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# Th12a

49<sup>th</sup> Day: Waived  
Staff: V. Lee-LB  
Staff Report: 01/22/2026  
Hearing Date: 02/05/2026

## STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE & DE NOVO

**Appeal No.:** A-5-LGB-24-0018

**Applicant:** Tony Reyna

**Agent:** Horst Noppenberger

**Local Government:** City of Laguna Beach

**Local Decision:** Approval with Conditions

**Appellants:** South Laguna Civic Association & Christopher Moore

**Project Location:** 31451 Coast Highway, Laguna Beach, Orange County (APN: 056-032-26)

**Project Description:** Appeal of City of Laguna Beach Local Coastal Development Permit No. 23-1069 to construct a new 7,231 square-foot, 3-story single-family dwelling with an attached 3-car garage, elevated decks, retaining walls, pool, spa, and landscaping on a vacant oceanfront blufftop lot. Grading consists of 4,340 cubic yards of cut and 1,070 cubic yards of fill.

**Staff Recommendation:** Determine that a substantial issue exists, and approve the de novo permit with conditions.

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

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## SUMMARY OF STAFF RECOMMENDATION

The project site consists of a rectangular-shaped, coastal bluff top parcel of varying elevations that totals approximately 0.56-acre (24,338 sq. ft.). The site is currently undeveloped, and consists of a gently sloping pad trending southwesterly adjacent to Coast Highway, followed by a steeply sloping area seaward to a second pad area, followed by a coastal bluff descending to the Pacific Ocean shoreline. Site elevations vary between approximately 15 feet and 123 feet for an overall relief of roughly 108 feet. The project site is designated as Village Low Density (3-7 DU/Acre) per certified LUP and Residential Low Density (R-1) per the certified IP. The City-approved development involves the construction of a new 7,231 sq. ft., 3-story single-family residential structure with an attached 3-car garage, elevated decks, retaining walls, pool, spa, and landscaping on a vacant oceanfront blufftop lot ([Exhibit 2](#)). Grading consists of 4,340 cubic yards of cut and 1,070 cubic yards of fill.

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which appeal number A-5-LGB-24-0018 has been filed for the following reasons: 1) The bluff edge determination was not made pursuant to the certified LCP and, therefore, all requirements relating to blufftop development were not properly assessed and the proposed development would occur on a bluff face; 2) the City did not adequately consider the project's consistency with the visual resource protection policies of the certified LCP. Commission staff also recommends that, after a public hearing, the Commission **approve the de novo permit** with the recommended special conditions. The primary issues raised are the project's consistency with LCP policies regarding development on an oceanfront bluff site and visual resources, and whether strict application of the LCP's bluff edge setback requirement would constitute a taking of private property without just compensation.

The Commission staff's geologist, Phillip Johnson, has reviewed the applicant's geotechnical analyses, bluff edge determination, topographic survey, cross-sections, coastal hazard analyses, historic aerial photographs, and proposed architectural plans. Based on his analysis, Mr. Johnson estimates the bluff edge on the subject site as the 115 ft. MSL elevation contour, which is mostly landward of the proposed residence ([Exhibit 5](#)). Based on the bluff edge determination for the subject site, most of the proposed single-family residence and associated development (including the pool, spa, elevated decks, and retaining walls) would occur on the bluff face ([Exhibit 6](#)). Therefore, strict application of the bluff edge setback policies would render the project non-approvable.

In response to this concern, the applicant submitted an analysis showing the remaining buildable area on the project parcel after applying the Commission's determination of the bluff edge setback ([Exhibit 7](#)). The resulting allowable buildable area was approximately 1,168 sq. ft. within the project site, with an overall area of 24,338 sq. ft., of which only 4.7% of the project site remaining as potentially buildable. As described in further detail in Section IX.H (Potential Takings) of this staff report, the strict application of the bluff edge setback policies could potentially result in an unconstitutional taking of private property without payment of just compensation. Therefore, in this case, even though the staff believes that the project as proposed is inconsistent with the blufftop setback policies of

the certified LCP, in light of the evidence that denying the proposed project could constitute an unlawful taking of the applicant's property without just compensation, pursuant to Coastal Act Section 30010, staff recommends the Commission determine that the applicant is entitled to a reasonable economic use of the property.

The certified Land Use Element (LUE) Action 10.2.7. requires all new development located on oceanfront bluffs to be sited in accordance with the stringline, but not less than 25 ft. from the bluff edge. Because the strict application of 25 ft. minimum setback from the identified bluff edge is not possible on the site, in this unique case, staff believes that applying the stringline for development setback would be the most consistent with the certified LUE while avoiding taking of the property. As proposed, the principal structure is already behind the identified stringline setback ([Exhibit 8](#)). However, the proposed accessory structures, including the pool, spa, and elevated decks, are seaward of the stringline. Therefore, staff recommends **Special Condition 1**, which requires the applicant to submit revised final plans that fully conform to the identified building stringline setback.

The Commission must also assess whether there is a superior alternative (in terms of minimizing impacts and bringing the project into greater conformity with the goals of the LCP) that would still provide a viable economic use of the property. As further explained in the Section IX.D (Visual Resources) of this report, there is a superior alternative that further minimizes blue water view obstructions from the Coast Highway, wherein the proposed topmost floor is removed from the proposal. This alternative would result in a residence with a total of 5,675.57 sq. ft. of living space and 1,464.61 sq. ft. of deck space, which is similar to the size of the neighboring structure in construction at 31461 Coast Highway, and that is overall more consistent with the size of the homes in the neighborhood ([Exhibit 12](#)). A home of this size is a reasonable development which would avoid a claim of takings while striving to be as close to consistent with the policies of the LCP. Thus, staff recommends **Special Condition 1** requiring the applicant to submit revised final plans that remove the topmost floor from the proposal.

Staff recommends approval of the de novo permit with **15 special conditions** that require the applicant to: **1)** submit final revised plans that conform to the building stringline and remove the topmost floor of the proposed structure; **2)** acknowledge that the Commission's action has no effect on conditions imposed by the City pursuant to an authority other than the Coastal Act; **3)** conform to the geotechnical recommendations; **4)** acknowledge that no shoreline protective device(s) shall ever be constructed to protect the proposed development; **5)** comply with construction best management practices; **6)** submit a pool leak prevention/detection plan; **7)** submit a bird strike prevention plan; **8)** acknowledge that landscaping shall only include drought-tolerant, non-invasive plants; **9)** submit a construction staging plan; **10)** submit an Archaeological and Tribal Cultural Resources Treatment and Monitoring Plan; **11)** assume the risks of development in a geologically hazardous area, waive any claim of damage or liability against the Commission, and indemnify the Commission against future claims; **12)** acknowledge that any future improvements to the structure authorized by this permit shall require a permit amendment or a new permit; **13)** mitigate exterior night lighting impacts; **14)** record a deed restriction against the property incorporating the special conditions of this permit; and **15)** record a view corridor deed restriction.

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## **EXHIBITS**

[Exhibit 1 – Vicinity Map and Project Site](#)

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – Appeals](#)

[Exhibit 4 – City Staff Report for Local CDP No. 23-1069](#)

[Exhibit 5 – CCC Bluff Edge Determination](#)

[Exhibit 6 – Proposed Development with CCC Bluff Edge Setback](#)

[Exhibit 7 – Applicant’s Analysis of Buildable Area Using CCC Bluff Edge Setback](#)

[Exhibit 8 – Proposed Development with Stringline Setback](#)

[Exhibit 9 – Project Archaeological Resource Impact Mitigation Measures](#)

[Exhibit 10 – Project Streetscape Analysis](#)

[Exhibit 11 – Proposed 16 ft.-Wide View Corridor](#)

[Exhibit 12 – Survey of Neighborhood Blufftop Properties](#)

[Exhibit 13 – Staff Site Visit Photos taken from PCH dated March 21, 2025](#)

[Exhibit 14 – Comment from Catherine Jurca dated December 5, 2025](#)

[Exhibit 15 – City Council-Approved Lot Line Adjustment No. 08-05](#)

## I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

**Motion:** I move that the Commission determine that Appeal No. A-5-LGB-24-0018 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

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

**Resolution:** The Commission hereby finds that Appeal No. **A-5-LGB-24-0018** presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access policies of the Coastal Act.

## II. APPELLANTS' CONTENTIONS

The Commission received a Notice of Final Local Action (NOFA) for City of Laguna Beach Local CDP No. 23-1069 on April 10, 2024. Local CDP No. 23-1069 authorizes construction of a new 7,231 square-foot, 3-story single-family dwelling with an attached 3-car garage, elevated decks, retaining walls, pool, spa, and landscaping on a vacant oceanfront blufftop lot at 31451 Coast Highway, Laguna Beach.

On April 23, 2024, within the Commission's appeal period, two appeals were filed by South Laguna Civic Association and Christopher Moore ([Exhibit 3](#)). The appellants contend that the City's approval does not comply with the City's certified LCP. More specifically, the appellants raise the following concerns with the City-approved development:

- 1) The City's bluff edge determination on the project site is defective and, therefore, all requirements relating to blufftop development have not been properly assessed (such as minimum required setbacks for development).
- 2) The proposed 3-story residence would impact public views, both from and to the beach, inconsistent with the certified LCP.
- 3) The City's approval did not consider protection of archaeological and paleontological resources, inconsistent with the certified LCP.

## III. LOCAL GOVERNMENT ACTION

On March 12, 2024, the City of Laguna Beach City Council held a public hearing for the coastal development permit application (Local CDP No. 23-1069, [Exhibit 4](#)) and other discretionary approvals for the construction of a new 7,231 square-foot, 3-story single-family dwelling with an attached 3-car garage, elevated decks, retaining walls, pool, spa, and landscaping on a vacant oceanfront blufftop lot at 31451 Coast Highway, Laguna Beach.

On April 10, 2024, the Coastal Commission's South Coast District Office received a valid Notice of Final Action (NOFA) for Local CDP No. 23-1069. The Commission issued a Notification of Appeal Period on April 11, 2024. On April 23, 2024, South Laguna Civic Association and Christopher Moore filed the appeal during the ten (10) working day appeal period ([Exhibit 3](#)). No other appeals were received. The City and applicant were notified of the appeal by Commission staff in a letter dated April 24, 2024.

#### **IV. APPEAL PROCEDURES**

After certification of Local Coastal Programs (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Development approved by cities or counties may be appealed if they are located within certain geographic appealable areas, such as those located between the sea and the first public road paralleling the sea or within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of a coastal bluff. (Coastal Act Section 30603(a).)

Section 30603 of the Coastal Act states in relevant part:

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

Section 30603(a)(1) of the Coastal Act establishes the project site as being in an appealable area because it is located between the sea and the first public road paralleling the sea and within 300 feet of the inland extent of any beach. The project site would also qualify as an appealable area based on Section 30603(a)(2) because of its location on the bluff. The issues raised in the subject appeal, on which the Commission finds there is a substantial issue as described further below, apply to proposed development located in the appeals area.

#### **Grounds for Appeal**

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

- (b)(1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth

in the certified Local Coastal Program or the public access policies set forth in this division.

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a) of the Coastal Act. If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered presumed, and the Commission will proceed to the de novo public hearing on the merits of the project. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review. (Coastal Act Section 30604(b).) In addition, for projects located between the first public road and the sea, a specific finding must be made at the de novo stage of the appeal that any approved project is consistent with the public access and recreation policies of the Coastal Act. (Coastal Act Section 30604(c).) Sections 13110-13120 of Title 14 of the California Code of Regulations further explain the appeal hearing process.

### **Qualifications to Testify before the Commission**

If the Commission, by a vote of 3 or more Commissioners, decides to hear arguments and vote on the substantial issue question, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. The time limit for public testimony will be set by the chair at the time of the hearing. As noted in Section 13117 of Title 14 of the California Code of Regulations, the only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. In this case, the City's record states that South Laguna Civic Association and Christopher Moore opposed the project at the local level. Testimony from any other members of the public for the substantial issue portion of the hearing must be submitted in writing.

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

## **V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE**

### **A. Project Description and Location**

The project site is located within an urbanized low-density residential neighborhood in the City of Laguna Beach ([Exhibit 1](#)). Surrounding land uses include the Pacific Ocean shoreline to the west, Coast Highway to the east, single-family residential land uses landward, and up and downcoast to the north and south. There is a partially in-filled natural drainage channel to the north. The project site is designated as Village Low Density (3-7 DU/Acre) per certified LUP and Residential Low Density (R-1) per the certified IP.

