

CALIFORNIA COASTAL COMMISSION

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F11b

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STAFF REPORT: REGULAR CALENDAR – DE NOVO

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

Applicants: Mike and Lori Gray

Agent: Steve Kaufmann

Appellants: Mark and Sharon Fudge

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

Project Description: After-the-fact authorization for demolition of the majority of existing structure; construction of a new, 3,558 sq. ft. single-family dwelling and attached 605 sq. ft. two-car garage; and construction of a public ADA compliant parking stall within the Anita Street and Gaviota Drive public right-of-way.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The applicants seek after-the-fact authorization for demolition of the majority of an existing residential structure and authorization for the construction of a new single-family home atop a 5,181 square foot (sq. ft.), rectangular, ocean-fronting, blufftop lot at 1007 Gaviota Drive in Laguna Beach. The City of Laguna Beach approved a local coastal development permit (CDP) for the proposed project, which was appealed to the Commission, and on July 13, 2022, the Commission found that the appeal raised a

substantial issue because the City's findings of local coastal program (LCP) consistency were not adequately supported by documents in the record. Specifically, there were substantial issues as to: (1) whether the bluff edge was properly identified and consequently whether the bluff edge setbacks were appropriately applied; (2) the perpetuation of potentially obsolete bluff retention structures onsite; (3) the encroachment of fenced-in private yard area into the public right-of-way, and (4) the potential reduction in residential density onsite. Furthermore, insufficient information was provided regarding the proposed development's compliance with relevant development and public access policies of the LCP and the Coastal Act.

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

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

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

The proposed plans indicate that the project consists of alterations to major structural components of the primary structure. The square footage of livable area would be increased by 820.8 sq. ft. Alteration percentages provided by the applicants include demolition of 100% of the roof area, 59% of the main level area, 100% of the upper-level area, and 80% of the total exterior walls. Furthermore, the pre-existing single-family-residence was utilized as a duplex in the late 1960's based on a two-family occupancy provided in the Orange County Directory in 1968. However, the City record shows no legal conversion to a duplex, consistently refers to the residence as a single-family residence, and the subject site does not maintain any building permits for a duplex. Thus, the legal use of the pre-existing structure is considered to be a single-family residence. In August 2014, the City issued a permit for a minor remodel of the structure, however, the City discovered that the applicant exceeded the scope of work authorized by the City-issued permit and on December 18, 2014, the City Code Enforcement issued a stop-work order for unpermitted construction that was taking place. The unpermitted demolition of the existing structure exceeded the threshold to qualify as repair and maintenance and caused the applicant to forfeit the opportunity to preserve and maintain the nonconforming features of their existing structure. Based on the available evidence, the proposed development constitutes a major remodel, and would result in a replacement structure. Thus, the resulting structure must be brought into conformity with current standards within the LCP pursuant to LUE Action 7.3.10.

The Commission found the appeal to raise a substantial issue as to whether the bluff edge was properly identified and whether the bluff edge setbacks were properly applied. The applicants' initial bluff edge determination was not consistent with the LCP definition pursuant to LUE Action 10.2.6, which is required because the project has been determined to be a major remodel. Since the applicants' initial proposal, Commission staff and the applicant have worked together to agree upon the final bluff edge determination of the site, which is located landward of the applicants' initial bluff edge determination. The updated bluff edge required removal of portions of the proposed primary structure extending seaward of the bluff edge setback, which the applicants have adhered to in revised plans submitted to the Commission's South Coast District Office on February 26, 2024. **Special Condition 1** requires the applicants to submit revised plans to remove portions of accessory structures extending seaward of the required bluff edge setback consistent with the LCP requirements.

The applicants have revised the proposed project to include a public ADA compliant parking stall within the Anita Street and Gaviota Drive public right-of-way, which will be constructed and maintained by the City following the applicants' withdrawal of a Revocable Encroachment Permit (REP). Thus, this part of the project is no longer inconsistent with the relevant Coastal Act policies.

The proposed structure has been designed to not rely on coastal armoring or retain coastal armoring for the protection of the proposed blufftop residence, per LUE Action 7.3.9. However, the neighboring property at 1021 Gaviota Drive, built in 1926, has been determined to rely on the existing retaining walls crossing both properties. The walls

cannot be removed without extensive grading of the bluff face in addition to the construction of large lateral retaining walls along either property line, otherwise causing erosion damage to the neighboring property. Therefore, the least environmentally damaging option is to allow the retaining walls to remain. Nevertheless, **Special Condition 3** requires the retaining walls fronting the proposed structure on the seaward side to be removed when no longer required to protect adjacent blufftop structures, namely the neighboring property to the south located at 1021 Gaviota Drive.

Therefore, staff recommends that the Commission **APPROVE** CDP application A-5-LGB-22-0025 with twelve special conditions. The motion and resolution can be found on Page 6 of the staff report.

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EXHIBITS

[Exhibit 1 – Project Location](#)

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – Existing Retaining Walls](#)

[Exhibit 4 – Bluff Edge Determination](#)

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

[Exhibit 6 – 2014 Building Permit and Stop Work Order](#)

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

Motion:

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

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

Resolution:

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

II. STANDARD CONDITIONS

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

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

III. SPECIAL CONDITIONS

1. Revised Final Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit for review and written approval of the Executive Director, revised final plans in substantial conformance with the proposed plans provided in [Exhibit 2](#) of the staff report dated May 31, 2024, except that all accessory structures without foundations shall be set back a minimum of ten feet from the bluff edge identified in [Exhibit 4](#). The revised final plans shall be approved by the City of Laguna Beach and shall include the following:

- A. The plans shall show the bluff edge as being located where it is depicted on [Exhibit 4](#) and the foundation of the proposed home shall be located at least 25 feet landward of the bluff edge of the site identified in [Exhibit 4](#).
- B. Accessory structures such as decks, patios and walkways that do not require structural foundations shall be entirely located at least 10 feet landward from the bluff edge of the site identified in [Exhibit 4](#).
- C. Native landscaping shall be provided in areas within ten feet of the bluff edge that are currently covered by non-conforming accessory structures, including portions of the existing patio. Temporary above-ground irrigation may be installed in this area for up to three years, but no temporary or permanent irrigation shall be installed seaward of the bluff edge.
- D. The residence may include a reduced front yard setback along Gaviota Drive, if approved by the City of Laguna Beach. The City approved plans and associated variance and/or encroachment permit shall be submitted to the Executive Director for review and approval. No amendment to the subject permit would be required for a project revision that includes relocating or expanding the structure to accommodate a reduced front yard setback, consistent with all other policies of the certified LCP including height, density, and public view corridors.
- E. Grading and excavation shall be prohibited within 25 feet of the bluff edge of the site identified in [Exhibit 4](#). Construction necessary to remove existing accessory structures and debris adjacent to the bluff edge shall be identified on the plans.
- F. All runoff from impervious surfaces on the top of the bluff shall be collected and directed away from the bluff edge toward the street. Drainage elements shall be identified on the plans.
- G. The final site plan shall identify the proposed ADA parking stall within the public right-of-way identified on [Exhibit 2, page 2](#).

