STATE OF CALIFORNIA - NATURAL RESOURCES AGENCY GAVIN NEWSOM, GOVERNOR

CALIFORNIA COASTAL COMMISSION
South Coast District Office
301 E Ocean Blvd., Suite 300
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W17a

A-5-LGB-24-0018 (Reyna)

May 13, 2026

CORRESPONDENCE

From: Catherine Jurca <cathjurca@gmail.com>
Sent: Friday, May 8, 2026 8:46 AM
To: SouthCoast@Coastal <SouthCoast@coastal.ca.gov>
Subject: Public Comment on May 2026 Agenda Item Wednesday 17a - Appeal No. A-5-LGB-24-0018 (Reyna, Laguna Beach)

Dear Chair Harmon and Commissioners:

Thank you for the opportunity to comment on this project.

Rather than clog your inboxes with another missive, I urge you to give the letter from Christopher Moore, dated January 27, 2026, your most serious consideration. For some reason only his outdated letter is appended to the Staff Report, so I attach the most recent version here for your convenience.

Mr. Moore's letter is a brilliant rebuttal to the factual errors and unpersuasive arguments in the Staff Report regarding the takings claim and the application of the stringline setback. The adjacent property at 31461 Coast Highway, formerly owned by Mr. Reyna, who alone is responsible for the current lot lines and buildable area of the subject property, cannot be used to justify the proposed massive project within the bluff edge that he seeks now to build.

It is troubling to witness the extraordinary contortions in the staff report to try to justify approval of a project that violates the Coastal Act as well as the Laguna Beach Municipal Code. The Coastal Act charges the Commission with caring more about coastal protection than maximizing developer profits. The Staff Report does not read that way.

Thank you for your consideration.

Sincerely,

Catherine Jurca

January 27th, 2026

Christopher Moore
1278 Glenneyre St. #457
Laguna Beach, CA 92651
chris@cscenterprises.net

Sent via Electronic Mail

California Coastal Commission
South Coast District
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SouthCoast@coastal.ca.gov

RE: Appeal A-5-LGB-24-0018, De Novo Hearing (Feb 5, 2026)
Site Address: 31451 S. Coast Hwy., Laguna Beach, CA 92651 (APN: 056-032-26)

Dear Honorable Commissioners and Staff,

I agree with Staff's findings of significant issues. However, there are critical defects in Special Condition 1A of the De Novo review that undermine the Coastal Act's protections and must be corrected for the following reasons:

1. Staff makes no valid findings that a plausible takings claim exists
2. Staff's proposed Special Condition 1A would violate §30007.5 and § 30200 of the Coastal Act.

1) Staff makes no valid findings that a plausible takings claim exists

While it is far from settled whether or not the proper unit of property is one or both parcels, it is an immaterial distinction. For the sake of argument, even if one defines the unit of property solely as 31451 SCH, the proximal cause of the applicant's hardship is solely due to his own voluntary actions, by altering its configuration and dimensions (and thus the buildable area). Mr. Reyna could have reapportioned the lot line in any number of hypothetical configurations to increase the buildable area, yet chose not to. He then voluntarily sold the neighboring parcel, effectively making his decision irreversible. It is precisely this sequence of voluntary actions that necessarily prevents any current buildable area based restrictions from having any origination from government imposition, thereby making the current takings claim unconvincing.

The foundational premise of the alleged taking, i.e. 4.7% buildable area, is also defective. The LCP explicitly excludes the land seaward of the bluff edge from the definition of lot area. LUE Policy 10.4 states: "Implement and define "lot area" as the total area of the lot minus the area/property located westerly of the building setback lines as described in Section

25.50.004(B)(1)(2)(3) or the oceanfront bluff ("oceanfront bluff edge" as defined in LCP Glossary), whichever is more restrictive." See also the zoning code definition of "buildable area". Therefore the Commission and the applicant are prohibited from using the entire parcel area as the percent buildable area denominator. Per Policy 10.4, the true lot area is actually 7,434 sq. ft. This means that Mr. Reyna actually has 15.7% buildable area, rather than the claimed 4.7%. 15% buildable area is in line with the neighboring properties listed in Exhibit 12 and does not trigger a takings. The staff report does not mention Policy 10.4 at all, nor the fact that it must be violated to support their findings.

Regarding the proper test for a takings analysis, we are in agreement that the Penn Central Test is the proper standard of review because the applicant will retain some economic use of his property. The Penn Central test must meet all of the following prongs to be considered a taking:

A. the economic impact of the regulation on the claimant;
B. the extent to which the regulation has interfered with distinct investment-backed expectations;
C. And the character of the governmental action.

The staff report concedes that several prongs of the Penn Central Test are not met, namely A and C, therefore I will not address them in depth. Regarding the economic impact of the regulation (Prong A), the staff report confirms existing law that, "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", and that a "95% diminution in value not a taking". A restriction is not a taking simply because it denies the property's highest and best use[1] or narrows a property owner's options[2]. Rather, the takings issue is resolved by looking at the uses that are permitted. If any (albeit small) economically viable use of the property remains under the restriction, a taking has not occurred. (See *Del Monte Dunes at Monterey v. City of Monterey* (9th Cir. 1996) 95 F.3d 1422, 1432) Therefore, we are in agreement that Prong A does not meet the takings threshold. And regarding the character of the governmental action (Prong C) it is universally undisputed that the Coastal Commission advances a legitimate public interest, nor is the applicant being singled out, and therefore Prong C does not meet the takings threshold.