The project site consists of a rectangular-shaped, bluff top parcel that totals approximately 0.56-acre (24,338 sq. ft.). The site is currently undeveloped with the exception of an existing electrical utility box and an associated three-foot high retaining wall along the northern edge of the project site. Onsite vegetation consists of native and non-native weeds, grasses, shrubs, and sparse trees. The project site possesses varied topography, and consists of a gently sloping pad trending southwesterly adjacent to Coast Highway, followed by a steeply sloping area seaward to a second pad area, followed by a second slope descending to the Pacific Ocean shoreline. Site elevations vary between approximately 15 feet and 123 feet for an overall relief of roughly 108 feet.

The City-approved development involves the construction of a new 7,231 sq. ft., 3-story single-family residential structure with an attached 3-car garage, elevated decks, retaining walls, pool, spa, and landscaping on a vacant oceanfront blufftop lot ([Exhibit 2](#)). Grading consists of 4,340 cubic yards of cut and 1,070 cubic yards of fill. The project also includes installation site lighting, driveway construction, and connection to offsite utilities (sewer, domestic water, electrical, telecommunications) in the right-of-way on Coast Highway. The project would include stormwater detention features, including a Biofiltration system, located at the rear yard, on the western end of the project site.

Landscaping improvements would include planting of drought-resistant trees, shrubs, and ornamental grasses and would be compatible with the surrounding neighborhood. Non-view impacting trees and shrubs would be used and maintained at proper height. All exterior lighting is proposed to be low voltage and 5-Watt maximum. The chosen light fixtures for landscape lighting would only light and highlight elements within the project site. Lighting would be placed so as not to have negative visual impact on neighboring uses. Wall sconces would have light deflectors or diffusers. The project would include implementation of a Fuel Modification Plan on the project site.

## **B. Local Coastal Program Certification**

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

jurisdiction and is subject to the policies of the certified LCP and with the public access and recreation policies of the Coastal Act.

### **C. Factors to be Considered in Substantial Issue Analysis**

Section 30625(b)(2) of the Coastal Act requires the Commission to conduct a de novo review of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal has been filed pursuant to Section 30603(a). The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. However, Section 13115(c) of the Commission’s regulations lists the following 5 factors as appropriate considerations in determining whether an appeal raises a substantial issue:

1. The degree of factual and legal support for the local government’s decision that the development is consistent or inconsistent with the relevant provisions of the certified LCP;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government’s decision for future interpretations of its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

The Commission may, but need not, assign a particular weight to any factor. Where the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government’s coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

### **D. Substantial Issue Analysis**

As stated in Section IV of this report, the grounds for an appeal of a CDP issued by the local government are the project’s conformity with the policies of the LCP and with the public access policies of the Coastal Act. The appellants raise several substantial issues discussed in detail below. Therefore, Staff is recommending that the Commission find that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a) of the Coastal Act.

#### **Appellants’ Argument No. 1: Defective Bluff Edge Determination.**

The appellants first contention is that the locally approved project did not accurately identify the location of the bluff edge using a methodology that is consistent with the Land Use Element (LUE) definition of bluff edge.

The LUE defines the coastal bluff and bluff edge as follows:

**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.

**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 sea cliff. 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 also contains policies that regulate development along bluff edges, including the following:

**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.

**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.

**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 appellant’s contention raises a substantial issue with regard to the consistency of the applicant’s bluff edge determination and the LCP. The appellants contend that the applicant’s bluff edge determination at 57 ft. MSL contour line by GeoSoils Inc. does not discuss how it complies with the LUE’s definition of the bluff edge. Instead, it relies on

other old maps, aerial photos, tangential discussion of past land uses, and the definitions and concepts from the City of San Diego LCP, which is not the standard of review for projects in Laguna Beach.

The appellants further argue that the applicant's bluff edge is actually the sea cliff, which is by definition the lower part of the bluff and can't be considered the bluff edge according to the LUE. The appellants claimed that the bluff is the entire portion from the upland area to the sea, not just the sea cliff according to the LUE and Commission's precedents. In this case, the upland area should be interpreted as the average slope at the landward-most edge of the parcel, which is at the elevation of Coast Highway. The appellants further claim that, since the site has multiple step-like features, the bluff edge must be taken from the topmost riser according to the LUE, yet the applicant's claimed edge is at the lowest riser.

Based on the above, the appellants claim that the true bluff edge falls at approximately the 115 ft. MSL contour line, at the intersection of the upland area and the topmost riser ([Exhibit 3, page 14](#)). Because most of the proposed development occurs seaward of the true bluff edge setback, and of which a significant portion lies on the bluff face itself (Attachment 4), the appellants claim the City-approved project is inconsistent with the bluff edge setback policies of the LUE above.

The Commission's staff geologist Philip Johnson reviewed the City's records and the applicant's supplemental bluff edge analysis by GeoSoils dated October 10, 2024, and agreed with the appellants' claim that the bluff edge on the site, as defined by the certified LUE, is at the 115 ft. MSL contour line. Specifically, Mr. Johnson found that the Coast Highway in the vicinity of the project site traverses a marine terrace that is gently inclined seaward. By contrast, the bluff slope on the site is inclined approximately 30 degrees. Mr. Johnson determined the location of the bluff edge where the steep bluff slope meets the terrace surface at approximately 115 ft. MSL contour line, as shown in 1920s oblique aerial photographs in the GeoSoils report dated October 10, 2024 ([Exhibit 5](#)).

Therefore, the Commission finds that the City-approved project did not adequately consider the location of the bluff edge and corresponding bluff setback policies, and finds the appellants' contention with regard to bluff edge determination does raise a substantial issue.

### **Appellants' Argument No. 2: Visual Resource Impacts.**

The appellants second contention is that the proposed 3-story residence would impact public views, both from and to the beach, inconsistent with the certified LCP.

The LUE contains policies that protect visual resources and neighborhood character, including the following:

**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

**Policy 2.9** Require the use of appropriate landscaping, special architectural treatments, and/or siting considerations to protect public views for projects visible from major highways and arterial streets.

**Policy 2.10** 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 7.3 and 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 natural landform alterations (all emphases added).

Open Space/Conservation Element:

**Policy 7-M:** 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.

Policies 2.10, 7-A, and 7-K of the certified LCP require that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. The LUE also requires that consideration be given to “View Equity” which seeks, generally, to achieve a reasonable balance that preserves views where new development is proposed and providing for a reasonable opportunity to develop. Policy 7-M requires, where feasible and topography allows, that new development be terraced below the grade of Pacific Coast Highway. The project site is located between the first public road (Coast Highway) and the sea, and currently provides extensive blue water view from the Coast Highway

Certified Laguna Beach IP Section 25.07.012(F)(3) states:

The proposed development will not adversely affect recreational or visitor-serving facilities or coastal scenic resources.

The appellants contend that the project fails to conform with the visual resource protection policies of the certified LCP. Specifically, the appellants claim that the project site is located in an area of unique scenic quality, and the proposed 3-story residential structure would obliterate public views both from the state scenic highway and from the beach, inconsistent with the LCP policies cited above.

The City’s record found that the proposed project is designed to protect views to and along the ocean and scenic coastal areas along Coast Highway. The City found that the visibility of the structure from the beach is consistent with the pattern of development within the neighborhood and along Coast Highway. The City found that the project will be “visually compatible with the character of surrounding areas” as required by Section 30251 and the City’s LCP in that the project will be visible to the same extent that other single-family

homes in the immediately surrounding area, as viewed from the beach below. The City found that the visual impacts from Coast Highway to the ocean have been minimized through the creation of a 16-foot-wide public view corridor ([Exhibit 11](#)), with low-height landscaping, along the north side of the property and by the limited height of the structure, which would be 7 ft. above street grade ([Exhibit 10](#)). The City further found that the proposed project is designed to be visually compatible with the character of surrounding areas, as the creation of a 16-foot-wide view corridor in the side yard setback is consistent with the development pattern along this stretch of Coast Highway. Finally, the City found that the project would not result in significant impacts to scenic and visual qualities of the coast, as the development is consistent with the area's height restrictions (30 ft. overall and 15 ft. above front curb) and has been designed to minimize the obstruction of the existing coastal views.

However, Policy 2.10 of the LUE requires new development to maximize the preservation coastal views and minimize blockage of existing views. Policy 7-M of the Open Space/Conservation Element also requires new development along Pacific Coast Highway to preserve existing views where feasible and, where topography allows, new development to be terraced below the grade of Pacific Coast Highway. As further described in Sections IX.D (Visual Resources) and IX.H (Potential Takings) of this report, there is a viable project alternative that further minimizes blockage of existing coastal views taken from the Coast Highway by terracing the proposed structure below the grade of the Coast Highway. Therefore, the Commission finds that the City did not adequately consider the project's consistency with the visual resource protection policies of the certified LCP, and finds the appellants' contention with regard to visual resource impacts does raise a substantial issue.

### **Appellants' Argument No. 3: Protection of Archaeological and Paleontological Resources.**

The appellants' third contention is that the City's approval did not consider protection of archaeological and paleontological resources, inconsistent with the certified LCP.

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

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

...

(7) The proposed development will not have any adverse impacts on any known archaeological or paleontological resource.

The appellants contend that, even though the project site contains a "well-developed prehistoric shell midden deposit", the City's approval did not require a map that shows where construction and construction-related activities, including staging, will take place in relation to the shell midden and did not require a full paleontological assessment of the project area. Consequently, the appellants argue that the City inadequately found the project will not adversely affect archaeological or paleontological resources.

The City's findings state that a Cultural Resources Assessment was completed for the project by evaluating project impacts to historical and archaeological resources. The

results of the assessment have revealed that there are known archaeological resources onsite. The applicant has proposed to avoid development of the proposed residential structure on the portion of the known resource identified as significant. Nonetheless, given the presence of archaeological resources within the project site and the identification of several prehistoric archaeological resources in the immediate vicinity, the City found there is a potential to encounter previously unknown archaeological resources during construction of the project. Based on these results, the applicant proposed mitigation measures MM-CULT-1 through MM-CULT-7 for the archaeological and Native American construction monitoring to occur during project-related ground disturbing activities, conduct training sessions for construction personnel, and require best management practices for inadvertent discovery of resources and human remains, and prepare a monitoring report within 14 days of concluding the archaeological monitoring ([Exhibit 9](#)). The City also delivered AB 52 consultation letters on October 10, 2022 to affiliated tribal groups.

With regard to paleontological resource impacts, the City Council requested information from the CEQA consultant on paleontological resources. The City Council considered, as reflected in the CEQA document, that a Vertebrate Paleontology Records Check was conducted by the Los Angeles County Natural History Museum for paleontological resources on the project site and in the vicinity. The research did not find any recorded paleontological resources within the project site boundaries. The City found that the CEQA documents reflected that mitigation measure MM-BIO-2 would ensure protection of any paleontological resources encountered during excavation on site.

The Commission finds that the City had adequately found the project will not adversely affect archaeological or paleontological resources based on the proposed mitigation measures, consistent with Certified Laguna Beach IP Section 25.07.012(F)(2) and (7). The appellants' contention with regard to archaeological and paleontological resource impacts does not raise a substantial issue.

### **SUBSTANTIAL ISSUE FACTORS:**

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

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

The City did not substantially support its approval of the project as being consistent with all of the applicable policies of the certified LCP and the public access and recreation provisions of the Coastal Act, specifically the bluff edge determination, corresponding bluff setback policies, and visual resource protection policies. Therefore, there is a low degree of factual and legal support for the local government's decision that the project, as conditioned, is consistent with the LCP, and this factor supports a substantial issue finding.

**2. The extent and scope of the development as approved or denied by the local government.**

The City-approved development includes the construction of a new 7,231 sq. ft., 3-story

single-family dwelling with an attached 3-car garage, elevated decks, retaining walls, pool, spa, and landscaping on a vacant oceanfront blufftop lot. In general, the proposed project does not adhere to the bluff edge setback policies set out in the LCP. The City concluded the project would be consistent with these setback policies, however, that was based on an erroneous bluff edge determination that placed the bluff edge well seaward of the actual bluff edge location which is much further upslope and closer to Coast Highway. Accordingly, the scope and extent of the development approved by the City, which is not compliant with the bluff edge setback requirement, is well beyond what is fully consistent with the LCP. The City failed to analyze this inconsistency and consider a project alternative that would be the minimum necessary to avoid an unconstitutional taking. As further described in Sections IX.D (Visual Resources) and IX.H (Potential Takings) of this report, the proposed development would be the largest structure in the neighborhood and almost entirely on the bluff face. Therefore, the Commission finds that the extent and scope of the City-approved development is inconsistent with the Chapter 3 policies of the Coastal Act. This factor does support a finding of substantial issue.