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

2. Revocable Encroachment Permit. The applicant shall submit, in a form and content acceptable to the Executive Director, evidence to demonstrate a formal request to withdraw City of Laguna Beach Revocable Encroachment Permit 22-0123 to the Laguna Beach Department of Community Development.

3. Coastal Armoring. By acceptance of this permit, the applicants agree, on behalf of themselves and all successors and assigns, that the existing retaining walls on the upper, middle, and lower bluff identified in [Exhibit 3](#) of the staff report dated 05/31/24 fronting the subject site may not be retained to protect the proposed blufftop residence and/or associated accessory development approved by A-5-LGB-22-0025 and shall be removed when no longer required to protect adjacent blufftop structures with rights to shoreline armoring under Public Resources Code Section 30235 or under the certified Laguna Beach LCP. By acceptance of this permit, the applicants agree that removal of existing retaining walls shall require conformance to City of Laguna Beach building code Chapter 22.06, restore the seaward slope to a stable condition, and maintain conformance to the certified LCP setback requirements, which may reduce the subject property's buildable area upon removal of the retaining walls and may require removal of some structural elements of the subject development including the seaward side of the home. Prior to the anticipated termination of the retaining walls, the permittees shall apply for a new CDP or amendment to this CDP, to remove the shoreline armoring or to modify the terms of its authorization, including with respect to any necessary mitigation, unless the Executive Director determines that no amendment or a new coastal development permit is legally required. By acceptance of this Permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to retain the existing retaining wall fronting the subject site to protect the blufftop residence that may exist under Public Resources Code Section 30235 or under the certified Laguna Beach LUP.

4. Future Improvements. This permit is only for the development described in coastal development permit No. A-5-LGB-22-0025. Pursuant to Title 14 California Code of Regulations (CCR) Section 13250(b)(6), and LCP Section 25.07.008, the exemptions otherwise provided in Public Resources Code (PRC) Section 30610(a) shall not apply to the development governed by coastal development permit No. A-5-LGB-22-0025. Accordingly, any future improvements to the permitted single-family residence and/or guest house authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in PRC Section 30610(d) and Title 14 CCR Sections 13252(a)-(b), shall require an amendment to coastal development permit No. A-5-LGB-22-0025 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

5. 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 on the street-side of the residence 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 plans. Any proposed changes to the approved final plans 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.

6. 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.

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

8. 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.

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

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

10. No Future Shoreline Protective Device(s).

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

In addition, this approval does not permit any development to be located on lands impressed with a public trust interest, and any development that comes to be located on such lands due to the movement of the mean high tide line must be removed unless the Coastal Commission determines, pursuant to a permit amendment, that the development may remain pursuant to the Coastal Act. If the development comes to be located on lands impressed with a public trust interest due to the movement of the mean high tide line, the applicant would also be subject to the State Lands Commission's (or other designated trustee agency's) discretionary leasing approval.

11. Public Rights and Public Trust. The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that exist or may exist on the property now or in the future. Because the boundary between public land (tidelands) and private land may shift with rising seas, the structure may currently or eventually be located on public trust lands. This development approval does not permit encroachment onto public trust land; any current or future encroachment must be addressed through an amendment to this permit such that the Coastal Commission may determine whether the encroachment is legally permissible pursuant to the Coastal Act. Further, any existing or future encroachment would also be subject to the State Lands Commission's (or other trustee agency's) review and approval.

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

IV. FINDINGS AND DECLARATIONS

A. Project Description

The subject property is a 5,181 sq. ft. rectangular ocean-fronting bluff lot at 1007 Gaviota Drive in the City of Laguna Beach, Orange County ([Exhibit 1](#)). The subject lot

is located at the corner of Gaviota Drive between the first public road (South Coast Highway) and the sea (Anita Street Beach). There is a public beach access stairway at Anita Street approximately 30 feet north of the site. The site is zoned R-2 (Residential Medium Density) and is surrounded by a mix of single-family residences and duplexes.

The site is currently developed with a partially demolished 2,737 sq. ft., 30-foot-high residential structure with a two-car garage built circa 1924. There is an unpermitted non-conforming driveway adjacent to the site that is within public property and has been illegally used by the applicants. Seaward of the site, there is a series of retaining walls consisting of a masonry wall at the bluff toe and two upper bluff retaining walls laterally crossing beachfront properties 1007 Gaviota Drive and 1021 Gaviota Drive, built pursuant to Commission-issued CDP A-80-7442 in 1980-81. The applicants propose a major remodel of the residential structure, which includes an after-the-fact authorization for the demolition of the structure, as well as the construction of a two-story, 3,558 sq. ft., 30-foot-high single-family dwelling with an attached 605 sq. ft. two-car garage, and construction of a public ADA compliant parking stall within the Anita Street and Gaviota Drive public right-of-way at the site of the existing unpermitted driveway, which will be constructed by the City following the withdrawal of the applicants' revocable encroachment permit (REP). The City is currently working toward obtaining permits to expand the public stairway and landings just north of the site to accommodate an improved sewer lift station (A-5-LBG-22-0060). The ADA parking stall proposed by the applicant will be incorporated into the City's final design.

Project History

The existing residential structure was constructed as a single-family residence in 1924, prior to the enactment of the Coastal Act. The pre-existing single-family-residence was utilized as a duplex in the late 1960's according to a two-family certificate of occupancy provided in the Orange County Directory in 1968. However, the City record shows no legal conversion to a duplex, consistently refers to the residence as a single-family residence, and the subject site only maintains building permits for a single-family residence, not a duplex. Thus, the legal use of the pre-existing structure is considered to be a single-family residence. Therefore, the assertion that the site was illegally converted from a duplex to a single-family residence resulting in a loss of residential density onsite is not supported by the evidence. In August 2014, the City issued a building permit for a minor remodel of the structure, however, the City discovered that the applicants exceeded the scope of work authorized by the City-issued permit and on December 18, 2014, the City Code Enforcement issued a stop-work order for unpermitted construction that was taking place ([Exhibit 6](#)). The unpermitted demolition of the existing structure exceeded the threshold to qualify as repair and maintenance and caused the applicants to forfeit the opportunity to maintain the nonconforming features of their existing structure. Based on the available evidence, the proposed development constitutes a major remodel, and would result in a replacement structure. Thus, the resulting structure must be brought into conformity with current standards within the LCP.