The crux of the issue is regarding Prong B, "the extent to which the regulation has interfered with distinct investment-backed expectations." In this respect, staff has provided no objective evidence to support the existence of any taking. More severely, staff has also applied an improper baseline from which to determine this expectation, in defiance of established jurisprudence.

Staff correctly asserts that "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

1. *Long Beach Equities, Inc. v. County of Ventura*, 231 Cal.App.3d 1016, 282 Cal.Rptr. 877 (Cal. App. 1991)
2. *Ewing v. City of Carmel-By-The-Sea*, 286 Cal.Rptr. 382, 234 Cal.App.3d 1579 (Cal. App. 1991)

would be tempered by the conditions on the site and the applicable Coastal Act and LCP policies." However, they err when they conclude that the applicant could have had a reasonable expectation to build a house of similar size as 31461 Coast Hwy, immediately to the south. <u>Mr. Reyna's reasonable investment-backed expectations must logically and necessarily be limited to those at the time of the investment in 2004</u>, (See *Bridge Aina Le'a, LLC v. Haw. Land Use Comm'n*, 950 F.3d 610 (9th Cir. 2020). The house at 31461 was not even permitted until 2016, over a decade after Mr. Reyna's investment. In other words, it was physically impossible for him to have had a reasonable investment backed expectation to build a home of that size at the time of the 2004 investment. Therefore, the Staff Report's conclusion that the 5,895 sq. ft. home at 31461 Coast Hwy was a reasonable expectation is legally invalid and must be thrown out. Because this home is the basis for the entirety of staff's reasonable investment-backed expectation analysis, this project fails the third and final prong of the takings test.
Staff must restrict their "reasonableness" comparison list in Exhibit 12 to only those homes in existence in 2004. Furthermore, many of the homes in Exhibit 12 are nonconforming, built prior to the existence of the Local Coastal Program (in fact the impacts of many of these larger blufftop homes necessitated the passage of the Coastal Act itself) and should also be excluded.

Moreover, the imposition of the 25 ft bluff edge setback does not prevent Mr. Reyna from building a single family home, merely reducing the size of said home. In footnote 15 of the staff report, Staff claims that "it is unclear exactly how the appellant [Chris Moore] arrived at those [1,168 sq. ft.] measurements for the structure itself". I in fact used the applicant's own site plan included as Exhibit 7 of the staff report which explicitly states the remaining buildable area. It is perfectly feasible to build a trapezoidal structure amounting substantially to 1,168 sq. ft. on the buildable area shown in Exhibit 7. Such a design is extremely popular among modernist architects, coincidentally by one of whom the applicant is represented. The staff report does not impartially question the applicant's claimed 775 sq. ft. number, which appears to merely be a rectangular fit on the same area.

Staff's Exhibit 12 shows that 31321 Coast Hwy is only 1,200 sq. ft. and yet is substantially valued at over $8 million. It is unclear how any taking claim could arise when Mr. Reyna could retain significant economic use of his property. It stands to reason then that a 1,168 sq. ft. home is compatible with a reasonable investment-backed expectation considering the strict regulations in existence at the time, the extraordinary topography and location of the lot, and the fact that these development risks were knowable in advance and necessarily incorporated into the purchase price. Mr. Reyna's wish to build a larger home is rooted in speculative possibility and not objective expectation. The courts caution that the takings clause is not an insurance policy for ultimately unsuccessful investment opportunities (See *Long Beach Equities*).

Aside from the takings test, staff has not discussed the possibility of implementing the 25 ft bluff edge setback as a special permit condition of approval. This would avoid an outright denial of the project, providing the applicant with economic use of the property, eliminating the risk of a takings claim, while ensuring maximum protection of coastal resources.

Staff has provided no valid evidence nor legal justification to prove that the ability to build a 1,168 sq. ft. home on the subject lot would constitute a taking in the first place. First, the proximal cause for the buildable area limitation is Mr. Reyna's voluntary lot line adjustment, not any government mandate. Second, a denial of the proposed project does not even satisfy one part of the Penn Central Takings test. Strict application of the Coastal Act in this case does not even approach a takings claim by any objective assessment, other than in the mind of the applicant. Therefore it is patently obvious that § 30010 should never have been triggered in this instance, and the LCP must be enforced to the fullest extent.

2) Staff's proposed Special Condition 1A would violate § 30007.5 and § 30200 of the Coastal Act.

The § 30010 takings exemption is intended to be extremely narrow and may only be made to the extent necessary to avoid a taking of property, (See *McAllister v. California Coastal Com.*, 169 Cal.App.4th 912, 87 Cal. Rptr. 3d 365 (Cal. App. 2008)) This is affirmed in the staff report, on page 53: "...<u>provided Coastal Act inconsistencies are avoided/minimized as much as possible</u> while still avoiding a taking", yet Staff does not provide any discussion or justification on how in fact the inconsistencies were minimized as much as possible. Instead, the staff report's sole justification repeats the debunked comparison to 31651 Coast Hwy. Therefore, even if the Commission hypothetically deems that leeway must be given pursuant to § 30010, Staff has not upheld their statutory duty to narrowly tailor that exemption to maximize coastal protections.

