

CALIFORNIA COASTAL COMMISSION

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W17a

Appeal Filed: 01/25/21
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Staff: V. Lee-LB
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Hearing Date: 04/09/25

STAFF REPORT: APPEAL – DE NOVO

Appeal No.: A-5-LGB-21-0012

Applicants: Sung-Tsei Chen & Lina Chen

Agent: James Conrad

Appellants: Mark & Sharon Fudge

Location: 6 Lagunita Drive, Laguna Beach, Orange County
(APN: 656-171-13)

Project Description: Demolish a 1,385-sq. ft., 27-ft. high single-family residence, and construct an approximately 3,350-sq. ft., 30-ft. high single-family residence with an attached 421-sq. ft. garage, a spa, and total grading of 1,091 cubic yards.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The applicants propose to demolish an existing 1,385 sq. ft., 27 ft.-high single-family residence, and construct an approximately 3,350 sq. ft., 30 ft.-high single-family residence with attached 421 sq. ft. garage, elevated decks totaling approximately 805 sq. ft., mechanical area (approximately 72 sq. ft.), two onsite parking spaces, spa (8 ft. x 6 ft. x 4 ft.), grading (approximately 1,091 cubic yards), retaining walls, and landscaping on a 6,307 sq. ft. lot at 6 Lagunita Drive, in the City of Laguna Beach, Orange County.

The City of Laguna Beach approved a local CDP for the project, it was appealed to the Commission, and on March 10, 2021, the Commission found that the appeal raised a substantial issue because the City's decision that the development is consistent with the provisions of the certified LCP regarding new development on a property that potentially meets the LCP's definition of a coastal bluff was not adequately supported by documents in the record file or the local CDP's findings. Specifically, the Commission found that there is no rationale in the City's record that supports the City's determination that the site is not on an oceanfront bluff/coastal bluff as defined in the certified LCP.

The standard of review for projects in this part of the City that are heard on appeal by the Coastal Commission is the City's certified Local Coastal Program. In addition, because this project is located between the sea and the first public road parallel to the sea, the public access and public recreation policies of the Coastal Act also serve as part of the standard of review.

The applicants submitted a geotechnical report which reviewed an early oblique aerial photograph circa 1928, prior to the construction of the subject lot, and showed that the subject site is above the mouth of a coastal canyon. The report explained that the coastal bluff trend line turns landward to become a coastal canyon associated with a regional drainage course, and that the subject site is clearly within and above the mouth of that regional drainage course. Consequently, the report concluded that the project site is located within a coastal canyon and not on a coastal bluff and, therefore, there is no coastal bluff edge on the site.

The Commission's staff geologist reviewed the applicants' geotechnical report and concluded that, based on the shape and orientation of the landform, the GeoSoils report correctly identified the project site to be located within the "mouth" of the canyon (formed by the action of several converging drainages) at Victoria Beach, and in this sense the project site is located on a canyon slope rather than an oceanfront bluff/coastal bluff as defined in the certified LCP. The site is located inland of a private road (Faulkner Way) and a row of houses oceanward of the private road (9 and 11 Lagunita Drive), such that it is not directly facing the beach and the shoreline. In addition, Commission staff concluded that the site would not be threatened by marine erosion over the expected project life (75 years), since the fill and natural materials at the bottom of the slope would have to erode substantially (on the order of 150 ft.) to even reach the subject lot, let alone cause erosion that would threaten the house on the upper slope.

For these reasons, staff believes the project site is located on a canyon slope as opposed to an oceanfront bluff, and the oceanfront bluff setback policies of the LUP would not apply. Staff recommends that the Commission **APPROVE** coastal development permit application A-5-LGB-21-0012 with seven special conditions: 1) Assumption of Risk; 2) Drought Tolerant and Non-Invasive Landscaping; 3) Construction BMPs; 4) Spa Leak Prevention/Detection Plan; 5) Bird Strike Prevention Plan; 6) Archaeological, Paleontological, and Tribal Cultural Resource Monitoring and Treatment Plan; and 7) Deed Restriction. The motion is on **Page 4** of the staff report.