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

On May 18, 2022, the Coastal Commission received the City's Notice of Final Action for the approval of local CDP No. 22-0121 and opened a 10-working-day appeal period. On June 1, 2022, Mark and Sharon Fudge filed an appeal to the Commission during the appeal period which raised the following concerns with the City-approved development:

- 1) The approved development does not comply with the public access requirements of Section 30210 of Chapter 3 of the Coastal Act such that the proposed development does not provide maximum access.
- 2) Review of the proposed development did not consider the certified LCP's Land Use Element Glossary Entry 101 definition of a bluff edge and the proposed development does not comply with the LCP's setback requirements from the correct bluff edge.
- 3) The three retaining walls are obsolete since new development cannot rely on existing protective devices per LUE Action 7.3.9 and must be removed per LUE Action 7.3.8.
- 4) Shoreline or bluff protective devices are limited to protecting existing development and not accessory structures per LUE Action 7.3.13. As such, the rear patio supported by the retaining wall and fill slope system is obsolete and must be removed.
- 5) The CDP did not address the (unpermitted) demolition of a pre-existing duplex.
- 6) The proposed development is inconsistent with SB330 and the LCP because it replaces an existing duplex with a single-family residence.

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

Because the Commission found that a substantial issue existed based on the grounds on which the appeal was filed, the Commission’s action voided the local CDP, and the Commission assumed review authority over the project.

This application was scheduled for a Coastal Commission hearing on March 9, 2023, but was postponed prior to that hearing and was rescheduled for a Coastal Commission hearing on April 12, 2023. The application was continued at the Coastal Commission hearing on April 12, 2023 to allow for the applicants to review documents that were obtained by Commission Staff at the hearing. The application was then rescheduled for a Coastal Commission hearing on December 14, 2023, and was postponed by the Commission during the hearing at the applicant’s request to further evaluate the final location of the bluff edge. The applicants met with Commission Staff on January 25, 2024 and submitted an additional study from the applicants’ geotechnical engineers on February 26, 2024, which proposed a revised bluff edge determination and revised project plans.

B. Standard of Review

Section 30604(b) of the Coastal Act states:

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

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

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

The standard of review for projects heard on de novo by the Coastal Commission that are located between the first public road and the sea, like this one, are the City’s certified LCP and the public access and public recreation policies of the Coastal Act. The City of Laguna Beach LCP was certified by the Commission on January 13, 1993 (except for the areas of deferred certification: Three Arch Bay, Hobo Canyon, and Irvine Cove). The subject site falls within the City’s certified LCP jurisdiction. The City’s LCP Land Use Plan portion is comprised of a variety of planning documents including the LUE, Open Space/Conservation Element (OS/C Element), and the Coastal Technical Appendix. The Implementation Plan (IP) portion of the LCP is comprised of a number of documents including City of Laguna Beach Code of Ordinances, Title 25, Zoning.

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

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

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

Moreover, if changes are so extensive that they go beyond mere improvements or repair and maintenance, then the provisions regarding such changes don’t apply at all. As discussed below, in Subsection D, Development, proposed work cannot be considered repair and maintenance, and the resulting structure is considered redevelopment, or a major remodel, if 50% or more of the major structural components are replaced. The proposed plans indicate that the project consists of alterations to major structural components of the primary structure. The square footage of livable area would be increased by approximately 821 sq. ft. Alteration percentages provided by the applicants include demolition of 100% of the roof area, 59% of the main level area, 100% of the upper-level area, and 80% of the total exterior walls. Much of the demolition work has already taken place and was stopped by the City because it exceeded the scope of work authorized by the building permit that was granted for repair and maintenance ([Exhibit 6](#)). Based on the available evidence, the proposed development constitutes a major remodel, and would result in replacement structure(s). As such, the entire resulting structure must be brought into conformity with the current standards. The proposed actions would also increase the size and degree of the existing onsite nonconformities, and it therefore would require the entire structure to come into conformity with the LCP pursuant to LUE Action 7.3.10, as well.

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

C. Hazards

The project site consists of an ocean fronting blufftop lot that is vulnerable to coastal and geologic hazards. Given the project site's vulnerability to such hazards, a preliminary geotechnical investigation report was prepared for the proposed development by Geofirm, dated July 17, 2019. Following the appeal and finding of substantial issue, the applicants also submitted a revised slope stability analysis by Geofirm, dated October 3, 2022. The slope stability analysis indicates a determination of the 1.5/1.1 Factor of Safety line to be projected onto the building pad to address slope stability with respect to the siting of the residence. The Commission's former staff geologist, Dr. Joseph Street, has reviewed all submitted reports, confirmed the statements discussed herein, and confirmed the bluff edge identified in [Exhibit 4](#). Dr. Street's more detailed review of the bluff edge and coastal hazards issues, supporting these findings, can be found in [Exhibit 5](#).

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

LUE 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.

LUE Action 7.3.2 Review all applications for new development to determine potential threats from coastal and other hazards

LUE Action 7.3.4: Require new development to assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic stability, 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.

LUE 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.

LUE Action 7.3.6: Require new development on oceanfront blufftop lots to incorporate drainage improvements, removal of and/or revisions to irrigation systems, and/or use of native or drought-tolerant vegetation into the design to minimize threats to oceanfront bluff recession.

LUE Action 7.3.8 states: On oceanfront bluff sites, require applications where applicable, to identify and remove all unpermitted and/or obsolete structures, including

but not limited to protective devices, fences, walkways, and stairways, which encroach into oceanfront bluffs.

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

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

LUE Action 7.3.12: Site and design new structures to avoid the need for shoreline and/or oceanfront bluff protective devices during the economic life of the structure (75 years).

LUE Action 7.3.13: Limit the use of shoreline/bluff protective devices to the minimum required to protect existing development in danger of erosion. Site and design any such protective devices as far landward as possible. “Existing development” for purposes of this policy shall consist only of a principal structure, e.g. residential dwelling, required garage, or second residential unit, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping etc. No shoreline/bluff protective device shall be allowed for the sole purpose of protecting an accessory structure.