**3. The significance of the coastal resources affected by the decision.**

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

**4. The precedential value of the local government's decision for future interpretations of its LCP.**

The subject site is an oceanfront bluff property. The majority of ocean-fronting development in Laguna Beach is sited on bluff properties, and the decision of the local government for this project might influence future permit decisions made in the City's Coastal Zone. This factor supports a finding of substantial issue.

**5. Whether the appeal raises local issues, or those of regional or statewide significance.**

Bluff face and blufftop development, as well as public coastal views, are issues of statewide significance, given that coastal bluffs and views are important coastal resources throughout the state, not just in Laguna Beach. Requiring consistency with the certified LCP (particularly policies relating to bluff face/top development), and the public access and recreation provisions of the Coastal Act is significant to all the people of California who wish to enjoy the public beaches of California. Unsubstantiated application of these policies could have regional or statewide ramifications regarding other similar LCPs and their policies regarding bluffs. This factor supports a finding of substantial issue.

**Conclusion**

In conclusion, staff recommends that the Commission find that a substantial issue exists with respect to whether the local government action conforms with the policies of the City's certified LCP and the public access policies of the Coastal Act.

## VI. MOTION AND RESOLUTION – DE NOVO PERMIT

**Motion:** I move that the Commission **approve** Coastal Development Permit No. A-5-LGB-24-0018 pursuant to the staff recommendation.

Staff recommends a **YES** vote. 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 the Commissioners present.

**Resolution:**

The Commission hereby approves Coastal Development Permit Application No. A-5-LGB-24-0018 and adopts the findings set forth below on grounds that the development, as conditioned, will be in conformity with the Certified Local Coastal Plan and the public access and recreation policies of Chapter 3 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 will substantially lessen any significant adverse impacts of the development on the environment.

## VII. STANDARD CONDITIONS

This permit is granted subject to the following 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 permittees 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 permittees to bind all future owners and possessors of the subject property to the terms and conditions.

## VIII. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Final Revised Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director two (2) full sized sets of final architectural plans, foundation plans, and grading plans that shall be revised as follows:
  - A. The proposed development, including but not limited to, the residence, elevated decks, retaining walls, pool and spa, shall be landward of the building stringline as identified in [Exhibit 6](#).
  - B. The proposed development, including but not limited to the residence, decks accessory structures, fencing/walls, and landscaping, shall not exceed the elevation of the existing curb fronting Coast Highway or the road surface of Coast Highway nearest the subject property where there is no curb. The topmost floor of the proposed development shall be removed from the proposal. The final plans will substantially conform with approximately 5,675 sq. ft. of total habitable area, 283 sq. ft. of mechanical area, and 724 sq. ft. garage; total deck area shall not exceed 1,465 sq. ft. but may be less to comply with the building stringline limitation noted in subsection A of this condition.
  - C. No development, as defined in section 30106 of the Coastal Act, except for at-grade ground covers that do not require any grading, shall occur in the 16 ft.-wide north side yard view corridor.
  - D. All exterior lighting shall be revised to conform to the requirements of Special Condition 13 (Exterior Lighting).

The applicant shall undertake development in accordance with the approved final 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 amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. **Conditions Imposed by Local Government.** This action has no effect on conditions imposed by the City of Laguna Beach pursuant to an authority other than the Coastal Act, except as provided in the last sentence of this condition. The permittee is responsible for compliance with all terms and conditions of this coastal development permit in addition to any other requirements imposed by other local government permit conditions pursuant to the local government's non-Coastal Act authority. In the event of conflicts between terms and conditions imposed by the local government and those of this coastal development permit, such terms and conditions of this coastal development permit shall prevail.
3. **Conformance with Geotechnical Recommendations.** PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, written evidence that a registered professional civil

engineer and certified engineering geologist, or a registered geotechnical engineer, have reviewed and approved all final design plans including foundation and grading/drainage plans and certified that each of those final plans is consistent with the Commission's approval and with all the recommendations contained in the geotechnical investigations prepared for the subject site.

**4. No Future Bluff or Shoreline Protective Device(s).**

- A. By acceptance of this permit, the permittee agrees, on behalf of themselves and any successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to CDP No. A-5-LGB-24-0018 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 permittee 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 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.

Approval of CDP No. A-5-LGB-24-0018 does not allow encroachment onto public trust lands. Any future encroachment onto public trust lands shall be removed unless authorized by the Coastal Commission. Additionally, encroachment onto public trust lands is subject to approval by the State Lands Commission or other designated trustee agency.

5. **Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.** The applicant shall comply with the following construction-related requirements:

- A. No demolition or construction materials, debris, equipment or waste shall be placed or stored in any location where it may enter or impact sensitive habitat areas, streams, wetlands, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
- B. The permittees shall employ Best Management Practices (BMPs) to ensure that erosion is minimized and the sea is protected from sedimentation.
- C. Any and all debris resulting from demolition or construction activities 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 applicant 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 shall be 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

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

6. **Pool 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 pool leak prevention/detection plans, which demonstrates that water overflow onto the bluff will be prevented, if a pool is still proposed as part of the revised final plans pursuant to **Special Condition 1** of this permit.

7. **Bird Strike Prevention Plan.** 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:

A. 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 appliques (e.g. stickers/decals) designed to reduce bird-strikes by reducing reflectivity and transparency. Any appliques used shall be installed to provide coverage consistent with manufacturer specifications (e.g. one applique for every 3 foot by 3 foot area). Use of opaque or partially opaque materials is preferred to clear glass or Plexiglas and appliques. All materials and appliques 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.

8. **Landscaping – Drought Tolerant, Non-Invasive Plants.** The applicant shall comply with the following landscaping requirements:

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/>), or with any status in the California Invasive Plant Council Inventory(<http://www.cal-ipc.org/plants/inventory>), 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 or very low water use plants according to the Water Use Classification of Landscape Species.(See: <https://wucols.ucdavis.edu/plant-search->

database).

- B. No permanent in-ground irrigation systems shall be installed in the rear yard (between the residence and the bluff slope). Temporary above ground irrigation is allowed to establish plantings. Any permanent irrigation system landward of the residence shall be low volume (drip, micro jet, etc.), weather based and shall only be permitted on the street facing portion of the lot. 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.

9. **Construction Staging Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the written review and approval of the Executive Director, two copies of a construction staging plan. The construction staging plan shall incorporate the following:

- A. The plan shall specify where construction equipment is proposed to be stored during construction in order to maintain slope stability, control erosion, and maintain public access along Coast Highway.
  - i. All construction equipment to be stored overnight shall be stored on-site, outside the street travel way.
  - ii. Placement of the on-site dumpster shall incorporate use of a flagman to direct traffic during placement.
  - iii. No staging shall occur on the beach below the project site.
- B. The plan shall also identify a disposal site outside of the Coastal Zone for waste materials and recyclable materials.

10. **Archaeological and Tribal Cultural Resource Monitoring and Treatment Plan.**

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

- A. All representatives of Juaneño (Acjachemen) Native American Tribes and Rincon Band of Luiseno Indians 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 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 representatives of the Juaneño (Acjachemen) Native American Tribes and the Rincon Band of Luiseno Indians 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.

- 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 or tribal cultural resources. Prior to grading operations, a copy of all archaeological documents and reports shall be provided to the Native American monitors.
- D. The permittee shall provide sufficient archaeological and Juaneño (Acjachemen) and/or Rincon Band of Luiseno Indians 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.
- E. If any archaeological 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 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) 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.
- G. The Permittee shall implement the approved Archaeological and Tribal Cultural Resources Treatment and Monitoring 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.

- 11. Assumption of Risk, Waiver of Liability, and Indemnity.** By acceptance of this permit, the permittee acknowledges 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, 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.
- 12. Future Improvements.** This permit is only for the development described in Coastal Development Permit A-5-LGB-24-0018. Pursuant to Title 14 of the California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to this development governed by the Coastal Development Permit A-5-LGB-24-0018. Accordingly, any future improvements to the structures authorized by this permit, including but not limited to, repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 of the California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit A-5-LGB-24-0018 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

**13. Exterior Lighting.** By acceptance of this permit, the permittee shall implement the following exterior lighting requirements:

- A. All new exterior night lighting installed on the site shall be designed to achieve the minimum degree of illumination necessary for safety or the intended use of the lighting. Lighting shall be energy efficient, DarkSky Approved luminaires, and shielded to direct light downward and away from non-target areas. Lighting shall use bulbs with a correlated color temperature of 3000K or less. Furthermore, no skyward-casting lighting shall be permitted unless shielded towards the illuminated object and designed such that impacts on the night sky are minimized.
- B. Lighting shall be designed to minimize light trespass into adjacent non-target areas, and to avoid the illumination of the beach and ocean and sensitive habitat areas. Programmable timing devices shall be utilized to turn off unnecessary lights where feasible.

**14. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant 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.

**15. View Corridor Deed Restriction.**

- A. No development, as defined in Section 30106 of the Coastal Act, except for at-grade ground covers that do not require any grading, shall occur in the 16 ft.-wide view corridor on the northern side yard setback area depicted on [Exhibit 11](#).
- B. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on development in the designated view corridor area. The recorded document(s) shall include a legal description and corresponding graphic depiction of the legal parcel(s) subject to this permit and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the designated view corridor area prepared by a licensed surveyor based on an on-site inspection of the view corridor area.

- C. The deed restriction shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed.
- D. The deed restriction shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner in perpetuity.

## **IX. FINDINGS AND DECLARATIONS – DE NOVO**

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

### **A. Project Description**

The project site is located within an urbanized low-density residential neighborhood in the City of Laguna Beach ([Exhibit 1](#)). Surrounding land uses include the Pacific Ocean shoreline to the west, Coast Highway to the east and single-family residential land uses beyond, and single-family residential land uses to the north and south. There is a partially in-filled natural drainage channel to the north. The project site is designated as Village Low Density (3-7 DU/Acre) per certified LUP and Residential Low Density (R-1) per the certified IP.

The project site consists of a rectangular-shaped, coastal bluff top parcel that totals approximately 0.56-acre (24,338 sq. ft.). The site is currently undeveloped with the exception of an existing electrical utility box and an associated three-foot high retaining wall along the northern edge of the project site. Site vegetation consists of native and non-native weeds, grasses, shrubs, and sparse trees. The project site consists of a gently sloping pad trending southwesterly adjacent to Coast Highway, followed by a steeply sloping area seaward to a second pad area, followed by a coastal bluff descending to the Pacific Ocean shoreline and sandy beach below. Site elevations vary between approximately 15 feet and 123 feet for an overall relief of roughly 108 feet.

The City-approved development involves the construction of a new 7,231 sq. ft., 3-story single-family residential structure with an attached 3-car garage, elevated decks, retaining walls, pool, spa, and landscaping on a vacant oceanfront blufftop lot ([Exhibit 2](#)). Grading consists of 4,340 cubic yards of cut and 1,070 cubic yards of fill. The project also includes installation site lighting, driveway construction, and connection to offsite utilities (sewer, domestic water, electrical, telecommunications) in the right-of-way on Coast Highway. The project would include stormwater detention features, including a Biofiltration system, located at the rear yard, located on the western end of the project site.

### **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 appeal by the Coastal Commission that are located between the first public road and the sea, like this one, are the City's certified Local Coastal Program and the public access and public recreation policies of the Coastal Act. The City of Laguna Beach Local Coastal Program was certified by the Commission on January 13, 1993 (except for the areas of deferred certification: Three Arch Bay, 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.

### **C. Hazards**

Laguna Beach Land Use Element:

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

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

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.

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.

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.

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 of the property as a deed restriction.

Action 7.3.11: Require all coastal development permit applications for new development on an oceanfront or on an oceanfront bluff property subject to wave action to assess the potential for flooding or damage from waves, storm surge, or seiches, through a wave uprush and impact report prepared by a licensed civil engineer with expertise in coastal processes. The conditions that shall be considered in a wave uprush study are: a seasonally eroded beach combined with long-term (75 years) erosion; high tide conditions, combined with long-term (75 year) projections for sea level rise; storm waves from a 100-year event or a storm that compares to the 1982/83 El Nino event.

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).

**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 Policy 7.3)

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.

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.

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.

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.