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EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Proposed Project Plans](#)

[Exhibit 3 – Oblique Aerial Photographs of Project Site Circa 1928 and 1940](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit A-5-LGB-21-0012 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-21-0012 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 applicant 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 applicant to bind

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

III. SPECIAL CONDITIONS

1. **Assumption of Risk.** By acceptance of this permit, the permittees acknowledge and agrees (i) that the site may be subject to hazards, including but not limited to bluff and slope instability, sea level rise, erosion, landslides and wave uprush or other tidal induced erosion; (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).
2. **Landscaping – Drought tolerant, Non-Invasive Plants.**
 - A. Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants that are non-invasive. 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 within 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/183488.pdf>).
 - B. Use of reclaimed water for irrigation is encouraged. If using potable water for irrigation, only drip or microspray irrigation systems may be used. Other water conservation measures shall be considered, such as weather based irrigation controllers
3. **Storage of Construction Materials, Mechanized Equipment, and Removal of Construction Debris.** The permittee shall comply with the following construction-related requirements:
 - A. No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion;

- B. No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers;
- C. Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project;
- D. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
- E. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- F. The applicants shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- G. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the Coastal Zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;
- H. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
- I. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
- J. The discharge of any hazardous materials into any receiving waters is prohibited;
- K. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures 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. The area shall be located as far away from the receiving waters and storm drain inlets as possible;
- L. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition

or construction activity, shall be implemented prior to the on-set of such activity;
and

M. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

4. Spa Leak Prevention/Detection Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittees shall submit for the review and approval of the Executive Director, two (2) full size sets of spa leak prevention/detection plans, which demonstrates that water overflow onto the canyon will be prevented

5. Bird Strike Prevention. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit revised plans showing the location, design, height, and materials of oceanfront deck railing systems, fences, screen walls, gates, windows and the like for the review and written approval of the Executive Director. Said plans shall include, at a minimum, the following requirements:

Oceanfront deck railing systems, fences, screen walls, gates, and windows and the like that are subject to this permit shall use materials designed to minimize birdstrikes with the deck railing, fence, gate, window or similar feature. Such materials may consist of all or in part of wood, wrought iron, frosted or partially-frosted glass, Plexiglas or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas may be installed only if it contains UV-reflective glazing that is visible to birds or is used with appliqué (e.g. stickers/decals) designed to reduce bird-strikes by reducing reflectivity and transparency. Any appliqué used shall be installed to provide coverage consistent with manufacturer specifications (e.g. one appliqué for every 3 foot by 3 foot area). Use of opaque or partially opaque materials is preferred to clear glass or Plexiglas and appliqué. All materials and appliqué shall be maintained throughout the life of the development to ensure continued effectiveness at minimizing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications

6. Archaeological, Paleontological, and Tribal Cultural Resource Monitoring and Treatment Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMITS, the applicants shall submit, for the review and approval of the Executive Director, an Archaeological, Paleontological, and Tribal Cultural Resources Monitoring and Treatment Plan (Plan) prepared by a qualified resource specialist in consultation with Gabrieleño-affiliated Native American representatives, which shall incorporate the following measures and procedures:

A. All representatives of Gabrieleño-affiliated 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 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.

- B. The Plan shall ensure that any archaeological, paleontological, or tribal 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). If there is disagreement regarding the method(s) of protection of resources, the methods that are most protective of coastal resources shall be selected. To this end, the Plan shall require that the Gabrieleño-affiliated 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, tribal cultural, and/or paleontological 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.
- C. 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 any and all archaeological or paleontological documents and reports shall be provided to the Native American monitors.
- D. The permittee shall provide sufficient paleontological, archaeological and Gabrieleño-affiliated Native American monitors to assure that all project grading and subsurface construction activities that have any potential to uncover or otherwise disturb cultural or paleontological deposits are monitored at all times.
- E. If any archaeological, 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, paleontologist, 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. If there is disagreement amongst monitors regarding the treatment of any resource discovery, the treatment that is the most protective of coastal resources shall prevail. 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. A permittee seeking to recommence construction activities shall follow the procedures set forth in Appendix B.

- F. If the Executive Director determines that the discovery is significant or that the treatment method preferred by the affected Native American tribe(s) and most protective of coastal resources 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 deposits that are encountered. Development shall not recommence until an amendment is approved, and then only in compliance with the provisions of such amendment.
- G. The Permittees shall implement the approved Archaeological, Paleontological, and Tribal Cultural Resources Monitoring and Treatment Plan in accordance with this condition. Any proposed changes to the final approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Coastal Commission approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is legally required.

- 7. 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 site is a 6,307-square-foot lot at 6 Lagunita Drive, in the City of Laguna Beach, Orange County ([Exhibit 1](#)). The project site is developed with a single-family residence and accessory structures. The subject site is zoned Village Low Density, is fronted by Faulkner Road (a private road) and is also surrounded by single-family residential development. The subject lot is located between the first public road (South Coast Highway) and the sea (Victoria Beach).