The Coastal Act is clear that environmental protections must be maximized, "when a provision of the Coastal Act is at issue, we are enjoined to construe it liberally to accomplish its purposes and objectives, giving the highest priority to environmental considerations. (See Pub. Res. Code § 30009; *Dunn v. County of Santa Barbara* (2006) 135 Cal.App.4th 1281). Furthermore, the Commission must make findings identifying the conflict per § 30200(b) and § 30007.5 (See *McAllister*):

Cal. Pub. Res. Code § 30200(b). *Where the commission or any local government in implementing the provisions of this division identifies a conflict between the policies of this chapter, Section 30007.5 shall be utilized to resolve the conflict and the resolution of such conflicts shall be supported by appropriate findings setting forth the basis for the resolution of identified policy conflicts.*

Cal. Pub. Res. Code § 30007.5. *The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in* *carrying out the provisions of this division* *<u>such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources.</u>*

There is clearly a conflict here between several sections of the Coastal Act and Laguna Beach LCP, and section § 30010. However Special Condition 1A is not tailored to be maximally protective of coastal resources, nor did Staff make the required written findings supporting how they did so.

The "building stringline" method in Special Condition 1A comically does not require the applicant to make any material reduction of his originally proposed building footprint. There is effectively no bluff protection. With the application of the stringline setback, only 0.4% of the 4,406 sq. ft. footprint will be reduced, with 99.6% remaining as is. The entire building footprint will continue unabatedly to be gouged out of the middle of the bluff face itself. This absurd result does not in any way maximize the oceanfront bluff protections, and makes a mockery of the Coastal Act and LCP. Staff has not made any findings to justify how allowing the building footprint to remain intact on the bluff face resolves the conflict in a manner balanced towards being most protective of coastal resources. On the contrary, the fact that there was virtually no change to the building footprint in the bluff face implies that no balancing test was ever attempted nor alternatives considered. Rather, staff has accepted the applicant's suggestions at face value by insisting on a false binary choice between a 1,168 sq. ft. home or a 5,675 sq. ft. home. Moreover, eliminating the top floor of the building (Special Condition 1B) does nothing to mitigate the significant impact to the bluff face, and makes the side view corridor redundant.

The staff report claims that "there is no project alternative that would avoid all impact on the bluff slope that would not result in potential take." This is false. Staff failed to make required findings analyzing any other alternative options that could be used to mitigate impacts to the bluff face. One possible alternative that has not been considered is merely reducing the bluff edge setback, thereby protecting the entire bluff face, while permitting an increase in buildable area. For example, reducing the setback from 25 to 10 ft, as similarly used in Action 10.2.8 for accessory structures, would permit 2,562 sq. ft. in buildable area. This number is in close alignment with the 2,792 sq. ft. average building area of the comparable properties in Exhibit 12 (excluding 31461 Coast Hwy for reasons mentioned above). As some of the properties listed in Exhibit 12 are pre-Coastal Act nonconforming, and some of the listed homes are multi-level, the true average buildable area is likely lower. It is nevertheless a useful tool to establish the unadjusted average building area as a rough ceiling on the possible buildable area that could have been contemplated in 2004 with reasonable probability. By using a 10 ft bluff edge setback, the Commission could unquestionably extinguish any possibility of a takings claim, and make the required findings that the conflict was "resolved in a manner which on balance is the most protective of significant coastal resources" per Section 30007.5.

Therefore, the “building stringline method” of Special Condition 1A as proposed is clearly not narrowly tailored to only the extent necessary to prevent a taking per § 30007.5, and must be thrown out. Nor has Staff made any of the findings to support how the exceptions to the LCP in Special Condition 1A maximize protection of the bluff face as required by § 30020. If the Commission approves the “building stringline method” it will have abused its discretion.

Conclusion.

I respectfully urge the Commission to abide by decades of binding precedent by rejecting the applicant’s phantom takings claim notion, and require the strict application of the LCP bluff edge setback in this instance. This suggests a denial of the application or perhaps the commission could modify Special Condition 1A to incorporate the 25 ft bluff edge setback. Alternatively, if the Commission remains convinced that a takings somehow still exists, it cannot remedy this by using the “building stringline method” and must choose another option that avoids and minimizes Coastal Act inconsistencies as much as possible.

Sincerely,

Christopher Moore

Attached:
Appendix A. Erroneous CDP Approval of 31461 Coast Hwy.

Appendix A. Erroneous CDP Approval of 31461 Coast Hwy.

The CDP approval of the site directly to the south of the project, 31461 Coast Hwy. has been claimed as a precedential baseline by the applicant and staff, which by operation of law is disqualified due to its date of approval over a decade after the time of investment. However there is another significant reason as to why it should not be used as precedent in this case. Namely, the CDP was erroneously approved in violation of the Coastal Act due to misrepresentations of the bluff edge by its applicant. The initial definition of oceanfront bluff was defined in the Zoning Code:

25.50.004(B)(4)(a). An "oceanfront bluff" is an oceanfront landform having a slope of forty-five degrees or greater from horizontal whose top is ten or more feet above mean sea level.

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

The upper riser of the 31451 Coast Hwy bluff exceeds 45 degrees in several areas, and therefore it was always known that its bluff edge existed at 115 ft MSL per the Zoning Code definition, as evidenced by several pre-2012 bluff edge determinations made by the city (see attachments to my letter dated 12/1/2025. However the critical distinction is that the upper riser of 31461 is gentler, below the 45 degree zoning code threshold for oceanfront bluff, that would have allowed the currently-permitted home.

