

**CALIFORNIA COASTAL COMMISSION**

South Coast District Office  
301 E Ocean Blvd., Suite 300  
Long Beach, CA 90802-4302  
(562) 590-5071



# F11a

Appeal Filed: 10/21/22  
SI Found: 04/12/23  
Staff: JP-LB  
Staff Report: 05/30/24  
Hearing Date: 06/14/24

## STAFF REPORT: REGULAR CALENDAR – DE NOVO

**Appeal No.:** A-5-LGB-22-0060

**Applicant:** City of Laguna Beach

**Agent:** Tom Perez, Assistant Director of Public Works

**Appellants:** Mark and Sharon Fudge

**Location:** Westerly Terminus of Anita Street, Public-Right-of-Way, Laguna Beach, Orange County

**Project Description:** Demolition of the existing sewer lift station, installation of a new sewer lift station, stairway reconstruction, Anita Street end improvements, landscaping, and the installation of a permanent lifeguard tower.

**Staff Recommendation:** Approval with conditions.

---

## SUMMARY OF STAFF RECOMMENDATION

The City of Laguna Beach is proposing a sewer lift station replacement and beach access improvements at Anita Street, including demolition of the existing sewer lift station, installation of a new sewer lift station, stairway reconstruction, Anita Street end improvements, landscaping, and the installation of a permanent lifeguard tower. The proposed stairway will generally follow the existing development alignment with minor alterations and expansions. The proposed stairway, lift station, and lifeguard tower will be supported on caissons and concrete landings with shallow concrete foundations

constructed in bedrock. The proposed project would expand the footprint of public improvements towards both homes on either side (992 Ocean Front and 1007 Gaviota Drive), most significantly the lift station and the upper landing, although private encroachments and existing landscaping would remain on both sides.

The project site is an ocean-fronting bluff consisting of an upper terrace and bluff face that descends to a narrow sandy beach ([Exhibit 1](#)). The stairs and proposed improvements will utilize caissons and footings along the bluff and lower shelf in addition to construction on the existing stairway where possible to minimize destruction of the slope, which additionally reduces the construction timeline. One new caisson will be constructed at the bottom of the stairs at the location of the proposed lifeguard tower to secure the new landing into the bedrock. The lower landing was designed to align with the existing landing elevation, which resides approximately at the extreme edge of the expected wave runup. The lower landing elevation is approximately NAVD 88 elevation +12', and the expected extreme beach wave run up is NAVD 88 elevation +13'. Additionally, new stormwater features will be constructed for capturing and redirecting rainfall and runoff to assist with erosion control. No additional riprap or armoring is expected to be necessary.

On October 21, 2022, Mark and Sharon Fudge filed a timely appeal of the local CDP. The appellants raised the following concerns with the City-approved development: 1) the project as presented prioritizes the private use of a public right-of-way by the adjacent landowner at 1007 Gaviota (where a proposed new home is the subject of appeal A-5-LGB-22-0025, which the Commission is reviewing on de novo separately but on the same day as this matter) rather than expanding the scope of the current accessway farther to the south for the benefit of the public; 2) the City failed to consider revocation of a Revocable Encroachment Permit (REP) (subject to the separate referenced appeal) granted to the adjacent property owner for landscaping and public improvements within the public right-of-way, which was not fully utilized in the subject project design; and 3) the proposed project does not provide maximum access to the coast. On April 12, 2023, the Commission found the grounds on which the appeal was filed raised a substantial issue, and the project is now being submitted to the Commission to be considered de novo. The Commission specifically raised concerns regarding the maximization of public access, including achieving wheelchair ADA access to the sandy beach, and the privatization of public space through the REP issued by the City for the homeowners at 1007 Gaviota Drive, allowing the homeowners to maintain public property. The City submitted a response to issues raised at the April 12, 2023 hearing in a letter sent to the South Coast District Office on October 26, 2023 ([Exhibit 3](#)).

The City's proposed design of the Anita Street stairway improvements would reduce the slope of the existing stairway in order to maximize safe public access to the coast to the extent feasible given the constraints of the project site. The design also widens the stairway and pedestrian approach, and designates vehicular access space for City maintenance, which supports maintenance of public amenities and improves safety. Additionally, as proposed, the Anita Street end will be accessible and would improve the

A-5-LGB-22-0060 (City of Laguna Beach)  
Appeal – De Novo

current uneven grade of the site. The current street-end grade is a steep slope down toward the stairs, which is not safe for wheel-chair access. The City submitted an analysis of alternatives examining plans to further increase ADA accessibility to the sandy beach, including a ramp, elevator, and funicular ([Exhibit 3](#)). These alternatives were determined to not be feasible due to the constraints of the site. In order to improve accessibility to the beach, the City's design incorporates improvements such as new handrails, wider stairways, compliant maximum step heights, landings for resting, a bench, and warning stripes. Given the constraints of the site, the project aims to maximize ADA access through inclusion of an ADA compliant viewing area at the street end accompanied by an ADA compliant parking stall located within the public right-of-way adjacent to the site, which is within the scope of the 1007 Gaviota Drive project (A-5-LGB-22-0025). The homeowners of 1007 Gaviota Drive have agreed to apply to withdraw their REP. The City would then construct the public ADA compliant parking stall within the public right-of-way as required by **Special Condition 4** and maintain the property.