Project History

On December 10, 2020, the City of Laguna Beach Design Review Board (“DRB”) held a public hearing for consideration and subsequent conditional approval of the Local CDP subject to this appeal (No. 20-7748), Design Review No. 20-7747, and a CEQA Categorical Exemption authorizing the applicants’ request to demolish the existing 1,385 sq. ft., 27 ft.-high single-family residence, and construct an approximately 3,350 sq. ft., 30 ft.-high single-family residence with attached 421 sq. ft. garage, elevated decks totaling approximately 805 sq. ft., mechanical area (approximately 72 sq. ft.), two onsite parking spaces, spa (8 ft. x 6 ft. x 4 ft.), grading (approximately 1,091 cubic yards), retaining walls, and landscaping ([Exhibit 2](#)).

On January 8, 2021, the Commission received the City’s Notice of Final Action for the approval of the local CDP and opened a 10-working-day appeal period. On January 25, 2021, Mark and Sharon Fudge filed an appeal to the Commission during the appeal period which raised that the City’s approval is not consistent with the City’s certified LCP. More specifically, the appellants contended that a coastal bluff determination has not been made pursuant to the certified LCP’s definition to determine whether the lot is on a “coastal bluff,” and that all requirements relating to blufftop development have potentially not been properly assessed (such as bluff top setbacks, prohibition of private development on the bluff face, waiver of future shoreline/bluff protection devices, minimization of landform alteration, preservation of visual resources, etc.).

On March 10, 2021, the Commission held a hearing and found that the appeal raised a substantial issue because the City’s decision that the development is consistent with the provisions of the certified LCP regarding new development on a property that potentially meets the LCP’s definition of a coastal bluff was not adequately supported by documents in the record file or the local CDP’s findings. Specifically, the Commission found that there is no rationale in the City’s record that supports the applicants’ determination or the City’s determination that the site is not on an oceanfront bluff/coastal bluff based on the definitions of the certified LCP.

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 coastal development permit, and the Commission must review the merits of the project.

Standard of Review

The standard of review for projects heard on appeal by the Coastal Commission that are located between the first public road and the sea, like this one, are the City's certified Local Coastal Program (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 Land Use Element (LUE), Open Space/Conservation Element (OS/C Element), and the Coastal Technical Appendix. The Implementation Plan portion of the LCP is comprised of a number of documents including Title 25, Zoning.

B. Coastal Hazards

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

Land Use Element Policy 7.3

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

Land Use Element Policy 7.3 Action 7.3.2

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

Land Use Element Policy 7.3 Action 7.3.3

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

Land Use Element Policy 7.3 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.

Land Use Element Policy 7.3 Action 7.3.5

Prohibit development on oceanfront bluff faces, except public improvements providing public access, protecting coastal resources, or providing for public safety. Permit such improvements only when no feasible alternative exists and when designed and constructed to minimize landform alteration of the oceanfront bluff

face, to not contribute to further erosion of the oceanfront bluff face and to be visually compatible with the surrounding area to the maximum extent feasible.

Land Use Element Policy 9.11

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

Land Use Element Policy 10.2 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.

Land Use Element Policy 10.2 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.

Land Use Element Policy 10.2 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.

Land Use Element Policy 10.2 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.

Entry 102 of the Land Use Element (LUE) Glossary, a component of the City of Laguna Beach certified LCP, contains the following definition of 'Oceanfront Bluff/Coastal bluff':

...A bluff overlooking a beach or shoreline or that is subject to marine erosion. Many oceanfront bluffs consist of a gently sloping upper bluff and a steeper lower bluff or sea cliff. The term "oceanfront bluff" or "coastal bluff" refers to the entire slope between a marine terrace or upland area and the sea. The term "sea cliff" refers to the lower, near vertical portion of an oceanfront bluff.

Section 25.50.004 of the certified IP defines the 'oceanfront bluff' as:

...an oceanfront landform having a slope of forty-five degrees or greater from horizontal whose top is ten or more feet above mean sea level.

- i. In cases where an oceanfront bluff possesses an irregular or multiple slope condition, the setback will be taken from the most inland forty-five degree or greater slope.
- ii. In cases where the landform constitutes an oceanfront bluff whose slope is less than forty-five degrees, a determination as to whether or not the specific landform is subject to this provision shall be made by the director of community development.

The project site is on a sloped residential lot located approximately 150 ft. from the public beach (Victoria Beach). The lot is fronted by a private road (Faulkner Road), and is also surrounded by single-family residential development, including the homes at 9 Lagunita Drive and 11 Lagunita Drive which are located seaward of the subject property facing the ocean.