#### Open Space/Conservation Element Policies:

**Policy 7-K:** Preserve as much as possible the natural character of the landscape (including coastal bluffs, hillsides and ridgelines) by requiring proposed development plans to preserve and enhance scenic and conservation values to the maximum extent possible, to minimize impacts on soil mantle, vegetation cover, water resources, physiographic features, erosion problems, and require re-contouring and replanting where the natural landscape has been disturbed.

**Policy 10-C:** Require projects located in geological hazard areas to be designed to avoid the hazards, where feasible. Stabilization of hazard areas for purposes of development shall only be permitted where there is no other alternative location or where such stabilization is necessary for public safety. The more unstable areas should be left ungraded and undeveloped, utilizing land use designations such as Open Space.

**Policy 10-E:** Development in the areas designated “Residential/Hillside Protection” on the Land Use Plan Map or within potential geologic hazard areas identified on the Geological Conditions Map of the Open Space/Conservation Element shall not be permitted unless a comprehensive geological and soils report is prepared pursuant to Title 22 of the City’s Municipal Code, and adequate mitigation measures have been approved and implemented by the City’s geologist. For projects located in areas subject to hazards as identified on the Geologic Conditions Map or subject to erosion, landslide or mudslide, earthquake, flooding or wave damage hazards confirmed by a geologic assessment, as a condition of approval or new development a waiver of liability shall be required through a deed restriction.

Section 25.50.004(B)(4) of the certified Laguna Beach Implementation Plan states, in relevant parts:

(b) The building stringline averages the setback of oceanfront buildings on both adjacent sides of coastal lots and is defined as follows: The stringline setback shall be depicted as a line across a parcel that connects the oceanward ends of the nearest adjacent walls of the main buildings on adjacent lots. Posts or columns that extend to grade from upper story decks, balconies, stairways and other types of similar features shall not be used to define the building stringline criteria.

...

(c) A deck stringline may be used to establish a setback for decks. The deck stringline setback shall be depicted as a line across a parcel that connects the oceanward ends of the decks on main buildings on adjacent lots.

The proposed project will be sited on an ocean-fronting lot that spans the face of a coastal bluff. The Commission has consistently found that development on a bluff site that is adjacent to the sea is inherently subject to hazards from erosional forces imposed against the bluff material from wave energy, wind and rain. The hazards policies of the LCP require, among other things, that all new development be (per the policies cited above): adequately evaluated to ascertain potential negative impacts on natural resources and on existing adjacent development; designed and sited to avoid hazardous areas and minimize risks to life and property from coastal and other hazards; and assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. In addition, the LCP policies cited above require, on bluff sites, that applications 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 hazards for its economic life.

### **Bluff Development/Bluff Edge Determination**

Setting development farther back from the edge of the coastal bluff decreases the project's visibility from the public beach below and ensures greater stability. 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.

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.

As explained in the Substantial Issue portion of this staff report, the Commission staff's geologist, Phillip Johnson, has reviewed the applicant's geotechnical analyses, bluff edge determination, topographic survey, cross-sections, historic aerial photographs, coastal hazard analyses and proposed architectural plans. Based on his analysis, Mr. Johnson estimates the bluff edge on the subject site as the 115 ft. MSL elevation contour, which is within the site located at 31451 Coast Highway, and is mostly landward of the proposed residence ([Exhibit 5](#)).

Actions 10.2.7 and 10.2.8 of the LUE (cited above) require a minimum bluff edge setback of 25 feet from the edge of the coastal bluff for primary structures (i.e. single-family residence) and major accessory structures that require a structural foundation, and a 10-foot setback for minor accessory structures (e.g. landscaping, decks and patios) that do not require structural foundations. In addition, Action 7.3.5 of the LUE prohibits development on oceanfront bluff faces (with a few exceptions for public improvements). Based on the bluff edge determination for the subject site, most of the proposed single-family residence and associated development (including the pool, spa, elevated decks, and retaining walls) would occur on the bluff face ([Exhibit 6](#)). Therefore, strict application of the bluff edge setback policies would render the project non-approvable.

In response to this concern, the applicant submitted an analysis showing the buildable area on the project parcel applying the Commission's determination of bluff edge setback ([Exhibit 7](#)). The analysis defined the buildable site area using the required 25 ft. bluff top setback from 115 ft. MSL contour line, along with the required front yard setback of 20 ft., a 10 ft. Coast Highway street widening dedication, and the required north side yard setback of 16 ft. by the City Council to create a broader public view corridor and avoid impacts to the identified shell midden on the project site. The resulting allowable buildable area was approximately 1,168 sq. ft. within the 24,338 sq. ft. lot (or approximately 4.7% of the subject lot).

As described in further detail in Section IX.H (Potential Takings) of this report, the strict application of the bluff edge setback policies to the project as proposed could potentially result in unconstitutional taking of private property without payment of just compensation. Therefore, in this case, even though the Commission finds that the project as proposed is inconsistent with the blufftop setback policies of the certified LCP, in light of the evidence that denying the proposed project could constitute an unlawful taking of the applicant's property without just compensation, pursuant to Coastal Act Section 30010, the Commission determines that the applicant is entitled to a reasonable economic use of the property.

Having reached this conclusion, however, the Commission also finds that the Coastal Act (or in this case, the certified LCP) only instructs the Commission to apply the applicable

Coastal Act provisions in a manner that will avoid an unconstitutional taking of property. It does not authorize the Commission to otherwise suspend the operation of, or ignore, the provisions of the certified LCP in acting on this CDP application. Thus, the Commission must still comply with the requirements of the certified LCP by conditioning the project in a manner that is as consistent with the LCP as much as possible, while avoiding an unconstitutional taking. The certified LUE Action 10.2.7. requires all new development located on oceanfront bluffs to be sited in accordance with the stringline but not less than 25 ft. from the bluff edge. As discussed, the strict application of 25 ft. minimum setback from the identified bluff edge is not possible on the site. Thus, in this case, the Commission finds that applying the stringline for development setback would be the most feasible method to ensure consistency with the certified LUE while avoiding a taking of the property, as further discussed in Section IX.H (Potential Takings) of this report.

Pursuant to certified IP Section 25.50.004(B)(4)(b) and (c), the applicant submitted a site plan adequately showing the proposed development with building and deck stringline setbacks ([Exhibit 8](#)). Although usually the deck stringline is more seaward than the building stringline, in this case, the house under construction on the immediate property to the south of the subject site at 31461 Coast Highway does not have a deck at the lowest level (i.e. the furthest oceanward project), and has a deck further landward on the site at the next level up, resulting in the building stringline situated more seaward than the deck stringline. In this case, the Commission finds that applying the building stringline for both the proposed primary structure and accessory structures is consistent with the intent of the certified LCP.

As proposed, the principal structure is already landward of the identified building stringline setback ([Exhibit 8](#)). However, the proposed accessory structure, including the pool, spa, and elevated decks, are seaward of the building stringline. Therefore, the Commission imposes **Special Condition 1**, which requires the applicant to submit revised final plans that fully conform to the identified building stringline setback.

### **Geotechnical Recommendations**

The applicant submitted a geotechnical report by Coastal Geotechnical dated September 16, 2004, and a geotechnical report update dated April 20, 2021, for the proposed development. The geologic reports present results and recommendations regarding the proposed development at the subject site. Preparation of the reports included research of readily available geotechnical records for the site and environs, identification of the site's subsurface soil and bedrock conditions by observation and exploration, collection of soil and bedrock samples, geotechnical laboratory testing of selected soil and bedrock samples obtained from exploratory work for the project, engineering analyses of the data obtained from the exploration and slope stability analyses.

The geotechnical consultant has found that the subject site is suitable for the proposed development, provided the recommendations contained in the geotechnical investigation prepared by the consultant are implemented in design and construction of the project. Commission's staff geologist agrees with the consultant's findings. Adherence to the recommendations contained in the geotechnical investigation is necessary to ensure that the proposed project assures stability and structural integrity, and neither creates nor contributes significantly to erosion, geologic instability, or destruction of the site or

surrounding area. Therefore, **Special Condition 3** requires that the applicant conform to the geotechnical recommendations in the above-mentioned geotechnical investigation and supplemental material, as summarized above.

### Sea Level Rise

Many of the coastal hazards issues described above will be affected by expected sea level rise. Sea level has been rising for many years. The State of California has undertaken significant research to understand how much sea level rise to expect over this century and to anticipate the likely impacts of such sea level rise. In June 2024, OPC adopted its most recent update to the State of California Sea Level Rise Guidance <sup>1</sup>, which reflects the previous five years of evolving scientific research on sea level rise. This Guidance document provides high-level, statewide recommendations for state agencies and other stakeholders to follow when analyzing sea level rise. Notably, it provides a set of projections that OPC recommends using when assessing potential sea level rise vulnerabilities for various projects. The updated State Guidance accounts for the current best available science on sea level rise for the State of California. The updated projections in the 2024 OPC Guidance suggest sea levels could rise between 1.0 and 6.6 feet by 2100 in the State of California, and between 0.6 and 6.3 feet at the Los Angeles tide gauge,<sup>2</sup> depending on future greenhouse gas emissions. The OPC Guidance recommends that development of only moderate adaptive capacity, including residential development, use the intermediate-high scenario (4.9 feet for the average statewide projected sea level rise), to inform decisions regarding development. These projections and recommendations are incorporated into the 2024 update of the Coastal Commission Sea Level Rise Policy Guidance.<sup>3</sup>

As our understanding of sea level rise continues to evolve, it is possible that sea level rise projections will continue to change as well (as evidenced by the recent updates to best available science). While uncertainty will remain with regard to exactly how much sea levels will rise and when, the direction of sea level change is clear and it is critical to continue to assess sea level rise vulnerabilities when planning for future development. Importantly, maintaining a precautionary approach that considers high or even extreme sea level rise rates and includes planning for future adaptation will help ensure that decisions are made that will result in a resilient coastal California.

The applicant has provided a coastal hazards analysis prepared by GeoSoils, Inc. dated April 23, 2020. The analysis identified the potential coastal hazards associated with the proposed development to include shoreline erosion, wave runup, and future sea level rise. Although the beach in front of the project site is subject to temporary but measurable wave runup and beach erosion, the study found the shoreline fronting the site is stable over the long term, referencing the 2002 USACOE wave study in South Coast Region, Orange County. During the coincidence of an eroded beach, high tides, and high waves, the bluff fronting the site may be subject to wave runup. However, the study found that because the

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<sup>1</sup> <https://opc.ca.gov/wp-content/uploads/2024/05/California-Sea-Level-Rise-Guidance-2024-508.pdf>

<sup>2</sup> The OPC Guidance provides sea level rise projections for 14 California tide gauges, and recommends using the statewide average.

<sup>3</sup> <https://documents.coastal.ca.gov/assets/slr/guidance/2024/2024AdoptedSLRPolicyGuidanceUpdate.pdf>

proposed development is located well above the beach, the development is safe from coastal hazards. In addition, there are large bed rock outcroppings in the surf zone in front of this site and adjacent properties that act like a breakwater to incoming waves. These rock outcroppings partially protect the site from waves and erosion. The study concluded there are no recommendations necessary to mitigate potential coastal hazards, new shore protection will likely not be required to protect the proposed development over the next 75 years, and the proposed development will neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or adjacent area. The Commission's staff geologist reviewed the study and agreed with its analysis, and found that the bedrock exposed in the bluff is highly resistant, so bluff retreat would likely be quite limited during the project design life, even accounting for future sea level rise.

In addition, the proposed development is located more than 90 ft. above the beach; therefore, wave runup would not reach the proposed development in the next 75 years. Thus, the proposed project is not anticipated to be adversely impacted by waves, marine erosion or future sea level rise, consistent with certified LUE policy 7.3.11.

#### **No Future Bluff/Shoreline Protective Devices**

Numerous LCP policies cited above require that new development not rely on existing or future bluff/shoreline protection devices to establish geologic stability or protection from coastal hazards and require that landform alteration be minimized. The certified LCP limits construction of protection devices because they can have a variety of negative impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach. In addition, the construction of a shoreline protective device to protect new development would conflict with Policies 7.3 and 10.2, and Actions 7.3.4 and 7.3.5 of the certified LUE that state that permitted development shall minimize the alteration of natural landforms.

Bluff/shoreline protective devices can result in a number of adverse effects on the dynamic shoreline system and the public's beach ownership interests. These protective devices can cause changes in the shoreline profile, particularly changes in the slope of the profile resulting from a reduced beach berm width. This may alter the usable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area in which the public can pass on public property, inconsistent with the public access policies of the Coastal Act.