LUE Policy 10.2: Design and site new development to protect natural and environmentally sensitive resources such as areas of unique scenic quality, public views, and visual compatibility with surrounding uses and to minimize landform alterations. (Same as LUE Policy 7.3)

LUE Action 10.2.5: On bluff sites, requires applications where applicable, to include a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contain statements that the project site is suitable for the proposed development and that the development will be safe from geologic hazard for its economic life. For development on oceanfront bluffs, such reports shall include slope stability analyses and estimates of the long-term average bluff retreat/erosion rate over the expected life of the development. Reports are to be prepared/signed by a licensed professional Engineering Geologist or Geotechnical Engineer.

LUE Action 10.2.6 Require all new development located on an oceanfront bluff top to be setback from the oceanfront bluff edge a sufficient distance to ensure stability, ensure that it will not be endangered by erosion, and to avoid the need for protective devices during the economic life of the structure (75 years). Such setbacks must take into consideration expected long-term bluff retreat over the next 75 years, as well as slope stability. The predicted bluff retreat shall be evaluated considering not only historical bluff retreat data, but also acceleration of bluff retreat made possible by continued and accelerated sea level rise, future increase in storm or El Nino events, and any known site-specific conditions. To assure stability, the development must maintain a minimum factor of safety against landsliding of 1.5 (static) or 1.2 (pseudostatic, $k=0.15$ or determined through analysis by the geotechnical engineer) for the economic life of the structure.

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

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

LUE Definition 101 states: 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.

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

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

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

i. Bluff Edge Determination

As stated above, LUE Policy 7.3 and Actions 7.3.3, 7.3.5, 10.2.7, and 10.2.8 of the Laguna Beach Land Use Element (LUE) of the certified LUP require that new development minimize the alteration of natural landforms and not contribute to geologic instability. Setting development back from the edge of the bluff can substantially decrease risk to life and property; the farther from the bluff edge development is located, the less likely it is that that development will become jeopardized by erosion, landslides, and similar hazards. Likewise, setbacks decrease the likelihood of destruction of a structure caused by geologic instability. The added weight of development, irrigation, and human activity closer to the bluff edge all could increase the rate of erosion and bluff retreat.

In addition, LUE Policy 7-A of the Open Space Conservation Element, which is a part of the certified Land Use Plan, requires that the quality of public views from the hillsides and along the city's shoreline be preserved to the maximum extent feasible. Setting development farther back from the edge of the coastal bluff decreases the project's visibility from the beach below, which the public may access below the mean high tide line. For these reasons, the Commission typically imposes a bluff edge (or top of the bluff) setback as a condition of approval for development on bluff sites. Moreover, determining the correct location of the bluff edge is critical to determine where the developable area of property exists within which to place a new home and accessory structures.

Entry 101 of the Land Use Element (LUE) Glossary, a component of the City of Laguna Beach certified LCP, contains the following definition of 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.

The LUE bluff edge definition expressly recognizes cuts as an erosional process that affect the position of the bluff edge, stating that “[b]luff edges typically retreat over time because of erosional processes, landslides, development of gullies, or by grading (cut)”. However, the LUE does not draw any distinction between cuts that remain open and

temporary cuts that are immediately backfilled. The LUE definition indicates that fill placed near or over the bluff edge does not alter the bluff edge position (“...the original bluff edge, even if buried beneath fill, shall be taken to be the bluff edge.”). However, similar to the previous point, the LUE fails to consider temporary cuts that are immediately backfilled. The Commission received comments from the applicants’ geologist who stated that the current position of the bluff edge is a result of a temporary grading cut necessary to install the upper retaining wall previously approved by the Commission in 1980. Specifically, the cut was needed in order to install the wall footing. Once wall construction was complete, the cut area was then backfilled with artificial fill. The applicants’ geologist argues that fill is allowed under the LUE, that the backfill restored the bluff to its previous position, and that, therefore, the temporary cut should not be used as the determining factor in the current bluff edge determination. In this case, where the cut was necessary for the installation of an approved retaining wall and immediately backfilled pursuant to a CDP, it is not unreasonable to consider the cut temporary.

Although the LCP states that cut alters the bluff edge, the LCP is ambiguous as to whether that was intended to include temporary cut that is authorized by and carried out pursuant to a Commission permit and is only for purposes of the installation of a permitted structure and is immediately backfilled. That is the situation in this case: the cut was a temporary cut for the purpose of installing a retaining wall, was immediately backfilled, and was performed pursuant to an approved CDP. In addition, all of this work occurred before the adoption of the current LCP policies indicating that cut would change the location of the bluff edge. Therefore, the issue was not considered at the time, and there is a fairness argument that the owner should not lose developable area for following the permit at a time when there was no way to predict what effect that would have as a result of a future LUE provision. Following the December 14, 2023, Commission hearing on this matter, the applicants’ geologist conducted three additional borings in order to more precisely identify the distribution and depth of artificial fill onsite, which aids in determining the location of the bluff edge. Based on the new data gathered, the applicant’s geologists’ analysis provided a new estimate of the location of the natural bluff edge that existed prior to the aforementioned temporary cut and upper retaining wall installation. On the northwestern (upcoast) portion of the property, where the new subsurface data was collected the bluff edge was delineated as the geologic contact between the natural bluff materials (terrace deposits) and overlying artificial fill, at an elevation of approximately +43 ft. MSL, or about 6 to 7 feet below the ground surface. Along the downcoast portion of the property, where the existing patio and retaining wall prevent the collection of new borings, the applicant’s geologist provided a reasonable estimate of the natural bluff edge that balances the subsurface information from the new borings with prior estimates of the bluff edge based on historical aerial photographs. The revised bluff edge is shown in [Exhibit 4](#). The Commission concurs with this approach.

ii. Bluff Edge Setback

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

The review of adjacent development approved by the Coastal Commission and the City of Laguna Beach also demonstrates that the 25-foot bluff edge setback has been consistently applied. While each bluff edge is identified based on site specific conditions and geotechnical analysis, once the bluff edge is identified, the Commission and the City have consistently applied a 25-foot setback as required by the certified LCP. The applicants' revised project plans adhere to the 25-foot setback as shown in [Exhibit 2](#), with the primary residence setback 25 feet from the bluff edge identified in [Exhibit 4](#). The proposed plans, however, retain an existing concrete patio both within 10 feet of the bluff edge and seaward of the bluff edge ([Exhibit 2](#)). In order to conform to the required 10-foot setback pursuant to LUE Action 10.2.8, **Special Condition 1** requires the applicants to submit revised final plans that additionally adhere to the 10-foot minimum setback for accessory structures (such as decks and landscaping) that do not require foundations. Therefore, the bluff edge identified in [Exhibit 4](#) with applicable setbacks is consistent with the certified LCP.

iii. Shoreline Protection Devices and Geologic Stability

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

The applicants' revised slope stability analysis indicates that, if the effects of the existing retaining walls are discounted, a 1.5 (static) factor of safety against landsliding is achieved approximately 14 feet landward of the top of the upper retaining wall along the analyzed cross-section, or approximately 11 feet landward of the revised bluff edge. As described in greater detail in [Exhibit 5](#), Dr. Street has reviewed this analysis and concurs with its conclusions.