The City analyzed alternatives to utilize the adjacent public right-of-way for an enlarged viewing landing. This alternative was not preferred, as it would require the demolition of an existing retaining wall, installation of new retaining walls and drainage elements, and extensive grading of the bluff ([Exhibit 3](#)). The City's proposed design enhances public access and improves the function of the sewer lift station, while minimizing landform alternations to the bluff. The proposed design also preserves four mature trees and existing landscaping, which is consistent with the visual and biological resource policies of the LCP.

The proposed design provides the necessary improvements to achieve the City's project objectives of increasing public safety, public access, and reliability of the sewer system. The project minimizes landform alterations while maximizing access given the constraints of the site. Additionally, although currently not within the scope of this project, the usage of the adjacent public right-of-way is modified to improve ADA access while reducing the private maintenance of public property.

Therefore, staff recommends that the Commission **APPROVE** CDP application A-5-LGB-22-0060 with seven special conditions. The motion and resolution can be found on Page 5 of the staff report.

## TABLE OF CONTENTS

MOTION AND RESOLUTION.....	5
STANDARD CONDITIONS.....	5
SPECIAL CONDITIONS .....	6
FINDINGS AND DECLARATIONS .....	11
A. Project Description .....	11
B. Project History .....	12
C. Standard of Review .....	13
D. Public Access and Recreation.....	14
E. Development .....	16
F. Hazards .....	18
G. Marine Resources and Water Quality.....	19
H. Archaeological and Tribal Cultural Resources.....	20
I. Local Coastal Program (LCP).....	22
J. California Environmental Quality Act .....	23
APPENDIX A – SUBSTANTIVE FILE DOCUMENTS.....	23
APPENDIX B – CULTURAL RESOURCES SIGNIFICANCE TESTING PLAN PROCEDURES .....	24

## EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Proposed Project Plans and Renderings](#)

[Exhibit 3 – City Response to Substantial Issue Finding](#)

[Exhibit 4 – Existing Site Photos](#)

## MOTION AND RESOLUTION

### Motion:

I move that the Commission approve Coastal Development Permit A-5-LGB-22-0060 pursuant to the staff recommendation.

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

### Resolution:

The Commission hereby approves Coastal Development Permit A-5-LGB-22-0060 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the certified Local Coastal Program and the public access and recreation policies of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

## STANDARD CONDITIONS

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

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

## **SPECIAL CONDITIONS**

### **1. No Future Shoreline Protective Device(s).**

- A. By acceptance of this permit, the applicant agrees, on behalf of itself and any successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to CDP No. A-5-LGB-22-0060 including, but not limited to, the stairway, lift station, lifeguard tower, and foundations in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, sea level rise, or any other natural hazards in the future. By acceptance of this permit, the permittee hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235, any similar provision of a certified LCP, or any applicable law.
- B. By acceptance of this permit, the applicant further agrees, on behalf of itself and all successors and assigns, that they are required to remove all or a portion of the development authorized by this permit and restore the site, if:
  - i. The City or any government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, sea level rise, or other natural hazards related to coastal processes, and that there are no feasible measures that could make the structure suitable for habitation or use without the use of bluff or shoreline protective devices;
  - ii. Essential services to the site (e.g. utilities, roads) can no longer feasibly be maintained due to the coastal hazards listed above;
  - iii. Removal is required pursuant to LCP policies for sea level rise adaptation planning; or
  - iv. The development requires new or augmented shoreline protective devices that conflict with applicable LCP or Coastal Act policies.
- C. Prior to removal/relocation, the permittee shall submit two copies of a Removal/Relocation Plan to the Executive Director for the review and written approval. The Removal/Relocation Plan shall clearly describe the manner in which such development is to be removed/relocated and the affected area restored so as to best protect coastal resources, including the Pacific Ocean. In the event that portions of the development fall to the bluffs or ocean before they are removed/relocated, the landowner shall remove all recoverable debris

associated with the development from the bluffs and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

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

**3. Landscaping – Drought Tolerant, Non-Invasive Plans.**

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, in a form and content acceptable to the Executive Director, two (2) full size sets of final landscaping plans, which shall include and be consistent with the following:
- i. Vegetated landscaped areas within the bluff face portion of the project site disturbed during construction shall be re-vegetated to avoid erosion and shall only consist of drought-tolerant and non-invasive plants native to coastal Orange County and appropriate to the habitat type. Native plants shall be from local stock wherever possible. No permanent irrigation system shall be allowed within the bluff face portion of the project site; temporary, above-ground irrigation to allow the establishment of the plantings is allowed.
  - ii. Vegetated landscaped areas not on the bluff face are encouraged to use native plant species; however, non-native drought tolerant non-invasive plant species may also be used in that area. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized on the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://ucanr.edu/sites/WUCOLS/files/183514.pdf> and <http://ucanr.edu/sites/WUCOLS/files/183488.pdf>).

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

B. The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission-issued amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

**4. Public ADA Compliant Parking Stall.** The applicant shall construct a public ADA compliant parking stall within the Anita Street right-of-way in substantial conformance with the plans identified in [Exhibit 2, page 2](#). Upon completion of construction activities for the project, the applicant shall submit, in a form and content acceptable to the Executive Director, evidence to demonstrate the construction of the public ADA compliant parking stall in compliance with the plans identified in [Exhibit 2, page 2](#).