In this case, the project does not propose any shoreline or bluff protective device, but the new residence would not be entitled to future bluff or shoreline protection under the certified LCP. Moreover, LUE Policies 7.3.4, 7.3.10, and 7.3.12 require new structures to not rely on bluff protective devices. Therefore, it is necessary for the applicant to acknowledge that new development is not entitled to bluff protection. Therefore, the Commission imposes **Special Condition 4**, which requires the applicant to acknowledge 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.

### **Assumption of Risk**

The proposed development is located on a bluff-top oceanfront lot. It is the nature of bluffs, especially ocean bluffs, to erode. Bluff failure can be episodic, and bluffs that seem stable now may not be so in the future. Even when a thorough professional geotechnical analysis of a site has concluded that a proposed development is expected to be safe from bluff retreat hazards for the life of the project, in some instances, unexpected bluff retreat episodes that threaten development during the life of a structure do occur. In the Commission's experience, geologists cannot predict with absolute certainty if or when bluff failure on a particular site may take place, and cannot predict if or when a residence or property may be come endangered.

Given that the applicant has chosen to implement the project despite potential risks from bluff and slope instability, sea level rise, erosion, landslides and wave uprush or other tidal induced erosion, the applicant must assume the risks of developing in an inherently hazardous area. Therefore, the Commission imposes **Special Condition 11**, requiring the applicant to assume the risk of developing in a geologically hazardous area. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand the hazards. In addition, the condition ensures that future owners of the property will be informed of the risks and the Commission's immunity from liability.

### **Future Improvements**

Repair and maintenance actions that could be exempt in other situations could extend the life of the proposed development and create additional coastal resource impacts, inconsistent with the conditions of approval. For this reason, the Commission imposes **Special Condition 12**, which states that any future improvements to the structures authorized by this permit, 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 create additional coastal resource impacts receives review under the Coastal Act (or certified LCP) by the appropriate regulatory body.

### **Conclusion**

The proposed project is not consistent with the bluff edge development setback and would ordinarily be a basis for denying the application. However, as discussed in more detail in Section IX.H (Potential Takings) of this report, the Commission finds that some development must be approved in order to avoid a potential takings. Accordingly, the

Commission finds that the proposed development, as conditioned, is most consistent with the bluff setback policies of the certified LCP while still allowing for the applicant's economic use of the property, and consistent with all other applicable policies of the certified LCP, which require that landform alteration be minimized, new development not rely on shoreline or bluff protective devices, and geologic stability is assured..

#### **D. Visual Resources**

Laguna Beach Land Use Element:

**Policy 2.10:** 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.)

Laguna Beach Land Use Element Glossary:

**147. View Equity** – Achievement of a fair, reasonable, and balanced accommodation of views and competing obstructions (such as structures, trees and/or vegetation), privacy and the use and enjoyment of property. When reasonably possible and feasible, development, including its landscaping, shall be designed to preserve views from and sunlight to neighboring properties without denying the subject property the reasonable opportunity to develop, as described and illustrated in the City's design guidelines.

Open Space/Conservation Element:

**Policy 7-A:** Preserve to the maximum extent feasible the quality of public views from the hillsides and along the city's shoreline.

**Policy 7-K:** Preserve as much as possible the natural character of the landscape (including coastal bluffs, hillsides and ridgelines) by requiring proposed development plans to preserve and enhance scenic and conservation values to the maximum extent possible, to minimize impacts on soil mantle, vegetation cover, water resources, physiographic features, erosion problems, and require re-contouring and replanting where the natural landscape has been disturbed.

**Policy 7-M:** 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.

Policies 2.10, 7-A, and 7-K of the certified LCP require that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. The LUE also requires that consideration be given to "View Equity" which seeks, generally, to achieve a reasonable balance that preserves views where new development is proposed and providing for a reasonable opportunity to develop. Policy 7-M requires, where feasible and topography allows, that new development be terraced below the grade of Pacific

Coast Highway. The project site is located between the first public road (Coast Highway) and the sea, and currently provides extensive blue water view from the Coast Highway ([Exhibit 13](#)). As seen in [Exhibit 13](#) with the story poles, the proposed structure would inevitably impact this view by erecting a structure on a currently vacant lot 7 ft. above the elevation of the Coast Highway. The appellant argues that the proposed project will impact public views of the bluff itself, as seen from the beach. The appellant also argues that the proposed project will obstruct existing blue water views from Coast Highway. The appellant includes photographs which demonstrate the viewshed from Coast Highway and view of the bluff from the beach ([Exhibit 3](#)). A letter submitted by Catherine Jurca also takes issue with the proposed project for much the same reason, and asserts that the removal of the top floor of the home would eliminate the view impacts as seen from Coast Highway ([Exhibit 14](#)). The Laguna Beach City Council, when considering an appeal of the project on March 12, 2024, discussed at length the view impacts and whether or not those impacts could be avoided with the removal of the topmost floor – though the Council did not impose the removal of the topmost floor. (City of Laguna Beach, Regular City Council Meeting March 12, 2024, [Agenda Item A](#); [Exhibit 4](#), City Staff Report.) When considering all the evidence provided in the record, the proposed project does not appear to strike a reasonable balance between the preservation of views and the applicant's reasonable opportunity to develop the subject parcel.

The Commission finds that the removal of the topmost level of the proposed home would maximize the preservation of coastal views and minimize the obstruction of coastal views, and is consistent with the principle of View Equity. The removal of the topmost level of the proposed home would maintain the existing approximately 180 ft. of largely unobstructed blue water views along Coast Highway. The proposed project, as currently designed, cascades down the bluff face and would not disturb the viewshed from Coast Highway while also allowing the applicant a reasonable opportunity to develop their property and improve it with a new home. The removal would result in the reduction of 1,556.20 sq. ft. of habitable space and 452.37 sq. ft. of deck space from the proposal for a total of 5,675.57 sq. ft. of living space and 1,464.61 sq. ft. of deck space. As conditioned, the proposed home's elevation profile would be consistent with the home on the neighboring property. The removal of the topmost floor would also achieve a home that is similar in size to those of similarly situated homes in the area, which the Commission finds is more consistent with the applicant's reasonable, investment backed expectations and still provides the applicant with a reasonable economic use of the home while further the goals of the LCP, as further described in Section IX.H (Potential Takings) of this report. Further, the Commission finds that the removal of the topmost floor is consistent with Policy 7-M of the LCP's Open Space/Conservation Element, which requires, where feasible and topography allows, that new development be terraced below the grade of Pacific Coast Highway. The applicant has not provided evidence that the removal of the top floor would be infeasible or that the topography of the subject parcel would not allow for the siting of the proposed home below the grade of Pacific Coast Highway. Therefore, the Commission imposes **Special Condition 1** requiring the applicant to submit revised final plans that remove the topmost floor from the proposal.

In addition, the visual impacts from Coast Highway to the ocean will be further minimized through the creation of a 16-foot-wide public view corridor on the northern side yard ([Exhibit 11](#)), with low-height landscaping, along the north side of the property. In order to memorialize the applicant's proposal for the view corridor, the Commission imposes **Special Condition 15**, which requires the applicant to record a deed restriction against the property to prohibit any development within the 16 ft.-wide view corridor. As conditioned, the project would not result in significant impacts to scenic and visual qualities of the coast, and has been designed to minimize the obstruction of the existing coastal views.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Policies 2.10, 7-A, 7-K, and 7-M of the certified LCP.

## **E. Biological Resources and Water Quality**

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

### Land Use Element:

**Policy 7.7:** 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.)

**Action 7.3.7:** Require swimming pools located on oceanfront bluff properties to incorporate leak prevention and detection measures.

### Open Space/Conservation Element:

**Policy 1-C:** 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:** 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-C:** Ensure that development is designed and managed to minimize the volume and velocity of runoff (including both stormwater and dry weather runoff) to the maximum extent practicable, to avoid excessive erosion and sedimentation.

**Policy 4-D:** 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-G:** Ensure that all development minimizes erosion, sedimentation and other pollutants in runoff from construction-related activities to the maximum extent practicable. Ensure that development minimizes land disturbance activities during construction (e.g., clearing, grading and cut-and-fill), especially in erosive areas (including steep slopes, unstable areas and erosive soils), to minimize the impacts on water quality.

**Policy 4-I:** 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:** Promote infiltration of both storm water and dry weather runoff, as feasible, to protect natural hydrologic conditions.

**Policy 4-H:** Require the property owner, homeowner's association or local government, as applicable, to continue the application and maintenance of Source Control and/or Structural Treatment Control BMPs as necessary to reduce runoff pollution, including appropriate construction related erosion and sediment control measures.

**Policy 7-K:** Preserve as much as possible the natural character of the landscape (including coastal bluffs, hillsides and ridgelines) by requiring proposed development plans to preserve and enhance scenic and conservation values to the maximum extent possible, to minimize impacts on soil mantle, vegetation cover, water resources, physiographic features, erosion problems, and require re-contouring and replanting where the natural landscape has been disturbed.

**Policy 9-I:** 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:** 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; ...

The City's LUP (Land Use Element) includes the following definitions:

**42. Environmentally Sensitive Habitat Area (ESHA)** - The Coastal Act defines environmentally sensitive area as any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

**43. Environmentally Sensitive Lands/Resources** – Land or resources that have been identified in the City's General Plan as having one or more of the following characteristics: 1) high- or very-high-value biological habitat, as described in the Open Space/Conservation Element; 2) located on the oceanfront; 3) a City-mapped watercourse; 4) geologic conditions such as slide-prone formations, potentially active fault, inactive fault, landslide potential, liquefaction potential, and soft coastal headlands; 6) hillside slopes greater than 45%; 7) adjacent wildland area, which requires fuel modification; and 8) major or significant ridgelines.

The LCP's Coastal Land Use Plan Technical Appendix Section IV states, in relevant part (page 52):

As described in this report, the coastal bluffs constitute a fragile natural resource particularly susceptible to damage and destruction. In 1969, F. Beach Leighton and Associates, a geotechnical consulting firm, prepared a Preliminary Geologic Map and accompanying research report for the city, which identified considerable stretches of the city's shoreline as susceptible to "slope instability and liquefaction and containing soft coastal headlands." (Refer to Map of Geologic Conditions contained in Section 6.) This study was largely responsible for the designation of coastal bluffs and adjacent ocean front property as "Environmentally Sensitive Areas." Much like natural watercourses and habitats, which also appear on the city's "Environmentally Sensitive Area Map," private or public development projects proposed on bluff top property must undergo special review procedures and detailed design standards, including site planning requirements and design review, setback provisions and compliance with provisions of the city's Zoning Ordinance, Geology Ordinance and Excavation and Grading Ordinance. This special review procedure is symbolic of the sensitive nature of coastal bluffs and surrounding environments and reflects the city's commitment to preserving this unique resource.

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. 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.

Section IV of the 1984 technical appendix to the City's LUP states that coastal bluffs and adjacent ocean front properties are valuable from a geological perspective. The Commission notes this section is separate from the intents of 30107.5 or 30240 of the Coastal Act, which both reference plant or animal life and habitats. Laguna Beach's [LUP](#) defines "Environmentally Sensitive Habitat Area" and "Environmentally Sensitive Lands/Resources" separately and it's clear that geologic landforms, as referenced by the appendix, would fall under the latter. In other words, the geological sensitivity of coastal bluffs and adjacent ocean front properties does not automatically designate them as ESHA.

The applicant submitted a biological resources assessment by LSA dated January 18, 2023. The report concluded that the project site consists of ruderal and disturbed vegetation, as well as some "moderate value" coastal bluff scrub, and found that project construction would result in minor impacts to coastal bluff scrub and would primarily occur on presently disturbed areas.

The Commission's staff ecologist, Dr. Corey Clatterbuck, visited the project site on March 21, 2025 and concurred with LSA's assessment that the site itself has classic coastal bluff scrub communities on it dominated by California brittlebush (*California encelia*) and lemonade berry (*Rhus integrifolia*). Given the dominance of these two species, both California brittle bush scrub (G3S3) and lemonade berry scrub (G3S3), respectively, were also identified on site but in small and isolated stands among non-native vegetation and bare ground. Other native plants on site included California sagebrush, bushrue, deerweed, wild cucumber, and cliff spurge. The biological resources assessment noted that cliff spurge has a 2B.2 ranking in the California Native Plant Society's (CNPS) Rare Plant Inventory, but it is not a federal or state-listed species and plant species with a CNPS ranking of 2B.1 or more rare are considered in an ESHA determination. Further, the applicant proposes to protect in place the existing cliff spurge for this development. Non-native plants on site included freeway ice plant, acacia, tree tobacco, palm trees, myoporum, and pride of madeira.