The applicants' coastal hazards report indicated that the proposed new development would be safe from wave runup hazards over the next 75 years, including the effects of sea level rise, but in Dr. Street's estimation did not provide an adequate analysis of the

potential for bluff erosion and retreat in the absence of shoreline protection and including the potential effects of sea level rise, and thus did not support a conclusion that the proposed setback would ensure stability and protect against bluff erosion for 75 years, consistent with LCP standards. The applicants' geologic reports provided some information about infrequent bluff erosion episodes in the years prior to the installation of the walls in 1980-81; drawing on this and other outside information, Dr. Street concluded that the bluff at the project site would likely be subject to erosion and future retreat in the absence of shoreline armoring ([Exhibit 5](#)). Combined with the 14-foot setback needed to achieve a 1.5 factor of safety against landsliding, and making some allowance for accelerated erosion in the future due to sea level rise, Dr. Street estimates that a total setback of approximately 30 feet from the current top of the wall (edge of fill slope) would be likely to ensure the stability of new development for 75 years without relying on shoreline protection, but acknowledges the high level of uncertainty embedded in this estimate.

As shown in [Exhibit 4](#), the LCP-required 25-foot setback from the bluff edge generally exceeds a 30-foot setback from the edge of the fill (i.e., top of the upper retaining wall) along the seaward-facing portion of the subject lot. Dr. Street has concluded that a geologic setback of this size would likely ensure stability and protect against future erosion over a 75-year economic life of the project. For these reasons, the proposed development is not expected to be threatened by coastal hazards and thus is not expected to need shoreline protection over the life of the development, and the project can be found to conform with the hazards policies of the LCP.

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

Here, the applicants are not proposing to construct a shoreline protection device and no shoreline protection would be authorized by this permit; however, the site currently contains three retaining walls on portions of the upper, middle, and lower (toe) bluff seaward side of the home that overlap the project site and the neighboring property (1021 Gaviota Drive) to the south ([Exhibit 3](#)). The lower wall (seawall) is a single structure that spans both properties. The existing retaining walls provide support for the neighboring property and could not be removed without causing instability and potential property damage, or requiring the construction of new, additional stabilization structures. However, because the project constitutes a major remodel and therefore is required to comply with the certified LUE, the proposed residence cannot rely on coastal armoring or retain coastal armoring for the protection of the proposed blufftop residence.

In the previously heard appeal, the appellants contended that the existing retaining walls are obsolete as the purpose of the walls was to stabilize the existing home, prior to the proposed redevelopment that is the subject of this permit application. The

appellants further contended that the neighboring home at 1021 Gaviota Drive does not rely on the retaining walls for stability as it was issued its own independent CDP for onsite retaining walls (A-80-7442 approved on December 5, 1980).

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

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

In order to feasibly and safely remove the retaining walls from 1007 Gaviota Drive, extensive construction would need to take place with uncertain results. As concluded in a conceptual analysis provided by the applicants' geologist (Stoney Miller & Geofirm, Jan. 13, 2023), removal of the existing retaining walls would require a new lateral retaining wall to be built along the lot line between 1007 Gaviota Drive and 1021 Gaviota Drive to support the 1021 Gaviota Drive property (Geofirm, Inc, 2021). Additionally, the bluff slope at 1007 Gaviota Drive would have to be extensively regraded to conform with building code requirements of a 2:1 slope, creating a lower elevation in the bluff face, in turn requiring construction of a lateral retaining wall along the northern lot line adjacent to the City stairway and sewer force main to prevent that development and the underlying norther slope from collapsing into the 1007 Gaviota Drive lot. The Commission's former staff geologist reviewed this analysis and agreed that significant slope regrading and the construction of new lateral retaining devices would likely be required if the existing walls were removed. The City of Laguna Beach Building Department affirmed the requirement for a 2:1 slope and noted that terracing would also be required, necessitating additional landform alteration. The City of Laguna Beach Public Works Department advised that their stairway and sewer force main project (A-5-LGB-22-0060) would have to be re-designed should the slope be regraded

and retaining walls added between the public right-of-way and the subject 1007 Gaviota Drive property.

As mentioned, the above construction analysis for the removal of the existing retaining walls is conceptual, as further study would be required from the applicants' geotechnical engineers. However, removing the existing retaining walls would likely require a return retaining wall along the edge of the 1021 Gaviota Drive lot. Such a project would have its own impacts, including extensive landform alteration at the bluff edge, bluff face, and northern and southern sides of the property. The least environmentally damaging path forward towards restoration of the natural bluff would be to remove the walls as part of a joint effort among the adjacent properties, likely involving regrading of the bluff face to achieve stability without wall support. In recent decisions, in addition to requiring coastal blufftop properties undergoing major remodels to eliminate reliance on coastal armoring structures, the Commission has also required special conditions to remove shared coastal armoring structures, such as seawalls, when they are no longer required to protect adjacent blufftop structures (6-15-1717, Mark and Felicia Barr; A-6-ENC-16-0060, Gary and Bella Martin). As such, **Special Condition 3** requires that the existing retaining walls fronting the subject site shall not be retained to protect the applicants' blufftop development (including the residence and accessory improvements) and shall be removed when no longer required to protect adjacent blufftop structures, namely the neighboring property to the south located at 1021 Gaviota Drive. Because removal of the retaining walls would likely cause extensive regrading of the bluff edge across both properties to conform to building code requirements of a 2:1 slope, **Special Condition 3** also requires the applicants to acknowledge that their home may be required to conform to a smaller buildable area in the future, which could require removal of part of the seaward portion of the home in order to comply with the conditions of this permit and the City's building code with respect to graded slopes. Future conformance to City of Laguna Beach building code Chapter 22.06 could cause the bluff edge to change due to extensive regrading. However, conformance to the building code is not a part of the certified LCP requirements. Therefore, the identified bluff edge identified in [Exhibit 4](#) is consistent with the certified LCP.