**5. Tribal Cultural Resource Treatment and Monitoring Plan.**

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a Cultural Resources Treatment and Monitoring Plan prepared by a qualified resource specialist in consultation with Juaneño (Acjachemen) Native American representatives, which shall incorporate the following measures and procedures:

- i. All representatives of Juaneño (Acjachemen) Native American Tribes listed on an updated Native American Heritage Commission (NAHC) contact list for the area shall be invited to consult on the preparation of the monitoring plan and all who accept the invitation shall be allowed to consult and shall be meaningfully considered in the plan's development. Evidence of written notification shall be made available to the Executive Director.
- ii. The monitoring plan shall ensure that any prehistoric archaeological or paleontological or Native American cultural resources that are present on the site and could be impacted by the approved development will be identified so that a plan for their protection can be developed. The methods of protection of Tribal Cultural Resources shall be developed in consultation with the Native American tribal government(s). To this end, the cultural resources monitoring plan shall require that the Juaneño (Acjachemen) representatives of Native American Tribes listed on an updated Native American Heritage Commission (NAHC) contact list for the area be invited to be present and monitor all ground-disturbing activities and arrange for any invited Tribal representative that requests to monitor and a qualified archaeological monitor to be present to observe project activities with the potential to impact archaeological and/or tribal cultural



resources. The monitor(s) shall have experience monitoring for archaeological resources of the local area during excavation projects, be competent to identify significant resource types, and be aware of recommended Tribal procedures for the inadvertent discovery of archaeological resources and human remains.

- iii. There shall be at least one pre-grading conference with the project manager and grading contractor at the project site to discuss the potential for the discovery of archaeological/tribal cultural or paleontological resources. Prior to grading operations, a copy of all archeological documents and reports shall be provided to the Native American monitors.
  - iv. The permittee shall provide sufficient archaeological and Juaneño (Acjachemen) Native American monitors to assure that all project grading and subsurface construction activities that have any potential to uncover or otherwise disturb cultural deposits are monitored at all times.
  - v. If any archaeological or paleontological, or cultural deposits, are discovered, including but not limited to skeletal remains and grave-related artifacts, artifacts of traditional cultural, religious or spiritual sites, or any other artifacts relating to the use or habitation sites, all construction shall cease. Should human remains be discovered on-site during the course of the project, immediately after such discovery, the on-site archaeologist and Native American monitor(s) shall notify the County Coroner within 24 hours of such discovery, and all construction activities shall be temporarily halted until the remains can be identified. The Native American group/person deemed acceptable by the NAHC shall participate in the identification process, pursuant to Public Resources Code Section 5097.98. Should the human remains be determined to be that of a Native American, the permittee shall comply with the requirements of Section 5097.98. Within five (5) calendar days of such notification, the permittee shall notify the Executive Director of the discovery of human remains. Treatment of any archaeological, paleontological, or cultural resource discovery shall be determined by the appropriate monitor(s) or the Most Likely Descendant (MLD) when state law mandates the identification of an MLD. Significance testing may be carried out only if acceptable to the affected Native American Tribe(s), in accordance with the attached "Cultural Resources Significance Testing Plan Procedures" ([Appendix B](#)). The permittee shall report all discovered resources as soon as possible, by phone and/or by email to the Executive Director. The permittee shall provide the significance testing results and analysis to the Executive Director, if applicable. An applicant seeking to recommence construction activities shall follow the procedures set forth in [Appendix B](#).
- B. If the Executive Director determines that the discovery is significant or that the treatment method preferred by the affected Native American tribe(s) is in conflict with the approved development plan, the permittee shall seek an amendment from the Commission to determine how to respond to the discovery and to

protect both those and any further cultural deposits that are encountered. Development shall not recommence until an amendment is approved, and then only in compliance with the provisions of such amendment.

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

- A. No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, rain, or tidal erosion and dispersion;
- B. Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
- C. Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;
- D. Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMP's shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and
- E. All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

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

- F. The permittee shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. It shall be located as far away from the receiving waters and storm drain inlets as possible;
- G. The permittee shall develop and implement spill prevention and control measures;
- H. The permittee shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks

shall be disposed of at a location not subject to runoff and more than 50 feet away from a storm drain, open ditch or surface water; and

- I. The permittee shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

**7. Future Improvements.** This permit is only for the development described in coastal development permit (CDP) A-5-LGB-22-0060. Pursuant to Title 14 California Code of Regulations (CCR) Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code (PRC) Section 30610(b) shall not apply to the development governed by the CDP A-5-LGB-22-0060. Accordingly, any future improvements to this structure authorized by this permit shall require an amendment to CDP A-5-LGB-22-0060 from the Commission or shall require an additional CDP from the Commission or from the applicable certified local government. In addition thereto, an amendment to CDP A-5-LGB-22-0060 from the Commission or an additional CDP from the Commission or from the applicable certified local government shall be required for any repair or maintenance identified as requiring a permit in PRC Section 30610(d) and Title 14 CCR Sections 13252(a)-(b).

