subdivisions, the creation of new building sites and remodels that involve building additions, is evaluated to ascertain potential negative impacts on natural resources, ESHA and existing adjacent development. Proposed development shall emphasize ESHA impact avoidance over impact mitigation. Any mitigation required due to an unavoidable negative impact should be located on-site rather than off-site, where feasible. Any off-site mitigation should be located within the City's boundaries and in close proximity to the project. (Similar to Policies 7.4 and 5.2.)

Coastal Act Section 30210 requires that public access be maximized and that new development maintain and enhance public access to the coast. Coastal Act Section 30221 requires that oceanfront public recreational uses be protected. These Coastal Act requirements are re-stated in the LCP's Coastal Technical Appendix. LCP OSC Policy 3-A also requires that public use of the City's beaches be protected and enhanced. In addition, the certified LCP policies cited above require public views along the shoreline be preserved and enhanced. Other LCP policies cited above also require protection and enhancement of public access and recreation, visual resources, and natural resources. Development, including fencing, in areas adjacent to the public beach have adverse impacts on public access and recreation, public views, and natural resources and so are discouraged by the Coastal Act and LCP. The LCP prohibits development on a coastal bluff, such as the subject site, as a means of protecting these resources, among other reasons.

The subject site is located between the first public road and the sea, fronting on West Street Beach. The proposed fence would be located approximately 10 feet landward of the public beach, roughly five vertical feet above the elevation of the beach, along the subject site's beach frontage. Thus, the proposed fence would be clearly visible from West Street beach, a beautiful and popular public beach. Under current conditions (without the unpermitted fence), the majority of the site closest to the beach is undeveloped, presenting a natural appearance of rock and plants. The scenic beauty of this cove beach, surrounded by bluffs and headlands, is enhanced by the naturalness that remains, despite development on the bluff tops. Construction of a readily visible fence would intrude upon this natural setting, presenting instead an ugly barrier. Where now beach visitors see mostly the natural bluff, they would instead be confronted by a signal of unwelcome. The LCP requires that visual resources be protected. Currently, the views from the beach are visually pleasant. The proposed fence would interrupt these existing natural views. The proposed fence would not preserve the quality of public views along the shoreline. Therefore, the proposed fence is inconsistent with the certified LCP policies that require that visual resources be protected.

In addition, the proposed fence creates adverse impacts on public access and recreation. The closer private development is located to the public beach, the greater the impacts to public access and recreation. With expected future sea level rise and resulting coastal erosion, it is likely that future demand for public recreational activities, such as use of sandy beaches like West Street beach, will need to be accommodated on smaller more

narrow beaches. In addition, the population is expected to continue to increase. And so, the area of sandy beach will decrease while the demand for remaining sandy beach areas will only increase.

Section 30214 of the Coastal Act recognizes the inherent conflicts likely to arise when private property abuts public use areas, but the Act prioritizes public access needs. Which means that a private property's need for privacy must be accommodated within the private property itself in a manner most protective of public access, not by burdening the already limited public beach area available for public use. When such conflicts are not addressed at the planning/permitting stage of development, and adjacent residential and residential accessory development are allowed too close to public beach areas (as is proposed in this case), impacts to public access and recreation result.

Generally, members of the public are uncomfortable congregating in areas too close to demarcated private residential development, effectively creating self-imposed buffer distances even though the entire area in question is public. As proposed, the fence would increase the likelihood of the self-imposed buffer. The proposed presence of the fence effectively privatizes the public beach area near the fence because the public is uncomfortable being so close to demarcated private property and will not use that portion of the beach. Thus, the proposed fence is inconsistent with Coastal Act and certified LCP policies that require that public access be maximized and protected.

It is also important to note that if the bluff edge identified by the applicant is accepted in conjunction with this request to install a fence, that would have significant consequences to potential future development should the property owner propose future additions to the existing residence or demolition of the existing residence (built in 1930) and construction of a new residence at the site. If the applicant's bluff edge location were accepted, even though it was not determined consistent with the LCP requirements, it could result significantly more development on the site and in a location much closer to the public beach than currently exists. Such potential future development would also adversely impact public access, public recreation, public views, and natural resources, to an even greater degree, setting a negative precedent for future bluff development at the site.

Finally, the subject site in the area closest to the public beach (where the subject fence is proposed to be located) is primarily in a natural state. Construction of a fence, where no permitted fence currently exists, would intrude into this natural area. LCP policies cited above require that natural resources be protected. But the proposed fence would not protect this natural area, inconsistent with these LCP policies.

Conclusion

Development on bluff faces is prohibited by LCP LUE policy 7.3.5 because of the adverse impacts it has on public access, public recreation, public views, and natural resources, among other impacts. As proposed, the project would not maximize public access as required by Section 30210 of the Coastal Act, would not protect oceanfront land suitable for recreational use as required by Coastal Act Section 30221. Moreover, the proposed project is inconsistent with the LCP policies that require protection of public access,

public recreation, public views, and natural resources. Because the proposed project is inconsistent with these Coastal Act and LCP policies, it must be denied.

Past Property Sale

In the staff report prepared for the December 2022 Coastal Commission hearing, a question was raised as to whether one of the two subject parcels may have been sold to a private entity (the applicant) by a public entity and if so, a CDP would have been required. Staff has reviewed that issue further, and neither of the subject parcels were sold by a public entity to a private entity. Tract 831, of which the subject parcels are a part, was approved in 1927 ([Exhibit 10](#)). Based on this tract map, it appears that the smaller of the two subject parcels was at one time part of Parcel A of Tract 831. But that area was added to Parcel M. Both Parcel A and Parcel M are private parcels, and have been since 1927. So, this question has been addressed since the December 2022 staff report and no longer raises a public access issue.

E. Unpermitted Development

Violations of the Coastal Act that are associated with the subject site have been undertaken on the subject property, including unpermitted installation of a chain link fence around the perimeter of the property and installation of private steps on the public sandy beach. If the proposed, permanent fence were approved, the removal of the temporary chain link fence would be expected. However, staff is recommending the Commission deny the permanent fence because it's proposed location on the bluff face is inconsistent with the certified Local Coastal Program. In the same way, the unpermitted temporary fence is also inconsistent with the certified LCP. The unpermitted private steps on the public beach may also be inconsistent with the certified LCP and public access and recreation policies of the Coastal Act. Denial of this application will result in violations remaining on the subject property. Enforcement staff will consider its options to refer the matter to the City of Laguna Beach, which retains primary enforcement jurisdiction to address the violations of the Coastal Act and LCP.

Consideration of the permit application by the Commission has been based solely on consistency of the proposed development with the policies of Chapter 3 of the Coastal Act and certified 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.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

1. Appeal No. A-5-LGB-22-0061 and associated file documents.
2. Geotechnical Review Memorandum, Joseph Street, Ph.D., P.G., Staff Geologist, 12/1/2022.
3. Updated Discussion of Geomorphology and Bluff Edge Determination, GeoSoils, 6/2/2022.
4. GeoSoils, Inc. Memorandum, 1/13/2023 – Discussion of Project Appeal Information Concerning the Bluff Edge Determination at 31351 Coast Highway, City of Laguna Beach, California.
5. Landscape Architect Memo, 1/19/2023, by Michael D. Wilkes, MD Wilkes Design + Consulting.
6. Fisher Broyles letter re: 31351-31355 Coast Highway, Laguna Beach (Appeal No. A-5-LGB-22-0061, 1/19/2023).
7. Nokes & Quinn 1/18/2023 letter to Marc Wiener, Director of Community Development, City of Laguna Beach, re: 31351-31355 Coast Highway, with attached Police Report information.