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

Coastal Act Section 30253(a) and related certified LUP policies prohibit approval of new development that would require armoring to be safe. Therefore, **Special Condition 10** requires that if any part of the proposed development becomes threatened by coastal hazards in the future, the threatened proposed development shall waive the right to use coastal armoring for protection and the development must be removed rather than protected in place. This condition recognizes that predictions of the future cannot be

made with certainty, thereby allowing for development that is currently safe and expected to be safe for the life of the development but ensuring that the future risks of property damage or loss arising from sea level rise, or other changed circumstances are borne by the applicants enjoying the benefits of new development, and not the public.

The Commission also finds that due to the possibility of future bluff erosion and instability hazards, if the applicants choose to build in this location despite those risks, they should assume the risks of development in a hazardous area as a condition of project approval. Because this risk of harm cannot be eliminated, the Commission requires the applicants to waive any claim of liability against the Commission for damage to life or property that may occur as a result of the permitted development. The applicants' Assumption of Risk, Waiver of Liability and Indemnity, as required by **Special Condition 8**, will ensure that the applicants are aware of and understand the nature of the hazards which exist on the site, and that may adversely affect the stability or safety of the subject development, and will effectuate the necessary assumption of those risks by the applicants.

Since coastal processes are dynamic and structural development may alter the natural environment, future development adjacent to the beach could adversely affect future shoreline conditions if not properly evaluated. For this reason, the Commission imposes **Special Condition 4**, which states that any future improvements to structure, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13253(b)(6) shall require an amendment from the Commission or shall require an additional CDP from the Commission or from the applicable certified local government. This condition ensures that any future development on this site that may affect shoreline processes, structural stability, or elevate cumulative development to a major remodel receives review under the Coastal Act (or future certified LCP) by the appropriate regulatory body.

To ensure that any prospective future owner of the property is made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition 12**, which requires the property owner record a deed restriction against the property, referencing all of the above special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the property. Thus, as conditioned, any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

Commission technical staff have reviewed the proposed plans and geotechnical reports and concur that a 25-ft. setback from the identified bluff edge will adequately address both slope stability and erosion and that the proposed development setback for the primary structure is adequate to minimize hazards from bluff erosion and instability over the next 75 years. The Commission finds that the proposed development, as conditioned, meets the minimum bluff setback requirements and is consistent with all the applicable policies of the certified LCP, which require that landform alteration be

minimized, development not rely on shoreline or bluff protective devices, and geologic stability is assured.

D. Development

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

LUE Policy 2.1: Maintain the diversity and uniqueness of individual neighborhoods. Development standards and design review guidelines shall minimize the scale and bulk of new construction and/or renovation and require development to be compatible with the surrounding residences.

LUE 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.

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

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

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

The proposed project is located within an existing developed area and the proposed development is compatible with the character and scale of the surrounding area, which consists of two- to three-story single-family residences. In addition, as described in greater detail in the Hazards section above, the proposed residence will conform with the bluff edge setbacks required by the LCP. In addition, the proposed development will be landward of the existing line of development, in character with the existing line of development of the residence and the surrounding residences. Thus, the project is consistent with the identified relevant LUP policies.

Major/Minor Remodel

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

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

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

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

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

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Here, the applicants have submitted information regarding the extent of proposed alterations to the existing residence. The proposed plans indicate that the project consists of alterations to major structural components of the primary structure. The square footage of livable area would be increased by approximately 821 sq. ft. Alteration percentages include demolition of 100% of the roof area, 59% of the main level area, 100% of the upper-level area, and 80% of the total exterior walls.

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

The Commission typically looks at cumulative development over time when determining whether or not a project constitutes redevelopment. Even small improvements that may not ordinarily need a CDP (such as replacing doors and/or windows or other small additions) could add to the total alterations to the primary structural elements over time and push the alteration total of one or more elements over the 50 percent threshold. To ensure that any future improvements to the development are consistent with the LCP and relevant Coastal Act policies, the Commission imposes **Special Condition 4**. This condition requires a new CDP or amendment for all future improvements, including repair and maintenance actions that would ordinarily not require a permit.

Additional conditions must be imposed to assure that the quantity and location of alterations to the existing residence occur in the manner proposed. First, the Commission imposes **Special Condition 1**, which requires the applicants to undertake development only in accordance with the Commission-approved final plans, which apply the 25-foot bluff edge setback consistent with the LCP, based on the bluff edge identified in [Exhibit 4](#). Any changes to the approved plans would require an amendment to the CDP, unless the Executive Director finds that an amendment is not required. Should the quantity or location of alterations carried out substantially differ from that which is proposed and identified specifically by the Commission-approved plans, the Commission may establish requirements for the project to be reassessed based on the revised alteration/demolition plan. The Commission therefore imposes **Special Condition 7**, which requires that the applicants submit a copy of the City Building Department job card after any proposed alterations are complete. The City's job card would verify the extent of work and the condition of the residence remaining. The job card will also enable the Executive Director to verify that additional work is not taking place seaward of the Commission identified building setbacks and verify that the public ADA compliant parking stall proposed on the City right-of-way are completed consistent with the approved plans.

As detailed below, the applicants previously installed a chain-link fence and other improvements within the public right-of-way adjacent to the north side of their property

without a CDP, which has since been removed. In the same area, the applicants agree to withdraw their previously issued REP to allow the City to construct a public ADA compliant parking stall. The City is currently developing an expanded public stairway just north of the site and landings to support an improved sewer lift station (A-5-LGB-22-0060), which increases the footprint of public infrastructure adjacent to the home and will be complimented by the aforementioned ADA parking stall in the area previously used as a non-conforming private driveway. The ADA parking stall will help facilitate access to a public viewing landing provided through A-5-LGB-22-0060.

Residential Density

As previously described, the City of Laguna Beach found that a legal duplex did not exist at the site, although the site had been marketed as having two units in the past. Thus, the legal use of the pre-existing structure is considered to be a single-family residence, which is consistent with the proposed project. The project therefore proposes no loss of existing housing units. Based on the available evidence, the proposed development constitutes a major remodel, and would result in a replacement structure. The LCP allows for single-family homes as well as duplexes in the subject R-2 zone (Residential Medium Density); thus, the proposed single-family home is consistent with the LCP which is the standard of review for the coastal development permit application.

Therefore, the Commission finds that the proposed development, as conditioned, is consistent with the certified LCP regarding oceanfront bluff development, including appropriate bluff edge setbacks.