## FINDINGS AND DECLARATIONS

### A. Project Description

The City-approved project is described as the replacement and alteration of the existing beach access stairway that descends from the upper terrace level, down the bluff face, and onto the beach. In addition, the improvements include sanitary sewer and storm drain improvements including a new below-grade generator and a new sewer lift station. Other proposed improvements include retaining walls, a new lifeguard tower, and native landscaping. The proposed stairway will generally follow the existing alignment with minor alterations and would be structurally supported on caissons and shallow foundations constructed in bedrock ([Exhibit 2](#)).

The public stairway is located between two private residences (992 Ocean Front and 1007 Gaviota Drive) and supports a sewer lift station above the upper landing. The project area includes the Anita street end, the stairway structure built into the eastern slope, and the toe of the bluff where the new lifeguard tower is proposed ([Exhibit 2](#)). Each of the private residences encroaches into the approximately 60-foot-wide public right-of-way, which is wider than the existing and proposed stairway. The subject project would expand public improvements, most significantly the lift station and the upper landing.

The project site is an ocean-fronting bluff consisting of an upper terrace and bluff face that descends to a narrow sandy beach ([Exhibit 1](#)). The stairs and proposed improvements will utilize caissons and footings along the bluff and lower shelf in addition to construction on the existing stairway where possible to minimize destruction of the slope, which additionally reduces the construction timeline. One caisson will be

used at the bottom of the stairs at the location of the proposed lifeguard tower to secure the new landing into the bedrock. The lower landing was designed to align with the existing landing elevation, which resides approximately at the extreme edge of the expected wave runup. The lower landing elevation is approximately NAVD 88 elevation +12', and the expected extreme beach wave run up is NAVD 88 elevation +13'. Additionally, new stormwater features will be constructed for capturing and redirecting rainfall and runoff to assist with erosion control. No additional riprap or armoring is expected to be necessary.

The proposed location of the new lift station was determined to increase emergency wet well storage and allow the existing sewer lift station to operate while the proposed improvements are constructed. The lift station is designed with emergency operating systems to prevent sewer overflow/surcharge if the lead pump fails. The lift station design includes two pumps: a lead pump and a secondary pump. The secondary pump automatically runs if the primary logic controller (PLC) detects that the lead pump has failed. In the event of utility power failure, the lift station includes an automatic transfer switch (ATS) and standby emergency generator, which can operate the pump station until utility power is restored. The lift station will also be equipped with a manual transfer switch (MTS) and portable generator connection allowing the city to run the station off of a portable generator. Based on the limited footprint within the site, and the pad elevations of the nearby residential properties, the wet well will be oversized to provide emergency wet well storage above the normal operating water levels but below the gravity sewer invert elevation.

The City conducted a geotechnical evaluation to relate onsite and regional geotechnical conditions to the project. Based on their evaluation, the City determined that the construction of the proposed improvements at the subject site is geotechnically feasible provided the foundational recommendations are integrated as proposed into the design, construction, and long-term maintenance of the property.

## **B. Project History**

On September 21, 2022, the Laguna Beach Planning Commission approved a local coastal development permit (CDP) and adopted a Mitigated Negative Declaration for the sewer lift station replacement and beach access improvements at Anita Street, including installation of a new sewer lift station, demolition of the existing sewer lift station, stairway reconstruction, Anita Street end improvements, landscaping, and the installation of a permanent lifeguard tower.

On October 21, 2022, Mark and Sharon Fudge filed an appeal of the local CDP. The appellants raised the following concerns with the City-approved development: 1) The project as presented prioritizes the private use of a public right-of-way by the adjacent landowner at 1007 Gaviota (where a proposed new home is the subject of appeal A-5-LGB-22-0025, which the Commission is reviewing on de novo separately but on the same day as this matter) rather than expanding the scope of the current accessway

further to the south for the benefit of the public; 2) The City failed to consider revocation of a Revocable Encroachment Permit (REP) (subject to the separate referenced appeal) granted to the adjacent property owner for landscaping and public improvements within the public right-of-way, which was not fully utilized in the subject project design; and 3) The proposed project does not provide maximum access to the coast.

On April 12, 2023, the Commission found the appeal raised a substantial issue(s) with respect to the grounds on which the appeal was filed. The Commission specifically raised concerns regarding the maximization of public access, including achieving wheelchair ADA access to the sandy beach, and the privatization of public space through the REP issued by the City for the homeowners at 1007 Gaviota Drive, allowing the homeowners to maintain public property. The City submitted a response to issues raised at the April 12, 2023 hearing in a letter sent to the South Coast District Office on October 26, 2023 ([Exhibit 3](#)). The project is now being considered de novo by the Commission.

### **C. Standard of Review**

The Commission reviews the project de novo following the finding of substantial issue. The standard of review that the Commission applies for projects that are located between the first public road and the sea, like this one, is the City's certified LCP and the public access and public recreation policies of the Coastal Act.

Section 30604(b) of the Coastal Act states:

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

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

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

The 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, 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 more than 10 documents, including the City of Laguna Beach's Code of Ordinance 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. Laguna Beach has a certified Local Coastal Program (LCP), but there are four areas of deferred certification in the City: Irvine Cove, Blue Lagoon, Hobo Canyon, and Three Arch Bay.

## **D. Public Access and Recreation**

Projects located between the sea and the first public road paralleling the sea, such as the subject project, must be consistent with the City's certified LCP and the public access and public recreation policies of the Coastal Act.

Coastal Act 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.

The City's certified LCP includes the following public access policies:

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.