Yet, a critical change happened. The Laguna Beach Land Use Element updated on May 9, 2012 added the current definition of "Oceanfront Bluff/ Coastal Bluff" and "Oceanfront Bluff Edge or Coastal Bluff Edge" as found in LUE Glossary definitions 101 and 102. This LUE definition is more restrictive on development than the Zoning Code definition, not less, because according to the CCC Staff Geologist, "the coastal bluff and bluff edge definitions in the LUE, which are determinative in this case, contain no slope-based restrictions on what qualifies as an "oceanfront bluff" (Gray, A-5-LGB-22-0025). This change had no effect on 31451, as the bluff edge remained in the same place, but it did significantly impact 31461, as the legal bluff edge was raised from 55 ft MSL to 115 ft MSL, identical to 31451. However there was significant confusion over which definition took precedence, until the Commission directed that the LUE is in fact the controlling definition. (Meehan, A-5-LGB-13-0223) on March 12th, 2015.

The development permit application for the current home under construction at 31461 Coast Hwy was filed on Jan 25, 2013 per city records, undergoing several Design Review Board hearings over the course of 3 years. During DRB consideration, the Coastal Commission staff sent a letter of concern to the city on April 6th, 2015 informing them about the Meehan decision, and that the bluff edge for 31461 must be delineated by a qualified geologist in accordance with the LUE definition. Yet it appears that this instruction was misinterpreted. At the subsequent DRB hearing on Jun. 18th, 2015, one DRB member did raise the concern that the bluff edge did not comply with the Coastal Commission, and the project architect rebutted that their geologist made a proper determination. However, in reality, their geologist did not in fact adhere to the LUE definition of bluff edge, instead finding it at the sea cliff (in an identical situation to what they attempted to do for 31451 Coast Hwy). This false claim silenced any further discussion of the LUE bluff edge definition during the remaining city proceedings. In fact, the Staff report for the Sept. 24, 2015 Design Review Board hearing explicitly reverted back to the 45 degree slope standard of the Zoning Code definition. The city made final approval of the CDP on September 1, 2016, going unappealed as most laypersons are ignorant of esoteric geotechnical nuances. In fact, the city apparently never again enforced the LUE definition, as evidenced by the table of several Coastal Commission Appeals I compiled in my initial letter of appeal.

Consequently, in our current case, the project applicant and the Coastal Commission staff have poisoned their entire argument with a project that was erroneously approved in defiance of the LCP and Coastal Act. Therefore the Commission should avoid reinforcing a negative precedent harmful to coastal resources and reject 31461 Coast Hwy from being used as a precedent for 31451 Coast Hwy. If anything, the Commission should be considering revocation proceedings as the building is still under construction and illegally issued permits have no vested rights.

From: bryan menne <bryan@menne.com>
Sent: Friday, May 8, 2026 5:00 PM
To: SouthCoast@Coastal <SouthCoast@coastal.ca.gov>
Cc: chris@cscenterprises.net <chris@cscenterprises.net>; Catherine Jurca <cathjurca@gmail.com>; Lee, Vince@Coastal <vince.lee@coastal.ca.gov>; Bryan Menne <bryanmenne@gmail.com>
Subject: Public Comment on May 2026 Agenda Item Wednesday 17a - Appeal No. A-5-LGB-24-0018 (Reyna, Laguna Beach)

Attention: Vince Lee:
I'm including these summary comments of Christopher Moore's Appeal, I agree with the arguments he presents below and want to add the following:

New Development Precedent was established with the Shopoff Residence approved in 2018, and the protection of the Curb-Level Roofline Heights by following the "Landscape & Scenic Highway Element was instrumental in protecting Public's Scenic Views from blockage'.
Reyna had full Knowledge of this Roof Height constraint that was approved in the City.
The same restrictions should be initiated with the Reyna Property as any New development is subordinate to the Existing Ocean view protections as follows by City of Laguna Beach Policies & GP, LUP, CUP & Design Guidelines:

-LU Policy & LU Element Policy 2.10- ***"Maximize the preservation of coastal…view…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)***-DRB P.8
-City LU Policy 2.8 ***"…and protect public views as specified in the Design Guidelines and the "Landscape and Scenic Highways Resource Document"*** -DRB P.8
-CLU Policy- 2.9 Technical Appendix Sec. 30251 -*"The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views along the ocean and scenic coastal areas, to minimize...be visually compatible with the character of surrounding areas, and where feasible to restore and enhance visual quality…**New development in highly scenic areas…shall be subordinate to the character of its setting"*** DRB-p.17/18
-City LU Policy 3.10: *"Require building design and siting to be compatible……and **protect public views** as specified in the Design Guidelines and Landscape and Scenic Highways Resource Document by maintaining the low profile character of structures"…"and **siting considerations for projects visible from major highways** and Arterial Streets". "**Best efforts should be made to site new development in locations that minimize adverse impacts on views from public locations(**e.g.-roads)"*, DRB p. 9
-LUE 7.3 and 10.2- *"Design and site new development to protect natural…such as areas of unique scenic quality, **public views**"- p.18*
-LUE Action7.3.5- *"Prohibit development on oceanfront bluff faces"* DRB-p.16

The Bluff Faces & Esha's, Bluff top Setbacks should be per CCC Geologist or Previous City 2009 Setback Line.

I. The Core Argument: No "Taking" Exists

Moore argues that the Coastal Commission Staff is incorrectly applying the law by claiming that a "taking" (a government action that unfairly deprives an owner of economic use of their land) would occur if the owner is forced to follow strict bluff-edge setbacks.