E. Public Access and Recreation

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

Section 30210 of the Coastal Act states:

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

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

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

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

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

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

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

- (1) The proposed development will not encroach upon any existing physical accessway legally utilized by the public or any proposed public accessway identified in the adopted local coastal program land use plan...
- (3) The proposed development will not adversely affect recreational or visitor-serving facilities or coastal scenic resources...

Revocable Encroachment Permit

City records include a comment from the previous property owner mentioning a driveway and fence within the public right-of-way since the original home was built in 1924. The applicants have since removed the fence and agree to withdraw their REP to allow the City to construct the aforementioned public ADA compliant parking stall in the area where the driveway and fence were located. Previously, the City authorized REP 22-0123 to allow the applicants to construct and maintain public amenities including a vehicle drop off location, bike racks, a concrete bench, beach access safety signs, and temporary above-ground irrigation within the public right-of-way. The applicants, in consultation with the City, have since revised the plans in an effort to improve ADA accessibility of the adjacent public right-of-way. The proposed project includes a public ADA compliant parking stall within the public right-of-way (former encroachment area). The applicants agree to withdraw their REP as required through **Special Condition 2**, and the City will construct the public ADA compliant parking stall as conditioned through A-5-LGB-22-0060. The public right-of-way will then continue to be owned and maintained by the City. There is also an existing lateral wood retaining wall between the City's project and the public right-of-way that will be retained ([Exhibit 2](#)) to avoid substantial landform alterations to the bluff. The public ADA compliant parking stall will be complimented by the expanded public stairway just north of the site (A-5-LGB-22-0060).

The Commission received comments from members of the public who appealed the originally approved project and the Sierra Club, Laguna Chapter on March 3, 2023, expressing concerns that the REP would grant private access to public land rather than ensure improvement of public amenities within the public right-of-way. The City asserts that the REP had been mischaracterized as a private encroachment area. The City's Design Review Board (DRB) previously approved the REP with the purpose not to grant private access to public land, but to allow the homeowners of 1007 Gaviota Drive to construct public amenities within the public right-of-way. This approval has since been

revised to incorporate the aforementioned public ADA compliant parking stall rather than the public amenities, as well as the withdrawal of the REP. Given the revised proposal, Commission Staff requested the public right-of-way area be transferred to the scope of the adjacent Anita Street stair replacement project, which is currently subject to the Commissions' de novo review (A-5-LGB-22-0060). The City raised concerns with this approach, as it would require the City to obtain revised CEQA and DRB approvals due to the changed plans, which would impose additional delays on the project. The City requested a solution to avoid this due to the aging nature of the sewer lift station, which is proposed to be improved through A-5-LGB-22-0060. Since this project will require revised plans to adhere to the updated agreed upon bluff edge determination as described above, the applicants must obtain new CEQA and DRB approvals, so revising the plans within the public right-of-way will not impose additional delays to the project. Therefore, the applicants and the City agreed to allow the applicants to revise the site plan of the public right-of-way, withdraw the REP, and allow the City to construct the public ADA compliant parking stall and continue to maintain and own the site. This solution and revision of the previously proposed plans ensures that the right-of-way will be dedicated for public use and will be owned and maintained by the City rather than a private property owner.

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

Therefore, the Commission finds that the proposed development, as conditioned, is consistent with the certified LCP and the public access and public recreation policies of the Coastal Act.

F. Visual Resources

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

Laguna Beach Land Use Element:

LUE Policy 2.8 states, in relevant part:

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

LUE Policy 2.10 states:

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

LUE Policy 3.10 states:

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

LUE Policy 7.3 states:

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

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

LUE Policy 10.2 states:

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

Open Space/Conservation Element:

LUE Policy 7-A states:

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

LUE Policy 7-K states:

Preserve as much as possible the natural character of the landscape (including coastal bluffs, hillsides and ridgeline) 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.

LUE Policy 7-M states:

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

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

The project site is highly visible from the public beach and adjacent public beach stairway. However, the coastal bluff on which the subject home is built is marked with the development of multiple single-family and multi-family residences. The proposed new structure would not significantly or adversely affect the natural character of the bluff face and beach because the addition would be adequately set back from the beach and bluff edge and the structure's 3,558 sq. ft. size and 30-foot height would be consistent with the pattern of existing development. In addition, the proposed development would not impede public coastal views from Coast Highway because the subject structure is not visible from PCH.

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

G. Marine Resources and Water Quality

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

LUE Policy 7.7 states:

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

Open Space/Conservation Element:

OSCE Policy 1-C states:

Require the installation of rain gutters and other water transport devices as a condition of approval on blufftop development, in order to convey water to the street

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(away from the bluff side). When this is impractical, all water shall be piped to the base of the bluff.

OSCE Policy 4-A states:

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

OSCE Policy 4-B states:

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

OSCE Policy 4-C states:

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

OSCE Policy 4-D states:

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

OSCE Policy 4-E states:

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

OSCE Policy 4-I states:

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

OSCE Policy 4-J states:

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

OSCE Policy 7-K states:

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

OSCE Policy 9-I states:

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

OSCE Policy 9-K states:

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

Title 25 of the certified Implementation Plan (IP):

IP Section 25.07.012(F) states, in relevant part:

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

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

...

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

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

Although the proposed development is not anticipated to adversely affect marine resources or other water resources, since the subject site is adjacent to the ocean, the proposed development still has the potential to discharge polluted runoff from the project site into a geologically sensitive coastal bluff, and/or beach, and into coastal

waters, either directly or via the community's storm drains, which ultimately flows to the sea. Furthermore, storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain or wind would result in adverse impacts upon the marine environment that could reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species' ability to see food in the water column.

In order to avoid adverse construction-related impacts upon marine resources, the Commission imposes **Special Condition 8**, which outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. This condition requires the applicants to remove any and all debris resulting from construction activities within 24 hours of completion of the project. In addition, all construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

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

H. 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, including 200 cubic yards of cut and 35 cubic yards of fill. The project has been designed to minimize ground disturbing activities and is sited in the same location as the existing single-family residence where ground disturbance has previously taken place, consistent with LUE Policy 2.8 and LUE Action 2.8.2. 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 6**, 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. Deed Restriction

The permit the Commission previously granted for construction of the retaining walls on the bluff face at 1021 Gaviota Drive (CDP A-80-7442, Langman) included a special condition requiring the applicant to record a document, in a form and content approved by the Executive Director, offering to dedicate a public access easement over the area between the seaward bulkhead and the mean high tide line to a public agency or private association approved by the Executive Director. A document was recorded by the original permittee and the sandy beach area is used by the public today. The subject CDP would have no effect on the existing retaining walls or the public's use of the sandy beach area. If the retaining walls are proposed to be improved in the future or are required to be removed pursuant to **Special Condition 3**, a follow up CDP will be required, and public access impacts will be analyzed and mitigated through that permit action.