Land Use Element Action 4.3.2

Maintain and improve public pedestrian access to and along beaches and oceanfront bluffs 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.

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.

The proposed project involves improvements to an existing public beach access stairway in conjunction with an improvement to an existing sewer lift station. The

design aims to improve access through the installation of new handrails, wider stairways, compliant maximum step heights, landings for resting, a bench, and warning stripes. Furthermore, the design removes an existing lifeguard tower on the sandy beach and sites a new lifeguard tower adjacent to the stairs on the bluff, which avoids access impacts on the beach. The proposed improvements to the existing stairway would enhance public access and safety to the sandy beach, consistent with LUE Policy 4.3, LUE Action 4.3.2 and Open Space/Conservation Element Policies 3A and 3M. In addition, Coastal Act Section 30210 requires maximum access to be provided for all people. The project design incorporates improvements to ADA accessibility through the addition of an ADA compliant viewing area located at the top of the access stairs, which includes regrading of the street end to improve the uneven grade of the street and achieve ADA compliance.

As proposed, the stairway improvements would not facilitate wheelchair access to the sandy beach. The City analyzed project alternatives that would establish ADA compliant wheelchair access to the beach in their response to issues letter dated October 26, 2023 ([Exhibit 3](#)). The City consulted with CASp Experts LLC, who are certified by the California Division of State Architect and are qualified to inspect buildings and sites for compliance with applicable state and federal construction-related accessibility standards, including ADA compliance. Specifically, the alternatives analysis considered a pedestrian ramp, elevator, and funicular. In order to provide an ADA compliant pedestrian ramp, the ramp must include a landing level every 30 feet and not exceed a slope of 8.33% pursuant to Title 8 California Code of Regulations Section 3232(c). When following these requirements and applying them to the steep, narrow subject site, the pedestrian ramp is not feasible. The grade difference between the top and middle landings would require a 105-foot ramp, and the site can only accommodate a 66-foot ramp. Additionally, the grade difference between the middle landing and beach would require a 378-foot ramp, and the site can only accommodate a 270-foot ramp, which would leave the bottom of the ramp 9 feet above beach level. Thus, an ADA compliant pedestrian ramp is not feasible due to the physical constraints of the site.

CASp Experts LLC also analyzed the practicality of an ADA compliant elevator or funicular, due to the infeasibility of a pedestrian ramp ([Exhibit 3](#)). The installation of an elevator or a funicular at this site poses several challenges, which will be described in this section and subsequent sections. Regarding access, an elevator or funicular would be physically possible to install at the site, however, given the proximity to the beach and ocean, salt from sea spray would likely cause frequent mechanical issues, causing continual service to be unreliable. Additionally, the sand levels of the beach are highly variable at this site. At low levels, the sandy beach is narrow with rocks exposed. At high levels, the beach becomes more accessible, however, there are several boulders located near the bottom of the stairs where an elevator or funicular would be installed ([Exhibit 4](#)). This would require additional infrastructure to achieve ADA compliance, which would result in additional landform alterations to the toe of the bluff. If an elevator or funicular were installed, access would not be guaranteed due to the variability of sand levels of the beach, exposing rocks, and imposing unsafe conditions based on sand availability.

Given the physical constraints of the site, the City considered alternatives to expand the top viewing area through the inclusion of an adjacent public right-of-way. The City previously issued a Revocable Encroachment Permit (REP) to the property owners at 1007 Gaviota Drive to construct public amenities within the public right-of-way, including a drop-off area, surfboard racks, bench, and other improvements. This proposal is within the project area of a proposed new home (A-5-LGB-22-0025), which the Commission is reviewing on de novo separately but on the same day as this matter. Access to the beach would not be improved through the inclusion of the public right-of-way; however, it could be included for an expanded viewing area. The City noted that this site would not be preferred for an expanded viewing platform, given it is located directly behind the proposed electrical shed and lift station, which are fixed by the location of the existing sewer ([Exhibit 3](#)). An ADA compliant parking stall was proposed as an alternative to an expanded viewing area, which would improve ADA accessibility to the stairs and proposed viewing area. Anita Drive has an uneven, variable grade, and parking is limited in this area. Including an ADA compliant parking stall adjacent to the ADA viewing platform located at the top of the stairs would improve accessibility and maximize access for all people, as required by Coastal Act Section 30210. Therefore, the City has agreed to construct the ADA compliant parking stall within the public right-of-way, as required by **Special Condition 4**. The owners of 1007 Gaviota Drive are required to withdraw their REP as a condition of A-5-LGB-22-0025 in order for the City to construct the public ADA compliant parking stall identified in [Exhibit 2](#), page 2. The City will continue to own and maintain the site.

Although ADA compliant wheelchair access to the beach was determined to not be feasible at this site due to physical and practical constraints, the City notes there are two beaches nearby with full ADA access. Main Beach (0.6 miles upcoast) and Aliso Beach (2.25 miles downcoast) ([Exhibit 1](#)) provide ADA parking, accessible restrooms, accessible paths to the sand, and beach wheelchairs available on a first come/first served basis. Therefore, full ADA compliant wheelchair access exists in close proximity to the subject site.

## **E. Development**

The City's certified LCP includes the following policies related to development:

### Land Use Element Policy 7.3

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

### Land Use Element Policy 7.3 Action 7.3.4

Require new development to assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective



devices that would substantially alter natural landforms along bluffs and cliffs.