The site's context within the existing landscape further reduces the biological value of these small native vegetation stands. The site is surrounded by homes and apartments and is immediately adjacent to the Pacific Ocean and PCH. There is no connecting habitat on the other side of PCH or along the adjacent homes. The bluffs below and adjacent to the site have some scattered coastal bluff scrub plant species but are dominated by non-native vegetation. Due to stand size and fragmentation, the native vegetation communities on site do not rise to the level of ESHA. The biological resources assessment did not find sensitive wildlife on site and the Commission's ecologist concurs that the site is unlikely to support sensitive wildlife species. Therefore, the Commission's ecologist determines that there is no environmentally sensitive habitat area on site.

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 5**, 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 8** requires that vegetated landscaped areas shall only consist of native plants or nonnative drought tolerant plants, which are non-invasive.

Although it is unclear whether the revised project per **Special Condition 1** would include a pool, the current proposal includes a swimming pool on the bluff 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. Also, certified LUE Policy 7.3.7 requires swimming pools located on oceanfront bluff properties to incorporate leak prevention and detection measures. Therefore, **Special Condition 6** requires a pool 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, if a pool is still proposed as part of the revised final project.

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 adequate bird strike prevention, **Special Condition 7** 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.

The proposed development includes exterior building and landscape lighting including a total of 52 lights, 14 building lights, and 52 landscape lights, which would be 3 watts or less and consistent with dark-sky lighting. To ensure that the impacts on sky glow and other visual resources from the proposed exterior night lights are mitigated to the maximum extent, the Commission requires **Special Conditions 1 and 13**.

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. Public Access**

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

Land Use Element:

**Policy 4.3:** Maintain and enhance access to coastal resource areas, particularly the designated public beaches, by ensuring that access points are safe, attractive, and pedestrian friendly.

Action 4.3.1: Continue to pursue dedication and acceptance of beach access and other offers-to-dedicate throughout the City. The City shall maintain an inventory of public access and open space dedication or offers-to-dedicate to ensure such areas are known to the public and are protected through the coastal development permit process. (Same as Action 6.9.1)

Action 4.3.2: Maintain and improve public pedestrian access to and along beaches and oceanfront bluff using public rights-of-way and public easements. Protect, and where feasible, formalize, continued public use over areas used historically by the public (i.e. public prescriptive rights) to gain access to and along beaches, oceanfront bluffs, and other recreational areas.

Coastal Land Use Plan Technical Appendix:

The location and amount of new development shall maintain and enhance public access to the coast by providing adequate parking facilities or providing substitute means of serving the development with public transportation.

Open Space/Conservation Element:

**Policy 3-A:** Retain and improve existing public beach accessways in the City and protect and enhance the public rights to use the dry sand beaches of the City.

Also, 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 and recreation 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.

The project site is located within the South Laguna neighborhood and adjacent to West Street Beach. Public access to this beach is constrained due to existing development patterns and physical barriers such as steep bluffs and rocky headlands to the north and south. The proposed project is located entirely on private residential property where there is currently no public coastal access provided, so no long-term, post-construction impacts to public access on the lot are anticipated. There are two nearby coastal accessways from Coast Highway: 100 ft. south of the site is a public accessway located off of Bluff Drive and 130 ft. north of the project site is a public accessway located adjacent to the Laguna Royale multi-family structure. The project site does not impact either of these public accessways. The project is located well above the beach and does not interfere with the public's ability to access dry sand, the sea, or the mean high tide line.

Construction projects can adversely impact public access by displacing otherwise available on-street, public parking spaces. During construction, measures should be implemented to ensure that temporary impacts to public access are minimized to the maximum extent feasible. Therefore, **Special Condition 9** requires that a final construction staging plan be submitted for Commission review and approval. All construction equipment to be stored overnight shall be stored on-site, outside the street throughway. Placement of any on-site dumpster shall incorporate use of a flagman to direct traffic during placement. No staging shall occur on the beach below the project site.

As proposed and conditioned, the project will not impact existing public parking available in the area, and will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. The Commission thus finds that the proposed project is consistent with the LCP public access policies cited above and with the public access and recreation policies of the Coastal Act.

## **G. Archaeological, Tribal Cultural, and Paleontological Resources**

The City's certified Land Use Element includes the following policies regarding sensitive resources:

**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.

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.

**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.

Certified Laguna Beach IP Section 25.07.012(F) states, in relevant parts:

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

...

(7) The proposed development will not have any adverse impacts on any known archaeological or paleontological resource.

The Commission recognizes that the entirety of the State's coastal zone was originally indigenous territory that continues to have significance to Native American tribes. The Commission's Tribal Consultation Policy (adopted on August 8, 2018) recognizes the importance of State efforts to work with California Native American Tribes to protect Tribal Cultural Resources, 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.

Ground-disturbing activities such as this project 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. Additionally, according to the ethnographic evidence, permanent villages were concentrated near watercourses and the coast. Particularly because this site is on a coastal bluff, where (as shared in past consultations) culturally sacred ceremonies were often and still may be held, there is potential for impacts to tribal cultural resources, which must be avoided or minimized and mitigated.

As previously described, a Cultural Resources Assessment was completed for the project by evaluating project impacts to historical and archaeological resources, which revealed a known resource onsite. The applicant has proposed to avoid the significant contributing components of the resource, as described in the Cultural Resources Assessment by siting the residential structure outside of the boundary of the significant contributing components of the resource. Nonetheless, given the presence of archaeological resources within the project site and the identification of several prehistoric archaeological resources in the immediate vicinity, the applicant proposed mitigation measures MM-CULT-1 through MM-CULT-7 for archaeological and Native American construction monitoring to occur during project-related ground disturbing activities, training sessions to be conducted for

construction personnel, best management practices to be implemented for inadvertent discovery of resources and human remains, and preparation of a monitoring report within 14 days of concluding the archaeological and Native American monitoring ([Exhibit 9](#)). In order to memorialize the City's approval, the Commission imposes **Special Condition 2**, which recognizes that the Commission's action does not affect local conditions imposed by the City pursuant to an authority other than the Coastal Act. In the event of conflict between the terms and conditions imposed by the City and this CDP, the terms and conditions of this CDP shall prevail.

As the Cultural Resource Assessment includes information and recommendation about archaeological resources and does not represent tribal interests, in order to better understand the cultural significance of the project site and the surrounding project area, Commission staff engaged in tribal consultation, consistent with the Coastal Commission's Tribal Consultation Policy. Staff reached out to all representatives of Juaneño (Acjachemen) tribal entities listed on the California Native American Heritage Commission contact list via email on February 11, 2025, to initiate consultation. Staff received a response from a representative of the Juaneño Band of Mission Indians Acjachemen Nation – Belardes asking for mitigation measures including monitoring by representatives of their tribe and implementation of an inadvertent discovery plan to minimize the potential impacts on buried cultural resources. Consultation with a representative of the Juaneño Band of Mission Indians Acjachemen Nation - 84A occurred on September 5, 2025, and the representative requested Native American monitoring of all ground disturbing activities and flexibility to follow tribes' recommendations if provided while onsite.

Therefore, to minimize impacts to potential archaeological and tribal cultural resources, the Commission imposes **Special Condition 10**, 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 an Archaeological and Tribal Cultural Resource Treatment and Monitoring Plan to ensure tribal cultural resources that may exist, including in the previously disturbed areas, are protected and properly treated. The plan shall also include best practices and treatment measures for other known and potential resources, criteria for significance of known and potential resources, and deference to tribes on the treatment of tribal cultural resources, wherever feasible and consistent with other state and federal laws as requested during consultation. These Tribes must also be invited to monitor all ground disturbing activities. An archaeological monitor must also be onsite during ground disturbing activities. This Plan must be submitted for review and approval by the Executive Director prior to issuance of the CDP and include monitoring and treatment procedures, including those listed in the special condition and **Appendix B**.

With regard to paleontological resource impacts, the project's CEQA document stated that a Vertebrate Paleontology Records Check was conducted by the Los Angeles County Natural History Museum for paleontological resources on the project site and in the vicinity. The research did not find any recorded paleontological resources within the project site boundaries. Nevertheless, the applicant proposed construction site housekeeping measures which would ensure protection of any paleontological resources encountered during excavation on site.

The Commission finds, therefore, that as proposed and conditioned, the proposed project minimizes and mitigates potential impacts to archaeological, tribal cultural, and paleontological resources consistent with the above-referenced policies of the certified LCP.

## **H. Potential Takings**

As discussed above, the project site is subject to significant development constraints given that (1) the site is subject to a large bluff edge setback that renders only 4.7% of the project site buildable, (2) the site is subject to a certain degree of inherent coastal hazards, and (3) is adjacent to a highly visible and popular public beach. While the hazards, views, and public access issues can be appropriately addressed via conditions of approval, no amount of conditions can ensure that this project conforms to the bluff edge setback policies of the LCP. As such, and as described in detail above, the project cannot be found consistent with the certified LCP and requires denial of this CDP application.

### The Coastal Act

If and when the Commission considers denying a CDP application for a project, a question may arise as to whether the denial results in an unconstitutional “taking” of an applicant’s property without payment of just compensation. Denial of all or substantially all economic use of a parcel without just compensation may result in an unconstitutional “taking” of an applicant’s property. Coastal Act Section 30010 states as follows:

The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission... to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.

Section 30010 is a statutory prohibition against unconstitutional takings, and does not provide additional property rights above and beyond the rights already afforded by the California and U.S. Constitutions. (Pub. Res. Code § 30010.) The Commission must assess whether denial of a CDP for the proposed development could result in an unconstitutional taking of private property. If the Commission determines that a taking is possible, then Section 30010 allows the Commission to approve some amount of development in order to avoid such a taking, even if the approved development is inconsistent with Coastal Act provisions, provided Coastal Act inconsistencies are avoided/minimized as much as possible while still avoiding a taking.<sup>4</sup> On the other hand, if the Commission concludes that its action likely would not constitute a taking, then it may deny the CDP for the project while still complying with Coastal Act Section 30010. Thus, the Commission must perform a takings analysis. Specifically, the Commission must attempt to determine how much development must be allowed in order to avoid a taking. It is important to note, however, that in undertaking such analysis, the Commission is not a

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<sup>4</sup> See, for example, CDP Nos. A-2-MAR-21-0048 (Groneman/Sibley SFD); 4-23-0184 (Sanddew LLC); and 5-18-0930 (Graham Property Management, LLC).

court, and it cannot ultimately adjudicate whether its action constitutes an unlawful taking as a matter of law. Only a court can make a final and determinative taking decision were the Commission's decision to be challenged. The following section discusses general principles which are instructive.

Per the Commission's typical practice, Commission staff requested a variety of documents from the applicant to conduct the takings evaluation, including but not limited to information related to the fair market value and property costs of the land, and history of the lot. The applicant provided the requested information on December 3, 2025. In the remainder of this section, the Commission considers whether, for purposes of compliance with Coastal Act Section 30010, denial of a CDP for the proposed development could constitute a taking.

#### General Takings Law Principles

The Fifth Amendment of the United States Constitution provides that private property shall not "be taken for public use, without just compensation."<sup>5</sup> Similarly, Article 1, Section 19 of the California Constitution provides that "[p]rivate property may be taken or damaged for public use only when just compensation...has first been paid to, or into court for, the owner." The idea that the Fifth Amendment proscribes more than the direct appropriation of property is usually traced to *Pennsylvania Coal Co. v. Mahon* ((1922) 260 U.S. 393). Since *Pennsylvania Coal*, most of the takings cases in land use law have fallen into two categories.<sup>6</sup> First, there are the cases in which government authorizes a physical occupation of property.<sup>7</sup> Second, there are the cases in which government merely regulates the use of property.<sup>8</sup> A taking is less likely to be found when the interference with property is an application of a regulatory program "adjusting the benefits and burdens of economic life to promote the common good" rather than a physical appropriation. *Keystone Bituminous Coal Ass'n. v. DeBenedictis* (1987) 480 U.S. 470, 488-489, footnote 18. The Commission's actions here would be evaluated under the standards for a regulatory taking.