If existing or proposed development is determined to not be on the applicants' property, either now or in the future, then it must be evaluated under the Coastal Act in order to protect the public's right to access public Tidelands. In order to ensure that private development does not preclude the public from using the public Tidelands, **Special Condition 11** requires that the Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property, the permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property now or in the future, and that this development approval does not permit encroachment onto public trust land; any current or future encroachment must be addressed through an amendment to this permit such that the Coastal Commission may determine whether the encroachment is legally permissible pursuant to the Coastal Act.

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition 12** requiring that the property owner record a deed restriction against the property, referencing all of the above special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the property. Thus, as conditioned, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

J. 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-22-0025) is located within the City of Laguna Beach's certified jurisdiction. As discussed above, the proposed development, as conditioned, will not adversely impact coastal resources and public access. Therefore, the Commission finds that approval of this project, as conditioned, is consistent with the City's certified LCP and would not prejudice the ability of the City of Laguna Beach to prepare a Local Coastal Program for the areas of deferred certification that conforms with and is adequate to carry out the Chapter 3 policies of the Coastal Act.

K. Unpermitted Development

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

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

Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations), nor does it constitute an implied statement of the Commission's position regarding the legality of the development undertaken on the subject site without a coastal permit, or of any other development, except as otherwise expressed herein. In fact, approval of this permit is possible only because of the conditions included herein, and the applicant's presumed

subsequent compliance with said conditions, and failure to comply with these conditions in conjunction with the exercise of this permit would also constitute a violation of this permit and of the Coastal Act and LCP. Accordingly, the applicants remain subject to enforcement action just as it was prior to this permit approval for engaging in the unpermitted development described herein, unless and until the conditions of approval included in this permit are satisfied.

L. 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 CEQA. The City's DRB 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). 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.

V. APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- 1) Appeal No. A-5-LGB-22-0025 and associated file documents.
- 2) Geofirm, Inc. and E. J. Miller, Inc., 1980, "Limited Geotechnical Investigation, Slope Instability and Remedial Design Recommendations, 1021 and 1031 Gaviota Street, Laguna Beach, California", May 30, 1980, signed by H. Lawrence and E. J. Miller.

- 3) E. J. Miller, Inc., 1980, “Proposed Design Scheme for Stabilizing the Failed Slope on the Seaward Side of the Residence at 1007 Gaviota Drive, Laguna Beach, California”, October 23, 1980, signed by E. J. Miller.
- 4) E. J. Miller, Inc., 1981, “Final Report of Observations and Tests during Repair of the Slope on the Seaward Side of the Residence at 1007 Gaviota Drive, Laguna Beach, California”, May 19, 1981, signed by E. J. Miller.
- 5) Geofirm, Inc., 2015, “Geotechnical Bluff Top Evaluation, 1007 Gaviota Dr., Laguna Beach, California”, May 8, 2015, signed by H. H. Richter and K. A. Trigg.
- 6) Geofirm, Inc., 2016, “Preliminary Geotechnical Investigation For Residence Remodel and Additions, 1007 Gaviota Dr., Laguna Beach, California”, July 20, 2016, signed by E. Hilde and E. J. Aldrich.
- 7) Geofirm, Inc., 2019a, “Geotechnical Slope Stability Determination, 1007 Gaviota Dr., Laguna Beach, California”, April 8, 2019, signed by Z. Wang and K. A. Trigg.
- 8) Geofirm, Inc., 2019b, “Updated Preliminary Geotechnical Investigation For Residence Remodel and Additions and Response to Review Dated June 17, 2019, 1007 Gaviota Dr., Laguna Beach, California”, July 16, 2019, signed by K. A. Trigg and Z. Wang.
- 9) Geofirm, Inc., 2019c, “Clarification of Bluff Edge Determination, 1007 Gaviota Dr., Laguna Beach, California”, September 18, 2019, signed by K. A. Trigg.
- 10) GeoSoils, Inc., 2021, “Discussion of Coastal Hazards and Wave Runup, 1007 Gaviota Drive, City of Laguna Beach, Orange County, California”, October 8, 2021, signed by D. W. Skelly.
- 11) Geofirm, Inc., 2021, “Review of Slope Retaining Walls and Bluff Edge Determination, 1007 Gaviota Dr., Laguna Beach, California”, October 22, 2021, signed by K. A. Trigg.
- 12) GeoSoils, Inc., 2022, “Final Coastal Bluff Edge Evaluation, 1007 Gaviota Drive, Laguna Beach, Orange County, California 92651”, dated February 22, 2022, signed by J. P. Franklin and D. W. Skelly.
- 13) “Slope Restoration for David Langman, 1007 Gaviota Street, Laguna Beach, CA 92651,” project plans prepared under supervision of Keith T. Robertson, consulting civil engineer, dated October 31, 1980.
- 14) Stoney Miller and Geofirm Consultants, Inc., 2022, “Review of Revised Residence Plans and Slope Stability, Response to Coastal Commission Comments, 1007 Gaviota Dr., Laguna Beach, California”, October 3, 2022, signed by K. A. Trigg and H. H. Richter.
- 15) Stoney Miller and Geofirm Consultants, Inc., 2023, “Response to Coastal Commission Email dated January 4, 2023, 1007 Gaviota Dr., Laguna Beach, California”, January 13, 2023, signed by K. A. Trigg.
- 16) Stoney Miller and Geofirm Consultants, Inc., 2023, “Response to Bluff Edge & Geologic Setback Review Memorandum dated February 24, 2023, Exhibit 5 to

De Novo Appeal A-5-LGB-22-0025, 1007 Gaviota Drive, Laguna Beach, California”, dated March 3, 2023, signed by K. A. Trigg.

- 17) Stoney Miller and Geofirm Consultants, Inc., 2023, “Discussion Regarding Bluff Edge Location, 1007 Gaviota Drive, Laguna Beach, California”, dated September 19, 2023, signed by K. A. Trigg.
- 18) Stoney Miller and Geofirm Consultants, Inc., 2024, “Revised Bluff Edge Location”, 1007 Gaviota Drive, Laguna Beach, California”, February 8, 2024, signed by K. A. Trigg.
- 19) Trigg, K. and D.W. Skelly, 2023, “Response to 1007 Graphics”, e-mail to Joseph Street, dated 10/20/2023.

VI. 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

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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.