#### Land Use Element Policy 7.3 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.

#### Open Space/Conservation Element Policy 7-A

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

The proposed development is sited at an existing beach stairway at the Westerly terminus of Anita Street between two private residences (992 Ocean Front and 1007 Gaviota Drive). The replacement stairway, lift station, and new lifeguard tower will be supported on caissons and concrete landings with shallow concrete foundations constructed in bedrock. This design minimizes destruction of the slope, which additionally reduces the construction timeline. The design minimizes landform alterations, consistent with LUE Policy 7.3 and LUE Action 7.3.4. The proposed development is sited on a bluff face, in the same general location as the existing stairway and sever lift station. LUE Action 7.3.5 prohibits development on oceanfront bluff faces, except for public improvements providing public access, coastal resource protection, or public safety, consistent with this proposal.

The alternatives analysis provided by the City ([Exhibit 3](#)) considered landform alterations and visual resource impacts from alternative designs. An elevator would require a bridge from the upper landing to the elevator, as well as a landing at beach level with a ramp to the beach. Extensive grading of the bluff face would be required to install an elevator, and the bridge and elevator structure would result in significant view impacts. Similar to the elevator alternative, a funicular would require extensive grading of the bluff face and the installation of large retaining walls and towers located at the top and bottom of the slope. This design would also impose significant view impacts. The elevator and funicular alternatives would both require significant landform alterations and visual impacts, and therefore would not be consistent with LUE Policy 7.3, LUE Actions 7.3.4 and 7.3.5, and Open Space/Conservation Element Policy 7-A. In addition to the infeasibility of the installation of a pedestrian access ramp, such a design would also require extensive grading of the bluff face in order to achieve ADA compliance.

The adjacent public right-of-way was also analyzed to determine whether or not it could be included in an expansion of the upper viewing landing. This alternative was not preferred, as it would require the demolition of an existing retaining wall ([Exhibit 4](#)), installation of new retaining walls and drainage elements, and extensive grading of the bluff ([Exhibit 3](#)). The electrical shed and lift station will obstruct some views from the

public right-of-way; however, these are fixed due to the existing sewer infrastructure. There are also four existing mature trees that will be preserved. The landscaping plans will promote open views, however, given the existing constraints of the site, the public right-of-way is not an appropriate location for an expanded viewing platform due to the extensive grading and loss of mature trees that would be required. The City's proposal does not impose any new visual impacts and minimizes landform alterations. The City's design proposes a new lifeguard tower located adjacent to the stairs on the bluff face rather than the existing location on the beach. The lifeguard tower requires the installation of one new caisson with shallow concrete foundations constructed in bedrock. Siting the lifeguard tower in this location rather than the sandy beach reduces visual resource impacts and proposes a minimal amount of landform alterations.

## **F. Hazards**

The City's certified LCP includes the following coastal hazards policies:

### Land Use Element Policy 7.3 Action 7.3.2

Review all applications for new development to determine potential threats from coastal and other hazards.

### Land Use Element Policy 7.3 Action 7.3.3

Design and site new development to avoid hazardous areas and minimize risks to life and property from coastal and other hazards.

### Land Use Element Policy 9.11

Ensure adequate evaluation of environmental impacts, coastal hazards, rates of erosion, sea level rise, tsunami hazard and safety hazards associated with public facilities and infrastructure improvements.

Due to the projects proximity to the sandy beach, the development must be evaluated and designed in consideration of threats from coastal hazards pursuant to LUE Actions 7.3.2 and 7.3.3 and LUE Policy 9.11. The lower landing of the stairway was designed to align with the existing landing elevation, which resides approximately at the extreme edge of the expected wave runup. The lower landing elevation is approximately NAVD 88 elevation +12', and the expected extreme beach wave run up is NAVD 88 elevation +13'. No additional riprap or armoring is expected to be necessary.

The U.S. Geologic Survey Coastal Storm Modeling System (CoSMoS), a regional sea level rise modeling tool, includes projected changes to the average mean high water (MHW) shoreline. It also provides predictions of wave runup and flooding that may be used to ascertain the potential effects from wave conditions. With no sea level rise and no coastal storm event, CoSMoS shows a maximum wave runup and sandy beach width that appears generally consistent with existing onsite conditions. Under the lower sea level rise scenario ranges available on CoSMoS (e.g., 0.8 - 2.5 ft.), the model shows landward shifts in maximum wave runup, flooding, and mean high water (MHW)

shoreline, but does not impact the project area. Under the higher sea level rise scenario ranges available on CoSMoS (e.g., 3.3 – 6.6 ft.), the maximum wave runup, flooding, and mean high water (MHW) shoreline shift further landward. However, given the steep slope of the bluff at the project site, impacts to the project area are minimal. With 4.9 ft. of sea level rise and an annual storm event, CoSMoS predicts a small section of the lower stairway would be inundated, with the majority of the site unimpacted. Although no additional riprap or armoring is necessary to protect the development, the Commission imposes **Special Condition 1A**, which prohibits the installation of shoreline protective devices. Although the project incorporates new retaining walls, these are not considered to be protective devices as they require shallow foundations. Furthermore, given the close proximity of future flooding to the lower section of the stairway and the landward migration of the MHW shoreline, the Commission imposes **Special Condition 1B**, which requires the applicant to remove the development should it be threatened by waves, erosion, storm conditions, liquefaction, bluff retreat, landslides, or other coastal hazards in the future.