The United States Supreme Court has identified two circumstances in which a regulatory taking might occur. The first is a "categorical" taking identified in *Lucas v. South Carolina Coastal Council* ((1992) 505 U.S. 1003, 1014). In *Lucas*, the Court found that a regulation that denied all economically viable use of property was a taking without undertaking a "case specific" inquiry into the public interest advanced by the challenged regulation. The *Lucas* court emphasized, however, that this category is extremely narrow, applicable only "in the extraordinary circumstance when no productive or economically beneficial use of land is permitted" or the "relatively rare situations where the government has deprived a landowner of all economically beneficial uses" or rendered it "valueless".<sup>9</sup>

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<sup>5</sup> The Fifth Amendment was made applicable to the States by the Fourteenth Amendment (see *Chicago, B. & Q. R. Co. v. Chicago* (1897) 166 U.S. 226).

<sup>6</sup> See *Yee v. City of Escondido* (1992) 503 U.S. 519, 522-523.

<sup>7</sup> See, for example, *Loretto v. Teleprompter Manhattan CATV Corp.* (1982) 458 U.S. 419.

<sup>8</sup> See *Yee, supra*, 503 U.S. at pages 522-523.

<sup>9</sup> See *Lucas* at pages 1016-1017, and see *Riverside Bayview Homes, supra*, 474 U.S. at page 126 (regulatory takings occur only under "extreme circumstances").

The second circumstance in which a regulatory taking might occur is under the three-part, ad hoc test identified in *Penn Central Transportation Co. (Penn Central) v. New York* ((1978) 438 U.S. 104, 124). This test generally requires an examination of the character of the government action, the economic impact of the challenged regulation, and the extent of the regulation's interference with reasonable, investment-backed expectations.<sup>10</sup> In both *Lucas* and *Penn Central*, even where the challenged regulatory act falls into one of these categories, government may avoid a taking if the restriction inheres in the title of the property itself. In other words, when background principles of state property law (e.g., related to public nuisances or property title) require the same outcome as a government decision might, then the government decision does not constitute a taking.<sup>11</sup>

#### Unit of Property

As a threshold matter, before a taking claim can be analyzed, it is necessary to define the unit of property against which the claim will be measured. In most cases, this is not an issue because there is a single, readily identifiable legally created lot or parcel of property on which development is proposed. The issue is more complicated in cases where there are multiple lots or parcels with differing numbers of APNs (e.g., ten parcels making up a single APN), where there are questions about the legality of the lots/parcels/APNs, where the landowner owns or controls adjacent or contiguous land that are related to the proposed development, or combinations of all of the above. Under the U.S. Supreme Court decision in *Murr v. Wisconsin* ((2017) 137 S.Ct. 1933), reviewing courts must consider objectively whether reasonable expectations about property ownership would lead a landowner to anticipate that a property in question would be treated as a single unit or as separate tracts. First, courts give substantial weight to the property's treatment, in particular how it is bounded or divided, under state and local law. Second, courts look to the property's physical characteristics, including the physical relationship of tracts, topography, and the surrounding environment. Third, courts assess the property's value under the challenged regulation, with special attention to the effect of the burdened land on the value of other holdings.

The applicant acquired both the subject property (Parcel 1; 31451 Coast Highway) and the neighboring property to the south (Parcel 2; 31461 Coast Highway) in 2004. The existing lot area of Parcel 1 at the time was approximately 8,600 sq. ft. and the existing lot area of Parcel 2 was approximately 39,000 sq. ft. In 2005, the applicant applied for and the City Council approved Lot Line Adjustment No. LLA 05-11. The lot line adjustment would have increased the area of Parcel 1 and decreased the area of Parcel 2 by approximately 4,500 sq. ft. However, that City Council action did not include issuance of a CDP and did not notify the Commission of the City's approval. Therefore, that 2005 City action was not valid. In 2008, the applicant submitted another lot line adjustment request, and the City Council approved LLA 08-05 and CDP 08-49, which increased the area of Parcel 1 and

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<sup>10</sup> See *Penn Central*, 438 U.S. at 134. In *Palazzolo v. Rhode Island* ((2001) 533 U.S. 606), the Supreme Court again acknowledged that the *Lucas* categorical test and the three-part *Penn Central* test were the two basic situations in which a regulatory taking might be found to occur (see *Palazzolo*, rejecting *Lucas* categorical test where property retained value following regulation but remanding for further consideration under *Penn Central*).

<sup>11</sup> See *Lucas*, 505 U.S. at pages 1028-1036

decreased the area of Parcel 2 by approximately 16,000 sq. ft., making both parcels essentially similar in size and configuration ([Exhibit 15](#)). The City's action correctly included CDP findings and approval and notified the Commission of the City's action (ref: 5-LGB-08-132), which was not appealed during the 14-day Commission appeal period. The applicant subsequently sold Parcel 2 in 2014, and that parcel is currently under construction for a single-family residence. Therefore, the City's 2008 lot line adjustment was valid and Parcel 1, the subject property, now consists of 24,338 sq. ft.

The evidence in the record before the Commission does not support a finding that the subject parcel (Parcel 1; 31451 Coast Highway) should be considered as a whole with the neighboring parcel (Parcel 2; 31461 Coast Highway) for purposes of the takings evaluation. The two lots were purchased in 2004 as distinct and separate lots. The Commission is not aware of any evidence that these lots were illegally created or otherwise bound together. Both lots were purchased as vacant lots and both contain their separate, developable areas. Although the applicant later sought to adjust the lot lines between the two adjacent parcels, the applicant did not seek to merge the lots or otherwise tie them together to create a single buildable area. The topography between the two lots is similar and features a coastal bluff, but the topography does not preclude the development of either lot. Accordingly, each lot, at the time of purchase, had its own economic use. Therefore, the parcels should not be considered as a whole. The Commission finds that the current configuration of the subject property is the legal unit of property for this potential takings analysis.

#### Takings Analysis under *Lucas v. South Carolina Coastal Council*

*Lucas* applies in a narrow set of circumstances when application of the challenged regulation would deprive the property owner of *all* economically viable use of a parcel. This is also referred to as a “categorical” taking. In *Lucas*, a property owner owned two parcels of beachfront land in an area already largely developed but prone to severe storm damage. Shortly after *Lucas* purchased the parcels in question, South Carolina enacted a state statute effectively prohibiting development of such parcels. The South Carolina Supreme Court reasoned that development in such high hazard areas would be tantamount to creation of a nuisance and could thus be prohibited under state law. (*Lucas, supra*, 505 U.S. at 1010.) The United States Supreme Court reversed, holding that in order to withstand a claim based on the federal takings clause, the regulation would have to be merely prohibiting a use that was *already* forbidden under “background principles of nuisance and property law” at the time the property was acquired—the state could not preemptively declare the prospective development in question a nuisance and then prohibit it. (*Id.* at 1030-1031.)

While finding a taking had occurred under the facts presented in *Lucas*, the Supreme Court's reliance on “background principles” of nuisance and property law allows the Commission affirmative defenses to a takings claim. An affirmative defense would arise if the Commission could demonstrate the proposed use was prohibited under the state's law when the owner took title to the property. If the owner lacked a right to develop the property in the manner proposed, then government prohibition of that development did not take any property rights from the owner- those rights never existed, so therefore could not be taken. The Court thus saw the discussion of background principles as the “logically

antecedent inquiry” into the nature of the owner's property interest. (*Lucas, supra*, 505 U.S. at 1027.) Thus, prior to determining whether denying this project would violate Section 30010, the Commission is examining whether any “background principles” would likely defeat a potential takings claim, in which case the Commission would be required to apply the LCP bluff edge setback to its full effect and deny the permit application.

#### Background Principles of California Nuisance and Property Law

There is no evidence that construction of a residence on the project site would create a nuisance under California law. (See Civil Code, §§ 3479-3486.) Other houses have been constructed on similar ocean-fronting bluff-top locations in Orange County, apparently without the creation of legal nuisances. Furthermore, the use that is proposed is residential, rather than, for example, industrial, which tends to have inherently less potential for the creation of a legal nuisance in a coastal bluff setting such as the project site.

Next is the question of “background principles” of state property law. Since the *Lucas* ruling, a number of federal and state courts have elaborated on the concept and have found that various common law and statutory background principles, including federal and state law, provide affirmative defenses to takings claims. However, none of the common law or statutory “background principles” that have been successfully used as affirmative defenses to a *Lucas* takings claim are applicable here. Therefore, to avoid a “*Lucas* taking,” and consistent with past Commission actions that allowed single family residence development on vacant lots despite coastal resource impacts,<sup>12</sup> the Commission must allow enough development of the project site to ensure that it is not depriving the property owner of all of the economically viable use of the parcel, despite such development being inconsistent with the bluff setback policies of the LCP.

#### Takings Analysis under *Penn Central Transportation Co. v. City of New York*

*Penn Central Transportation Co. v. City of New York* (438 U.S. 104 (1978) (“*Penn Central*”)) applies when the government is proposing some restrictions on use of a property but is not denying all economic use of that property. *Penn Central* held that mere government denial of the most intensive or most profitable use of the property does not in itself constitute a taking of the property. (*Penn Central, supra* 438 US at 130-136.) Unlike the *Lucas* analysis, which determines whether government action denies all use of the property, the focus of the *Penn Central* approach is whether the regulatory action, while preserving some economic use of a parcel, nonetheless “goes too far” and thereby crosses a constitutional line into a taking. Courts have generally permitted a regulation or a regulatory action to cause a substantial amount of diminution in value without finding a taking under *Penn Central*. (See, e.g., *William C. Haas v. City and County of San Francisco* (9th Cir. 1979) 605 F. 2d 1117 [95% diminution in value not a taking]; see also *Rith Energy v. United States* (Fed. Cir. 2001) 270 F. 3d 1347 [91% diminution in value not a taking].)

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<sup>12</sup> 1-12-023 (Winget), 3-03-072 (Heron Crest Development), A-3-SCO-06-059 Addendum (Collins), 6-24-0262 (Connor & Setiadi); see generally CDP No. 4-10-040 et seq. (Lunch Properties, LLC et al).

Under the test in *Penn Central*, a taking may be found based on a ‘complex of factors, including (1) the economic impact of the regulation on the claimant; (2) the extent to which the regulation has interfered with distinct investment-backed expectations; and (3) the character of the governmental action. (*Supra*, 438 US at 124-125.)

#### Economic Impact

In 2004, the applicant bought the subject property in tandem with the neighboring property to the south at 31461 Coast Highway, which were both vacant lots at the time, for approximately \$6,000,000. As explained previously, the applicant legally conducted a lot line adjustment in 2008 to make both lots in similar size and configuration. The Commission is requiring the revised project to conform to the structural stringline setback and remove the topmost floor as required by the certified LCP, is requiring a deed restriction, is limiting further development, and where further development is allowed, is requiring review via a coastal development permit or amendment. None of these restrictions would cause a significant impact on the value of the property. Approval of a permit for residential development on this property, as recommended, will cause the property to appreciate in value.

For comparison, the home at 31441 Coast Highway, which is 2,089 sq. ft. and was built in 1947, has an estimated value on Zillow.com of approximately \$8 million.<sup>13</sup> The home at 31425 Coast Highway is 2,200 sq. ft. and was constructed in 2009, and has an estimated value of approximately \$7.9 million on Zillow.com.<sup>14</sup> A chart for additional blufftop properties are included in [Exhibit 12](#). Thus, a brand-new home on the subject lot could be expected to be worth more than these smaller, older blufftop homes in the neighborhood. Thus, construction of the proposed home as conditioned is expected to increase the value of the property.

#### The Applicants’ Reasonable Investment-Backed Expectations

The Supreme Court has clarified that for distinct, investment-backed expectations to be considered as a factor in the *Penn Central* test, those expectations must also have been “reasonable,” and the absence of a reasonable investment-backed expectation is usually dispositive of a taking claim under the *Penn Central* standards. (*Ruckelshaus v. Monsanto Co.* (1984) 467 U.S. 986, 1005, 1008- 1009.)

For purposes of the *Penn Central* analysis, courts typically look to existing laws and regulations governing use of the parcel at the time it was acquired to help determine the owner’s reasonable investment backed expectations, considering existing law at the time of acquisition. (See *Guggenheim v. City of Goleta* 638 F. 3d 1111 (9th Cir. 2010) [distinct, investment-backed expectation necessarily implies the expectation is a reasonable probability given the state of the law at the time of acquisition.])