- **Self-Created Hardship:** Moore points out that the property owner (Mr. Reyna) voluntarily changed the lot lines and sold the neighboring parcel. Any "hardship" or lack of building space is a result of his own business decisions, not government overreach.
- **Math Error on "Buildable Area":** Moore claims the staff is using the wrong denominator for their calculations. By applying the Local Coastal Program (LCP) definitions, the buildable area is actually **15.7%**, not the **4.7%** claimed. This higher percentage is consistent with neighbors and does not constitute a taking.
- **Failed Legal Test (Penn Central):** Moore argues the project fails the legal test for a taking because:
  - **Investment Expectations:** The owner bought the land in 2004. He could not have had a "reasonable expectation" to build a massive home based on a neighbor’s house that wasn't even permitted until 2016.
  - **Economic Viability:** A **1,168 sq. ft.** home is still possible on the site. Since the property would still have significant value with a home of that size, no taking has occurred.

II. Violations of the Coastal Act

Moore asserts that "Special Condition 1A" (the current staff recommendation) fails to protect the environment as required by law.

- **Failure to Maximize Protection:** The law requires the Commission to resolve policy conflicts in a way that is *most* protective of coastal resources.
- **The "Stringline" Mockery:** Moore argues the proposed "building stringline" method is a shell game. It only reduces the building footprint by **0.4%**, allowing 99.6% of the massive project to be "gouged" into the bluff face.
- **Ignored Alternatives:** Moore suggests a "10-foot setback" compromise. This would allow for a medium-sized home (approx. 2,562 sq. ft.) while still protecting the actual bluff face, which would be more legally sound than the current proposal.

III. The "Poisoned" Precedent (Appendix A)

Moore warns the Commission not to use the neighboring property (**31461 Coast Hwy**) as a baseline for what is "reasonable."

- **Illegal Approval:** He claims the neighbor's house was approved based on a "misrepresentation" of the bluff edge and an
- **No Vested Rights:** Since that project was approved in error, Moore argues it should not be used to justify further environmental damage at 31451.

Summary of Requests

Christopher Moore is asking the Commission to:

1. **Reject the "takings" claim** as legally and factually unsupported.
2. **Enforce the full 25-foot bluff edge setback**, which would limit the house to approximately 1,168 sq. ft.

3. **Throw out the "Stringline Method"** because it fails to protect the bluff.
4. **Consider a smaller compromise** (like a 10-foot setback) only if they are absolutely convinced a taking exists, rather than approving the current massive footprint.

Respectfully,
Bryan Menne- Land Planner, LA # 1826
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May 8, 2026

VIA EMAIL AND ONLINE AGENDA SUBMISSION **W17a**

California Coastal Commission
South Coast District Office
301 E. Ocean Blvd., Suite 300
Long Beach, CA 90802

Re: Appeal No. A-5-LGB-24-0018 - 31451 South Coast Highway, Laguna Beach
May 13, 2026 Hearing - Agenda Item No. W17a
Applicant's Letter in Support of Staff Recommendation

Dear Chair Harmon and Honorable Commissioners:

This office represents Tony Reyna, the Applicant ("Applicant" or "Reyna"), in connection with the above-referenced appeal. Reyna owns the undeveloped property at 31451 South Coast Highway in Laguna Beach (the "Property"). The Applicant respectfully submits this letter in support of Commission staff's recommendation to approve a new single-family residence (the "Project") and to confirm his agreement to all proposed conditions of approval. The administrative record contains substantial evidence that strict application of the certified Local Coastal Program ("LCP") bluff-edge setback, in combination with the independently required cultural resource and visual resource constraints, would result in an unconstitutional taking. Approval under Public Resources Code section 30010, as staff recommends, is the appropriate and legally required outcome.

A. The Applicant Supports the Staff Recommendation and Agrees to All Conditions of Approval

The Applicant agrees to all fifteen proposed special conditions, including but not limited to: siting all development landward of the applicable building stringline (Special Condition 1); the visual resource condition limiting roof height to no more than 2'-11" above the existing curb elevation fronting Coast Highway (Special Condition 1); and the Archaeological and Tribal Cultural Resources Monitoring and Treatment Plan (Special Condition 10). The building stringline is an existing, certified LCP siting mechanism. Its application here reflects the minimum departure from the LCP necessary to avoid a constitutional violation while continuing to protect coastal resources to the maximum extent feasible. *McAllister v. California Coastal Commission* (2008) 169 Cal.App.4th 918, 939.

The Applicant has made meaningful concessions from the project as originally approved by the City, each relating to the siting, height, and accessory structures. First, in response to staff's visual resource concerns, the Applicant proposed lowering the entire structure by four feet, which reduces the roof elevation to no more than 2'-11" above the existing curb fronting Coast Highway and preserves blue water views along Coast Highway. Second, significant development approved by the City that was sited seaward of the building stringline must now be relocated landward of the stringline in conformance with Special Condition 1. Third, the Applicant has agreed to record a deed restriction permanently protecting a 16-foot public view corridor along the northern side yard. These modifications reflect the Applicant's commitment to minimizing coastal resource impacts while preserving reasonable economic use of the Property.