The project is designed in consideration of threats from future hazards. Alternative designs, including an elevator or funicular, would require additional infrastructure that would be susceptible to coastal hazards in the future. The proposed project sites the development landward to the greatest extent possible, including the lifeguard tower. The lifeguard tower is sited on the bluff face adjacent to the stairway rather than on the sandy beach, which would be vulnerable to coastal hazards. Therefore, the development as proposed is sited to avoid hazardous areas.

## **G. Marine Resources and Water Quality**

The City's certified LCP includes the following policies regarding water quality:

### Land Use Element Policy 9.7

Implement sewer and drainage improvements necessary to protect and enhance water quality; take into consideration location of drainage improvements and account for rising sea levels and other coastal hazards. Promote the future achievement of tertiary sewage treatment.

### Open Space/Conservation Element Policy 4-B

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

### Open Space/Conservation Element Policy 4-C

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

### Open Space/Conservation Element Policy 4-E

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

#### Open Space/Conservation Element Policy 4-J

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

#### Open Space/Conservation Element Policy 7-K

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

The proposed location of the new lift station was determined to increase emergency wet well storage and allow the existing sewer lift station to operate while the proposed improvements are constructed. The lift station is designed with emergency operating systems to prevent sewer overflow/surcharge if the lead pump fails. The lift station design includes two pumps; the secondary pump automatically runs if the primary logic controller (PLC) detects that the lead pump has failed. In the event of utility power failure, the lift station includes an automatic transfer switch (ATS) and standby emergency generator, which can operate the pump station until utility power is restored. The lift station will also be equipped with a manual transfer switch (MTS) and portable generator connection allowing the city to run the station off a portable generator. Based on the limited footprint within the site, and the pad elevations of the nearby residential properties, the wet well will be oversized to provide emergency wet well storage above the normal operating water levels but below the gravity sewer invert elevation. The design of the proposed project, specifically updating an aging sewer lift station, increases water quality protection measures and is therefore consistent with the water quality policies of the City's certified LCP.

Additionally, new stormwater features will be constructed for capturing and redirecting rainfall and runoff to assist with erosion control. Alternatives analyzed for this project, including the pedestrian ramp, elevator, and funicular, would remove vegetation from the bluff face. The removal of additional vegetation would increase runoff at the site and reduce the permeability of the bluff face, which would not be consistent with Open Space/Conservation Element Policies 4-E and 4-J. In order to protect marine resources, **Special Condition 5** requires best management practices during construction activities to take measures to protect water quality and control runoff and erosion.

## H. Archaeological and Tribal Cultural Resources

Section 30244 of the Coastal Act states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

The City's certified LCP includes the following policies regarding sensitive resources:

Land Use Element Policy 2.8

Require building design and siting to be compatible and integrated with natural topographic features, minimize significant alteration of natural topography and/or other significant onsite resources, and protect public views as specified in the Design Guidelines and the Landscape and Scenic Highways Resource Document.

Land Use Element Policy 2.8 Action 2.8.2

Establish criteria for placement of new development on the most suitable area of the lot to maximize the preservation of sensitive resources.

Land Use Element Definition 129

Sensitive Resources/Sensitive Biological Resources - Sensitive coastal, geologic, vegetation and wildlife, archeological and paleontological, visual, watersheds and watercourse resources, water quality and conservation, air quality, parks and trails, and natural hazards, as discussed in the General Plan Open Space/Conservation Element.

The Commission recognizes that the entirety of the State's coastal zone was originally indigenous territory that continues to have cultural significance to Native American tribes. The Commission's Tribal Consultation Policy (adopted on August 8, 2018) recognizes the importance of State efforts to protect Tribal Cultural Resources and improve communication and coordination with Tribes, and it sets out a tribal consultation process that is fully consistent with, and complementary to the nature of, the Commission's goals, policies (including Section 30244), and mission statement. Tribal Cultural Resources can be sites, features, cultural landscapes, sacred places, and objects with cultural value and can also qualify as archeological, paleontological, visual, biological, or other resources that the Commission is tasked with protecting pursuant to the Coastal Act.

The subject development involves regrading of the subject site. The project has been sited to minimize ground disturbing activities by siting the proposed development primarily in the same alignment as the existing stairway and sewer lift station consistent with LUE Policy 2.8 and LUE Action 2.8.2. However, ground disturbance was determined to be necessary in order to ensure the structural integrity of the proposed development according to the Updated Geotechnical Evaluation submitted by Geofirm dated November 22, 2022. On May 30, 2024, via email, Commission staff initiated consultation with all representatives of Juaneño (Acjachemen) tribal entities listed on the California Native American Heritage Commission contact list.

Ground-disturbing activities such as this have potential to unearth and/or impact archaeological resources, including tribal cultural resource deposits. Based on past consultations with representatives of Native American Tribes with ancestral ties to the area, the use of this area by native peoples for thousands of years, as well as resource discoveries in Laguna Beach in recent years suggests that there is potential for tribal cultural resources to be found at this site. Therefore, the Commission imposes **Special Condition 5**, which requires the applicant to invite representatives of each of the Juaneño (Acjachemen)-affiliated Tribes listed on an updated Native American Heritage Commission contact list to consult on the preparation of a Tribal Cultural Resource Treatment and Monitoring Plan that must be submitted prior to issuance of the CDP for review and approval by the Executive Director and include monitoring and treatment procedures, including those listed in the special condition and [Appendix B](#).