To evaluate whether the Applicant had a “reasonable and investment-backed expectation” that a residence could be developed on the property requires that expectations be measured objectively in terms of what a reasonable person might conclude about the developability of a site, and to what degree that expectation was backed by any actual

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<sup>13</sup> [https://www.zillow.com/homedetails/31441-Coast-Hwy-Laguna-Beach-CA-92651/25141227\\_zpid/](https://www.zillow.com/homedetails/31441-Coast-Hwy-Laguna-Beach-CA-92651/25141227_zpid/)

<sup>14</sup> [https://www.zillow.com/homedetails/31425-Coast-Hwy-Laguna-Beach-CA-92651/25141226\\_zpid/](https://www.zillow.com/homedetails/31425-Coast-Hwy-Laguna-Beach-CA-92651/25141226_zpid/)

investment. To analyze this question, one must assess, from an objective viewpoint, whether a reasonable person would have believed that the property could have been developed as proposed by the applicant, considering all the legal, regulatory, economic, physical, and other constraints that existed when the property was acquired.

As explained previously, the applicant bought both 31451 and 31461 Coast Highway properties in 2004 for a total of \$6,000,000, conducted a legal lot line adjustment in 2008 to make both lots in similar size and configuration, then subsequently sold 31461 Coast Highway property, which is now under construction for a 5,895 sq. ft., 3-story single-family residence. The subject lot is zoned for a single-family residence, so the applicant reasonably could expect to construct a home on this lot of reasonable size. However, their investment did not guarantee a particular home nor a particular configuration of the home. Due to the building site's proposed location and the constraints required by the LCP in relation to the bluff edge, the resulting allowable buildable area was approximately 1,168 sq. ft., or only 4.7% of the 24,338 sq. ft. overall area of the lot. Given that the Coastal Act and the City's certified LCP were long in place by the time the applicant purchased the lot in 2004, the investor's reasonable expectations would be tempered by the conditions on the site and the applicable Coastal Act and LCP policies. The Coastal Act had been in effect for decades prior to the applicants' purchase, and the Laguna Beach LCP, which lays out the coastal bluff edge setback policies for new development, was also certified before the applicants purchased their property. Thus, an investor's reasonable expectations to develop the property must include the understanding that such development would face restrictions.

That said, when understood in the context of an existing residentially-developed neighborhood, and the fact that this property does not have any recorded deed restrictions/easements that prohibit or limit residential uses of the site, a court could find that the applicant had a reasonable expectation to construct a residence on the property. The Commission also concludes that the applicant could have a reasonable expectation to construct a residence of the size similar to the home directly south of the property at 31461 Coast Highway, which is currently in construction (5,895 sq. ft., 3-story single-family residence on a 23,639 sq. ft. vacant coastal blufftop lot).

As to whether the applicant's expectation was investment-backed, the applicant acquired the subject property and 31461 Coast Highway property in 2004 for approximately \$6,000,000 (or about \$123 per sq. ft. of undeveloped land), and the land values for both the subject property and 31461 Coast Highway are approximately equal due to the 2008 lot line adjustment which made both lots similar in size and configuration. The subject property is currently assessed over \$4 million according to Zillow and Lightbox Vision. Given these points, a court could conclude that there is evidence that the applicant has a reasonable and investment-backed expectation to construct a house of similar size and location as the one directly south of the subject property at 31461 Coast Highway.<sup>15</sup>

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<sup>15</sup> Appellant Chris Moore submitted a letter dated December 1, 2025 objecting to the findings of the staff report published on November 12, 2025 - including whether the applicant had a reasonable, investment

### Character of the Government Action

The final prong of the *Penn Central* test is the character of the government action. If the Commission were to deny the CDP application in this case for the reasons identified above, the Coastal Commission advances a legitimate public interest to regulate proposed development pursuant to the LCP, which itself implements the Coastal Act, which protects coastal resources and requires new development minimize risks to life and property in hazardous areas. With the Coastal Act, and as extended to LCPs that implement the Act on the local level, the Legislature sought to protect coastal resources while allowing for orderly future development, provided it was consistent with the Act. In this case the LCP does not allow for development of the type proposed on a steeply sloping bluff face above an important public beach where its impacts on coastal resources would be considerable. In denying a CDP for such a project, the Commission's action would not be arbitrary or capricious, rather it would be rooted in fundamental Coastal Act and LCP goals, objectives, and requirements, all of which advance legitimate public interests and coastal resource protections relevant to this site. In other words, the character of the Commission's action strongly argues against a taking.

### Conditions of Approval Do Not Constitute a Taking

The Commission finds that strict application of the LCP's development standards with regard to the bluff edge setback may result in a taking under the *Penn Central* factors due to the limited buildable area on this vacant lot and the possible interference with the applicant's reasonable investment backed expectations to build a home of similar size and location as other similarly situated homes in the area. Accordingly, Section 30010 allows the Commission to approve some amount of development in order to avoid such a taking, even if the approved development is inconsistent with Coastal Act and LCP provisions, provided that Coastal Act and LCP inconsistencies are avoided/minimized as much as possible while still avoiding a taking. The Commission finds that approval of the proposed home, as conditioned, is not likely to constitute a taking under the *Penn Central* factors. Whenever approving a project that allows the owners reasonable economic use of the land, the Commission must consider alternatives or set conditions that avoid or minimize impacts on coastal resources. Setting conditions of approval does not constitute a regulatory taking, even when they cause some loss of value. (See *Penn Central*, *supra*,

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backed expectation to build a home larger than would fit on the 1,168 sq. ft. buildable area. First, the appellant claims that the sale of the neighboring parcel allowed the property owner to recoup a significant share of his investment in the purchase of both lots. However, the sale of the adjacent lot, which is a separate legal lot, does not bear on the evaluation of the reasonable backed expectation for this legal parcel. Second, a Court may find that the appellant's proposed alternative, the "cottage," would not satisfy the property owner's reasonable expectation. The appellant claims that the cottage could be approximately 1,168 sq ft, (though it is unclear exactly how the appellant arrived at those measurements for the structure itself) and that such cottages could sell for \$2,000,000. Yet, the applicant has claimed that a fully LCP compliant home would be about 775 sq ft. Though the appellant argues that courts have found that substantial diminution in property value due to government imposed restrictions and regulations has not resulted in a take, the Commission has discretion to evaluate the facts of individual projects and circumstances, and approve a residence which would avoid a potential taking. In this case, the Commission finds that the proposed project, as conditioned, would avoid a taking, provide the applicant with a reasonable economic use, and would also minimize the impact on affected coastal resources.

438 U.S. at p. 130 [finding claim “untenable” that interference with an undeveloped property interest, while viable economic uses continued, constituted a taking].) Section 30010 instructs the Commission to construe the applicable Coastal Act policies in a manner that will avoid a taking of property; it does not eviscerate the coastal bluff setback policies of the Coastal Act or the Laguna Beach LCP. In this case, the development may be approved only subject to several conditions, including revised final plans that conform to the structural stringline setback and restrictions on the property, specifically to protect the coastal bluff and visual resources. After imposition of the conditions of approval for this CDP, the applicants will still be able to construct a home of significant size. This prong therefore weighs in favor of a determination that approval of this permit, as conditioned, is not a taking.

#### Takings Conclusion

It is infeasible for the project to fully conform to the 25 ft. minimum bluff edge development setback and still provide a reasonable economic use of the property so as to avoid a potential taking. Accordingly, allowing some such development in order to avoid a potential taking take consistent with Section 30010 of the Coastal Act, provided that the impacts to the coastal bluff and visual resources are avoided to the maximum extent feasible. Therefore, the Commission must also assess whether there is a superior alternative (in terms of minimizing impacts and bringing the project into greater conformity with the coastal bluff protection goals of the LCP) that would also provide a viable economic use of the property.

#### Allowable Project to Avoid a Taking

In this case, there is no project alternative that would avoid all impact on the bluff slope that would not result in potential take. As discussed above, the strict application of 25 ft. minimum setback from the identified bluff edge is not possible on the site. Thus, in this case, the Commission finds that applying the stringline for development setback would be the most feasible method to ensure consistency with the certified LUE while avoiding a taking of the property. The Commission finds that applying the building stringline for both the proposed primary structure and accessory structures is consistent with the intent of the certified LCP. Therefore, the Commission imposes **Special Condition 1**, which requires the applicant to submit revised final plans that fully conform to the identified building stringline setback.

Additionally, as described above, the Commission finds that the removal of the topmost level of the home will reduce the extent that the residence will not conform with the bluff edge setbacks by reducing the overall size of the non-conforming structure and by removing a portion of the structure that, itself, extends into the bluff edge setback. The Commission also finds that the reduction of the proposed project’s size more appropriately meets the property owner’s reasonable, investment backed expectations when purchasing the vacant parcel. As conditioned, the proposed residence will be of similar size to the neighboring residence, though significantly larger than other, similarly situated oceanfront homes in the neighborhood ([Exhibit 12](#)). Further, as explained in Section IX.D (Visual Resources) of this report, as conditioned, the proposed project will preserve existing blue

water views from Coast Highway and will reduce blue water view obstruction as compared to proposed project with the topmost level.

**Special Condition 1** would require the revision of final plans to reflect the removal of the topmost floor from the proposed project and for the final design of the proposed project to substantially conform with an overall habitable area of 5,675 sq ft. The removal of the topmost floor would remove 1,556.20 sq. ft. of habitable space and 452.37 sq. ft. of deck space from the proposal. **Special Condition 1** would also require height of the proposed home to not exceed the existing curb fronting Coast Highway or the road surface of Coast Highway nearest the subject property where there is no curb. The Commission finds that proposed project, as conditioned, is a reasonable, economic use of the subject parcel. Accordingly, the proposed project, as conditioned, would provide the applicant with a reasonably sized residence that avoids a potential taking, reduces the extent which the residence does not conform with the bluff face development restrictions and bluff edge setbacks in the LCP, and preserves visual resources in accordance with the LCP.

To preclude a claim of takings and to assure conformance with California and United States Constitutional requirements, as provided by Coastal Act Section 30010, this CDP approval allows for the construction of a residential development to provide a reasonable economic use of the subject property as described above. In view of the evidence, there is a reasonable possibility that a court might determine that the Commission's denial of a residential use or limitation beyond what the Commission is allowing, based on the inconsistency of this use with the Coastal Act and certified LCP, would constitute a taking. Therefore, the Commission determines that the inconsistency with the certified LCP in this case does not preclude a reasonable residential development that is appropriately conditioned to minimize coastal resource impacts and Coastal Act and LCP inconsistencies as much as possible while still providing an economically viable use of the property.

To achieve consistency with the Coastal Act and certified LCP policies in light of constitutional takings issues, the Commission approves development of a single-family residence with special conditions to minimize adverse effects to the extent feasible on steep slopes and visual resources, and to improve water quality and avoid geological hazards. As discussed in previous sections of this report, development of the proposed residence is inconsistent with the coastal bluff setback policies of the certified LCP. However, the Commission approves a residence on the site in order to avoid potential constitutional takings claim. In general, when a project is approved to avoid a taking, the project will still include implementation of mitigation measures necessary to minimize the impacts of development on sensitive coastal resources.

## **I. 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 14**, which requires that the property owners 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 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**

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 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, the Open Space/Conservation Element, and the Coastal Technical Appendix. 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.

The proposed development that is subject to this permit application (CDP No. A-5-LGB-24-0018) is located within the City of Laguna Beach's certified jurisdiction. As discussed in this staff report, the proposed project, as conditioned, is consistent with the Laguna Beach LCP except that it does not conform to the bluff edge setback provisions of the LCP. Because strict application of the bluff edge setback would extremely constrain the site's developability, approval of project as conditioned is highly unlikely that the City of Laguna Beach will be prejudiced in preparing 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. California Environmental Quality Act (CEQA)**

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 for the purposes of CEQA review. On March 12, 2024, the Laguna Beach City Council held a public hearing and determined that the Final Initial Study/Mitigated Negative Declaration for the project has been completed in compliance with CEQA. Based on the Final Initial Study/MND and the administrative record, the City Council found that the Final Initial Study/MND contains a complete and accurate reporting of the environmental impacts associated with the project and that all environmental impacts of the project are less than significant with the mitigation set forth in the Final Initial Study/MND and the Mitigation Monitoring Program.

In addition, the proposed project has been conditioned to be found most consistent with the certified LCP. As conditioned to minimize risks associated with natural hazards, and avoid adverse impacts to water quality and natural resources, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that 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 can be found consistent with the requirements of the Coastal Act to conform to CEQA.

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

- A-5-LGB-24-0018 and associated documents
- Zillow screenshots of neighboring blufftop properties

## **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 Archaeological 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 Archaeological Plan.

1. If the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological 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 Archaeological 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.