B. The Record Establishes an Unconstitutional Taking Under *Lucas* and *Penn Central*

As staff correctly analyzes at pages 46 through 54 of the Staff Report, the record supports an unconstitutional taking under both *Lucas* and *Penn Central*. Three independently required constraints, applied cumulatively, eliminate any realistic opportunity for economically viable residential use of the Property. First, Commission staff's geologist determined the bluff edge lies at the 115-foot MSL contour, substantially higher than the City's peer-reviewed 57-foot determination used for the now-approved adjacent residence. The required 25-foot setback limits the buildable envelope to approximately 1,168 square feet (4.7% of the lot area), in an irregularly shaped and constrained location. Second, the Cultural Resources Assessment identified a shell midden deposit along the northern portion of the Property, imposing an independent avoidance requirement that further compresses the already-limited buildable envelope. Third, the visual resource height limitation, capped at 2'-11" above the existing curb, requires that any structure within the constrained envelope be substantially depressed below grade, yielding fewer than 700 square feet of habitable space in a configuration that does not daylight onto the slope and is functionally impracticable. Taken together, these constraints do not merely restrict development - they eliminate it in any meaningful sense. Where regulation denies all economically beneficial use of property, a categorical taking occurs regardless of the public interest served. *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1019. (Staff Report, pp. 49–50).

The *Penn Central* factors independently support the same result. The economic impact on the Applicant is severe. Reyna acquired the Property in 2004 for $3,002,605 and has since incurred over $1.7 million in development costs, taxes, and carrying charges, bringing his total investment to more than $4.7 million in a parcel that strict LCP enforcement would render effectively unbuildable. The interference with reasonable investment-backed expectations is substantial. The Property is a legally created, residentially-zoned lot in an established oceanfront neighborhood of existing and currently approved single-family residences, including the now-approved home immediately to the south developed under the same regulatory framework. Finally, the character of the government action weighs in the Applicant's favor. While the bluff-edge setback policies advance legitimate coastal resource interests, *Penn Central* does not permit those interests to fall disproportionately on a single parcel simply because its physical topography, not any conduct of the owner, produces a more severe regulatory outcome than the same rules impose on neighboring properties. *Penn Central Transportation Co. v. New York City* (1978) 438 U.S. 104, 124. (Staff Report, pp. 50–54).

C. Staff's Takings Analysis Is Well-Founded

Section 30010 requires a record-based finding that strict enforcement will effect a taking, not a final adjudication. The relevant standard is whether the record demonstrates facts sufficient to support a reasonable conclusion that strict enforcement would result in a taking. *McAllister*, supra, 169 Cal.App.4th at 939; *Felkay v. City of Santa Barbara* (2021) 62 Cal.App.5th 30, 37–39. The Commission need not resolve every factual uncertainty before acting to avoid an unconstitutional outcome. The physical constraints noted in Section B of this letter more than satisfy that threshold.

The Applicant's acquisition history does not alter the takings analysis. In 2004 Reyna purchased two adjacent vacant lots - 31451 and 31461 Coast Highway - and subsequently obtained City approval for a lot line adjustment that reconfigured both parcels into their current configuration. That adjustment was approved by the City with a coastal development permit, reported to the Commission, and not appealed. Reyna sold the 31461 parcel in 2014 to an unrelated third party, which is now developing it under a separately approved and not appealed coastal development permit. California has no merger statute, and nothing in established case law requires treating parcels that were lawfully reconfigured, separately sold, and have been in independent ownership for more than a decade as a single unit for takings purposes. The bluff-edge setback operates independently of parcel configuration and its impact on the Property is unaffected by that prior ownership history.

Prior lawful exercises of property rights do not forfeit constitutional protection. The lot line adjustment was an agency-approved exercise of property rights. A property owner does not surrender constitutional takings protections by taking actions that the applicable regulatory authority specifically reviewed and approved. *Palazzolo v. Rhode Island* (2001) 533 U.S. 606, 627–628. The severe restriction on the buildable envelope at the Property is a product of the Commission's bluff-edge determination, not of how the parcel lines were drawn.

The Property contains no ESHA. Commission staff's ecologist visited the site in March 2025 and confirmed there is no ESHA under the Coastal Act or the certified LCP. Commission staff correctly distinguishes "Environmentally Sensitive Habitat Area" from "Environmentally Sensitive Lands/Resources" under the LCP and concludes that the geological sensitivity of the coastal bluff does not automatically constitute ESHA. (Staff Report, pp. 40–41.) The special conditions, particularly the landscaping requirements of Special Condition 8 and the stringline setback of Special Condition 1, will in fact restore habitat to previously graded pads and slopes.

A hypothetical geometrically possible structure is not a constitutionally adequate use. The existence of a hypothetical building footprint within the remaining envelope does not end the inquiry. Courts consistently hold that economic reality (construction feasibility, habitability, and market value) governs the takings analysis, not the abstract possibility that something could be drawn on a site plan. *Monks v. City of Rancho Palos Verdes* (2008) 167 Cal.App.4th 263, 305–309. The Staff Report itself confirms the point: after applying the bluff edge setback, the cultural resource avoidance requirement, and the side yard setback, the remaining buildable area of approximately 1,168 square feet occupies an irregularly configured location within a 24,338 square foot lot, and any nominally compliant structure in the northern portion of that envelope would be entirely subterranean with no natural light. (Staff Report, pp. 30, 36, 54.) Nor does any local zoning definition of buildable area change that conclusion - constitutional analysis turns on economic reality, not definitional conventions. Given the surrounding neighborhood and factual circumstances, a largely subterranean structure of fewer than 700 habitable square feet does not represent a constitutionally adequate economic use of the Property. (Staff Report, p. 54.)