The Commission finds, therefore, that as conditioned, the proposed project minimizes and mitigates potential impacts to archaeological and tribal cultural resources consistent with Section 30244 of the Coastal Act and the cultural resource protection policies of the certified LUP.

## I. Local Coastal Program (LCP)

Section 30604 (a) of the Coastal Act states:

*Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).*

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

The proposed development that is subject to this permit application (CDP No. A-5-LGB-22-0060) is located within the City of Laguna Beach's certified jurisdiction. As discussed

above, the proposed development, as conditioned, will not adversely impact coastal resources and public access. Therefore, the Commission finds that approval of this project, as conditioned, is consistent with the City's certified LCP and would not prejudice the ability of the City of Laguna Beach to prepare a Local Coastal Program for the areas of deferred certification that conforms with and is adequate to carry out the Chapter 3 policies of the Coastal Act.

## **J. California Environmental Quality Act**

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

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

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

## **APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

- 1) Updated Geotechnical Evaluation (DRAFT) Beach Access Rehabilitation Improvements by Geofirm, dated November 22, 2022.
- 2) Anita Street Civil Plan by PACE Advanced Water Engineering, dated June, 2022.

## **APPENDIX B – CULTURAL RESOURCES SIGNIFICANCE TESTING PLAN PROCEDURES**

- A. An applicant seeking to recommence construction following discovery of the cultural deposits shall submit a Significance Testing Plan for the review and approval of the Executive Director. The Significance Testing Plan shall identify the testing measures that will be undertaken to determine whether the cultural deposits are significant. The Significance Testing Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), and the Most Likely Descendent (MLD) when State Law mandates identification of a MLD. The Executive Director shall make a determination regarding the adequacy of the Significance Testing Plan within 10 working days of receipt. If the Executive Director does not make such a determination within the prescribed time, the plan shall be deemed approved and implementation may proceed.
1. If the Executive Director approves the Significance Testing Plan and determines that the Significance Testing Plan's recommended testing measures are de minimis in nature and scope, the significance testing may commence after the Executive Director informs the permittee of that determination.
  2. If the Executive Director approves the Significance Testing Plan but determines that the changes therein are not de minimis, significance testing may not recommence until after an amendment to this permit is approved by the Commission.
  3. Once the measures identified in the significance testing plan are undertaken, the permittee shall submit the results of the testing to the Executive Director for review and approval. The results shall be accompanied by the project archeologist's recommendation as to whether the findings are significant. The project archeologist's recommendation shall be made in consultation with the Native American monitors and the MLD when State Law mandates identification of a MLD. The Executive Director shall make the determination as to whether the deposits are significant based on the information available to the Executive Director. If the deposits are found to be significant, the permittee shall prepare and submit to the Executive Director a supplementary Archeological Plan in accordance with subsection B of this appendix and all other relevant subsections. If the deposits are found to be not significant, then the permittee may recommence grading in accordance with any measures outlined in the significance testing program.
- B. An applicant seeking to recommence construction following a determination by the Executive Director that the cultural deposits discovered are significant shall submit a supplementary Archeological Plan for the review and approval of the Executive Director. The supplementary Archeological Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), the Most Likely Descendent (MLD) when State Law mandates identification of a MLD, as well as others identified in the special condition. The supplementary



Archeological Plan shall identify proposed investigation and mitigation measures. The range of investigation and mitigation measures considered shall not be constrained by the approved development plan. Mitigation measures considered may range from in-situ preservation to recovery and/or relocation. A good faith effort shall be made to avoid impacts to cultural resources through methods such as, but not limited to, project redesign, capping, and placing cultural resource areas in open space. In order to protect cultural resources, any further development may only be undertaken consistent with the provisions of the Supplementary Archeological Plan.

1. If the Executive Director approves the Supplementary Archeological Plan and determines that the Supplementary Archeological Plan's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction may recommence after the Executive Director informs the permittee of that determination.
  2. If the Executive Director approves the Supplementary Archeological Plan but determines that the changes therein are not de minimis, construction may not recommence until after an amendment to this permit is approved by the Commission.
- C. Prior to submittal to the Executive Director, all plans required to be submitted pursuant to this special condition, except the Significance Testing Plan, shall have received review and written comment by a peer review committee convened in accordance with current professional practice that shall include qualified archeologists and representatives of Native American groups with documented ancestral ties to the area. Names and qualifications of selected peer reviewers shall be submitted for review and approval by the Executive Director. The plans submitted to the Executive Director shall incorporate the recommendations of the peer review committee. Furthermore, upon completion of the peer review process, all plans shall be submitted to the California Office of Historic Preservation (OHP) and the NAHC for their review and an opportunity to comment. The plans submitted to the Executive Director shall incorporate the recommendations of the OHP and NAHC. If the OHP and/or NAHC do not respond within 30 days of their receipt of the plan, the requirement under this permit for that entities' review and comment shall expire, unless the Executive Director extends said deadline for good cause. All plans shall be submitted for the review and approval of the Executive Director.