As previously discussed, the Commission's March 10, 2021 action on appeal found that the City's approval did not adequately support its determination that the site is not on an oceanfront bluff/coastal bluff based on the definitions of the certified LCP. There are two references for oceanfront/coastal bluffs provided in the certified LCP, one in the land use element component of the certified LUP, and one in the zoning code component of the implementation plan (IP). Pursuant to the LUP's definition, an 'oceanfront bluff/coastal bluff' is defined as a bluff that overlooks a beach or shoreline, or a bluff that is subject to marine erosion. The IP defines an 'oceanfront bluff' as an oceanfront landform having a slope of forty-five degrees or greater from horizontal whose top is ten or more feet above mean sea level.

The applicants submitted a geotechnical report prepared by GeoSoils dated October 14, 2019. The report reviewed aerial photographs and concluded that the subject lot was created substantially at existing grade, with some minor placement of fill. The report

reviewed an early oblique aerial photographs circa 1928 and 1940, prior to the construction of the subject lot, which showed that the subject site is above the mouth of a coastal canyon ([Exhibit 3](#)). The report explained that the coastal bluff trend line turns landward to become a coastal canyon associated with a regional drainage course, and that the subject site is clearly within and above the mouth of that regional drainage course. Consequently, the report concluded that the project site is located within a coastal canyon and not on a coastal bluff and, therefore, no coastal bluff edge can exist on the site. The report further indicated that the beach subjacent to the project site has not experienced any long-term erosion trend and the site has not been subject to marine erosion in the past, which evidences that the project site is not on a coastal bluff as defined by the LUP.

The Commission's staff geologist reviewed the applicants' geotechnical report and concluded that, based on the shape and orientation of the landform, the GeoSoils report has correctly identified the project site to be located within the "mouth" of the canyon (formed by the action of several converging drainages) at Victoria Beach, and in this sense the project site is located on a canyon slope rather than an oceanfront bluff/coastal bluff as defined in the certified LCP. The site is located inland of a private road (Faulkner Way) and a row of houses oceanward of the private road (9 and 11 Lagunita Drive), such that it is not directly facing the beach and the shoreline.

In addition, Commission staff concluded that the site would not be threatened by marine erosion over the expected project life (75 years), since the fill and natural materials at the bottom of the slope would have to erode substantially (on the order of 150 ft.) to even reach the subject lot, let alone cause erosion that would threaten the house on the upper slope. This much retreat/erosion of the lower slope, even with high levels of sea level rise, is not likely to occur.

Setting development back from the edge of the bluff can substantially decrease risk to life and property, because 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 and disturbance of development, irrigation, and human activity closer to the bluff edge all could increase the rate of erosion and bluff retreat. For these reasons, Actions 7.3.5, 10.2.6, 10.2.7, and 10.2.8 of the of the LUP require a bluff edge (or top of the bluff) setback for new development on oceanfront bluff sites.

In this case, because the project site is located on a canyon slope as opposed to an oceanfront bluff, the oceanfront bluff setback policies of the LUP would not apply. However, Policy 7.3, and Actions 7.3.2, 7.3.3, 7.3.4 of the certified LUP still require that new development minimize the alteration of natural landforms and not contribute to geologic instability. The applicants submitted a geotechnical report prepared by Rock Solid Geotechnical dated January 7, 2025, which provided a slope stability analysis for the proposed foundation loads at the subject site. The results showed a factor of safety (FS) greater than 1.5 under static conditions for the proposed structure. For the slope below the structure, the FS was greater than 1.5 close to the structure, but was slightly

below 1.5 under static conditions and greater than 1.2 with seismic loads for the outermost portion of the descending slope (approximately 25 ft from the structure). Commission's staff geologist reviewed the report and found no geologic hazards issue for the proposed project, accounting for future sea level rise of the project life.

Regardless, development on a canyon slope is inherently hazardous. 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 1**, will ensure that the applicants are aware of and understands 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.

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 7**, 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.

As proposed and conditioned, the project is consistent with the hazards policies of the certified LCP.

C. 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, Section 25.07.012 (F) of the certified IP 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...

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 is located within a private gated residential community and there are no public access ways either across the project site itself or the street end where the project site is located. The development itself would not result in any new adverse impacts and on the Dumond Drive public beach accessway which is located 40 ft. west of the project site. The proposed home and accessory structures with foundations would all be located on the applicants' property and would therefore not obstruct access to or across the public sandy beach below. Therefore, the project as proposed is consistent with the public access and recreation policies of the Coastal Act and the certified LCP.

D. Visual Resources

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

Laguna Beach Land Use Element:

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...

Policy 2.10 states:

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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.)

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.).

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.

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 Policy 7.3)

Open Space/Conservation Element:

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 2.10, and OSCE Policies 7-A and 7-K 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, and 10.2 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 minimizes natural landform alterations.

The project site is on a sloped residential lot located approximately 150 ft. from the public beach (Victoria Beach). The lot is fronted by a private road (Faulkner Road), and is also surrounded by single-family residential development, including the homes at 9 Lagunita Drive and 11 Lagunita Drive which are located in front of the subject property facing the ocean. Because of the existing development between the subject property

and the shoreline, the project site is not highly visible from the public beach. In addition, the slope on which the subject home is built is developed with multiple single-family residences. The proposed new structure would not significantly or adversely affect the natural character of the canyon face and beach because its mass and scale would be consistent with the pattern of existing development. In addition, the proposed addition would not impede public coastal views from Coast Highway because the subject property 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.

E. Biological Resources and Water Quality

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

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:

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

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.

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.

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.

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.

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.

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

Policy 4-J states:

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

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.

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.

Policy 9-K states:

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

Title 25 of the certified Implementation Plan (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 Polices 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. Section 25.07.012(F) of the certified IP 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, given the subject site's proximity to the ocean, the proposed development still has the potential to discharge polluted runoff from the project site into a geologically sensitive canyon 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 3**, 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.

For water conservation, any plants in the landscape plan must be drought tolerant to minimize the use of water (and preferably native to coastal Orange County). To ensure that any onsite landscaping minimizes the use of water to prevent drainage that may impact water quality and minimize the spread of invasive vegetation, **Special Condition 2** requires that vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive.

The proposed project includes a spa on the canyon slope. If left untreated, a leak could create the potential for instability at the site and impact biological resources and water quality of the area. **Special Condition 4** requires a spa leak prevention/detection plan prepared by an appropriately licensed professional that incorporates mitigation of the potential for geologic instability and water quality impact caused by potential leakage from the proposed pool/spa.

The proposed development includes new railings for the proposed deck areas along the ocean fronting side of the project site. Glass railing systems, walls or wind screens are known to have adverse impacts upon a variety of bird species. Birds are known to strike these glass walls causing their death or stunning them, which exposes them to predation. To ensure bird strike prevention, **Special Condition 5** requires that the applicants use a material for the glass railing that is designed to prevent creation of a bird strike hazard, and to submit revised plans reflecting the requirements of this condition.

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.

F. Archaeological and Paleontological 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 grading of the subject site. Ground-disturbing activities such as this have potential to unearth and/or impact paleontological and 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. On March 11, 2025, via email, Commission staff initiated consultation with all representatives of Gabrieleño-affiliated tribal entities listed on the California Native American Heritage Commission contact list, as staff understand is within Gabrieleño territory. That same day, the Commission received a response from a member of the Gabrielino Tongva Indians of California concerning the sensitivity of the project site and the need for Native American monitoring for all ground disturbing activities.

Therefore, the Commission imposes **Special Condition 6**, which requires the applicants to invite representatives of each of the Gabrieleño-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](#). This condition also requires that plan to include measures for paleontological and archaeological monitoring and measures to protect those resources should they be discovered.

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.

G. Deed Restriction

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 7** 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.

H. Local Coastal Program (LCP)

The City of Laguna Beach Local Coastal Program (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 modification 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 Land Use Element, 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 Land Use Element of the LCP was updated and replaced in its entirety via LCPA 1-10 in 2012. The certified Implementation Plan 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 Local Coastal Program (LCP), but there are four areas of deferred certification in the City: Irvine Cove, Blue Lagoon, Hobo Canyon, and Three Arch Bay.

The proposed development that is subject to this permit application (CDP No. A-5-LGB-21-0012) 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.

I. California Environmental Quality Act

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

The City of Laguna Beach is the lead agency responsible for certifying that the proposed project is in conformance with the California Environmentally Quality Act (CEQA). The City's Design Review Board determined that in accordance with CEQA, the project is Exempt from Provisions of CEQA citing Section 15303 (New Construction or Conversion of Small Structures), in that the project consists of construction and location of limited numbers of new, small structures. 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 the California Environmental Quality Act (CEQA).

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

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

Appeal No. A-5-LGB-21-0012 and associated file documents.

APPENDIX B – CULTURAL RESOURCES SIGNIFICANCE TESTING PLAN PROCEDURES

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

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

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