The building stringline is the minimum necessary departure from the LCP. The stringline is an existing, certified LCP siting mechanism applicable to principal structures, not a new or *ad hoc* standard. Any alternative numerical setback not grounded in the certified LCP's provisions for principal structures would represent a greater departure from the LCP, not a lesser one. Staff's approach is therefore the most defensible and least intrusive means of resolving the constitutional conflict while protecting coastal resources to the maximum extent feasible.

Further Reduction in the Size of the Proposed Residence Would Not Reduce Impacts to Coastal Resources. The Staff Report recognizes that reducing the size of the proposed residence would not benefit coastal resources. Specifically, staff finds that "requiring a material change in the proposed home's size and design does not appear in this particular case to be necessary to provide for any significant coastal resource benefit." (Staff Report, p. 54.) This finding supports the recommendation to approve the Project as conditioned. The proposed conditions are appropriately tailored to address coastal resource concerns without imposing unnecessary restrictions on the Applicant's reasonable economic use of the Property.

D. Conclusion

The administrative record establishes that strict application of the LCP bluff-edge setback, in combination with the cultural resource avoidance and visual resource height requirements applicable to the Property, would eliminate any economically viable residential use. The Coastal Act does not permit that result. Staff has correctly identified the building stringline as the appropriate, narrowly tailored, and constitutionally sound means of avoiding that outcome. The Applicant supports the staff recommendation, agrees to all proposed conditions of approval, and respectfully urges the Commission to adopt staff's findings and approve the Project.

Sincerely,

Sherman Stacey
Sherman Stacey
Partner
of RAND PASTER & NELSON, LLP

SS:tdp

cc: Karl Schwing
Amrita Spencer
Vince Lee
Tony Reyna
Horst Noppenberger
Fred Gaines, Esq.
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California Coastal Commission
South Coast District
301 E. Ocean Blvd. Suite 300
Long Beach, CA 90802

May 8, 2026

Subject: Public Comment on May 2026 Agenda Item Wednesday 17a - Appeal No. A-5-LGB-24-0018 (Reyna, Laguna Beach)

Dear Coastal Commissioners,

We appreciate your finding that there is a substantial issue related to the proposed project, and we believe that you need to go beyond the staff recommendations in order to achieve the goals of the Coastal Act.

- Taking. As is clear from extensive materials already submitted – please see Exhibit 2, Appeal by Christopher Moore, of the staff report – the applicant has been fully aware for nearly twenty years that development on the site would be severely constrained. None of the arguments pertaining to those constraints, which were summarized in the original appeal, has been addressed by staff, and thus we are not convinced that the staff are correct in asserting that there is a valid basis for saying that there could be an "unconstitutional taking of private property without just compensation". We note that even under the strict interpretation of the bluff edge, which staff clearly believe is legally correct, the site does have a buildable area of 1,168 SF, which would allow a house of 2,336 SF, slightly less that the size of a standard new house in this county. We therefore disagree with the staff's recommendation that a completely different standard be applied to this lot. We further note that the staff recommendation could set a dangerous precedent for our city in regard to other vacant lots and possibly to future projects that propose to redevelop oceanfront parcels.

- Staking. The project has not yet been properly re-staked. All that has been done is to mount a string line delineating what we suppose is the proposed landward edge of the building's roof. In fact, in terms of preservation of the views to the ocean, the operative line needs to be the seaward edge of the roof, the location of which will largely determine the extent of view blockage. We therefore request that, before any determination is made by the Commission, the seaward edge of the roof be staked so that a proper visual analysis can be made of the effects of the proposed building on the view. Based on our own analysis, the roof as proposed will permit visual access to only a narrow sliver of – at most a couple of degrees – between the edge of the roof and the horizon.

- Views. We believe that the intention of the policies in the Open Space/Conservation element of the City's General Plan is completely clear: existing views are to be protected.

> Policy 7-A: *Preserve to the maximum extent feasible the quality of public views from the hillsides and along the city's shorelines.*
>
> 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 grade of Pacific Coast Highway.* (emphasis ours)

If the proposed project is permitted to go forward, then on this site there is ample potential to meet the intentions of these policies, and we propose that the maximum height of the roof of the structure, including any elements that project above it, should be further reduced by approximately 6'-0". That would put its roof on the same level as the roof of the building, currently nearing completion, on the adjacent lot at 31497 Coast Highway, thus substantially preserving the views of the ocean from Coast Highway, as was required for the building on that adjacent property (please see attachment #1 to this letter). Thank you for your attention.

South Laguna Civic Association - By:

John B. Thomas
Vice President


Tyvek
HomeWrap

May 8th, 2026

Christopher Moore
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Sent via Electronic Mail

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RE: Appeal A-5-LGB-24-0018, De Novo Hearing (May 13, 2026)
Site Address: 31451 S. Coast Hwy., Laguna Beach, CA 92651 (APN: 056-032-26)

Dear Honorable Commissioners and Staff,

I agree with Staff's findings of significant issues. However, there are critical defects in Special Condition 1A of the De Novo review that undermine the Coastal Act and must be corrected for the following reasons:

1. **Staff incorrectly claims a potential taking exists.**
    a. **Investment Expectations:** Reyna bought the land in 2004. He could not have had a "reasonable expectation" to build a massive home based on a neighbor's house that wasn't even permitted until 2016.
    b. **Economic Viability:** A 1,168 sq. ft. home is still possible on the site. Since the property would still have significant value with a home of that size, no taking could occur.
2. **Staff's proposed stringline violates §30007.5 of the Coastal Act.**
    a. **Failure to Maximize Protection:** The law requires the Commission to resolve policy conflicts in a way that is *most* protective of coastal resources.
    b. **The "Stringline" Mockery:** The proposed "building stringline" method is a shell game. It only reduces the building footprint by 0.4%, allowing 99.6% of the massive project to be "gouged" into the bluff face.
    c. **Ignored Alternatives:** A "10-foot setback" compromise could be considered. This would allow for a medium-sized home (approx. 2,562 sq. ft.) while still protecting the actual bluff face, which would be more legally sound than the current proposal.
3. **Summary of Requests:**
    a. Reject the "takings" claim as legally and factually unsupported.
    b. Enforce the full 25-foot bluff edge setback, which would limit the house to approximately 1,168 sq. ft.

c. Throw out the "Stringline Method" because it fails to protect the bluff.
d. Consider a smaller compromise (like a 10-foot setback) only if you are absolutely convinced a taking exists, rather than approving the current massive footprint.

These points are explained further in depth below:

1) Staff incorrectly claims a potential taking exists

While it is far from settled whether or not the proper unit of property is one or both parcels, it is an immaterial distinction. For the sake of argument, even if one defines the unit of property solely as 31451 SCH, the proximal cause of the applicant's hardship is solely due to his own voluntary actions, by altering its configuration and dimensions (and thus the buildable area). Mr. Reyna could have reapportioned the lot line in any number of hypothetical configurations to increase the buildable area, yet chose not to. He then voluntarily sold the neighboring parcel, effectively making his decision irreversible. It is this sequence of voluntary actions that prevents any current buildable-area-based restrictions from having any origination from government imposition, thereby making the current takings claim unconvincing.

The foundational premise of the alleged taking, i.e. 4.7% buildable area, is also defective. The LCP explicitly excludes the land seaward of the bluff edge from the definition of lot area. LUE Policy 10.4 states: "Implement and define "lot area" as the total area of the lot minus the area/property located westerly of the building setback lines as described in Section 25.50.004(B)(1)(2)(3) or the oceanfront bluff ("oceanfront bluff edge" as defined in LCP Glossary), whichever is more restrictive." See also the zoning code definition of "buildable area". Therefore the Commission and the applicant are prohibited from using the entire parcel area as the percent buildable area denominator. Per Policy 10.4, the true lot area is actually 7,434 sq. ft. This means that Mr. Reyna actually has 15.7% buildable area, rather than the claimed 4.7%. 15% buildable area is in line with the neighboring properties listed in Exhibit 12 and does not trigger a takings. The staff report does not mention Policy 10.4 at all, nor the fact that it must be violated to support their findings.

Regarding the proper test for a takings analysis, we are in agreement that the Penn Central Test is the proper standard of review because the applicant will retain some economic use of his property. The Penn Central test must meet all of the following prongs to be considered a taking:

A. the economic impact of the regulation on the claimant;
B. the extent to which the regulation has interfered with distinct investment-backed expectations;
C. And the character of the governmental action.

The staff report concedes that several prongs of the Penn Central Test are not met, namely A and C, therefore I will not address them in depth. Regarding the economic impact of the regulation (Prong A), the staff report confirms existing law that, "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", and that a "95% diminution in value not a taking". A restriction is not a taking simply because it denies the property's highest and best use[1] or narrows a property owner's options[2]. Rather, the takings issue is resolved by looking at the uses that are permitted. If any (albeit small) economically viable use of the property remains under the restriction, a taking has not occurred. (See *Del Monte Dunes at Monterey v. City of Monterey* (9th Cir. 1996) 95 F.3d 1422, 1432) Therefore, we are in agreement that Prong A does not meet the takings threshold. And regarding the character of the governmental action (Prong C) it is universally undisputed that the Coastal Commission advances a legitimate public interest, nor is the applicant being singled out, and therefore Prong C does not meet the takings threshold.

The crux of the issue is regarding Prong B, "the extent to which the regulation has interfered with distinct investment-backed expectations." In this respect, staff has applied an improper baseline from which to determine this expectation, in defiance of the law.

Staff correctly asserts that "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." However, they err when they conclude that the applicant could have had a reasonable expectation to build a house of similar size as 31461 Coast Hwy, immediately to the south. <u>Mr. Reyna's reasonable investment-backed expectations must logically and necessarily be limited to those at the time of the investment in 2004</u>, (See *Bridge Aina Le'a, LLC v. Haw. Land Use Comm'n*, 950 F.3d 610 (9th Cir. 2020). The house at 31461 was not even permitted until 2016, over a decade after Mr. Reyna's investment. In other words, it was physically impossible for him to have had a reasonable investment backed expectation to build a home of that size at the time of the 2004 investment. Therefore, the Staff Report's conclusion that the 5,895 sq. ft. home at 31461 Coast Hwy was a reasonable expectation is legally invalid and must be thrown out. Because this home is the basis for the entirety of staff's reasonable investment-backed expectation analysis, this project fails the third and final prong of the takings test.
Staff must restrict their "reasonableness" comparison list in Exhibit 12 to only those homes in existence in 2004. Furthermore, many of the homes in Exhibit 12 are nonconforming, built prior to the existence of the Local Coastal Program (in fact the impacts of many of these larger blufftop homes necessitated the passage of the Coastal Act itself) and should also be excluded.

Moreover, the imposition of the 25 ft bluff edge setback does not prevent Mr. Reyna from building a single family home, merely reducing the size of said home. In footnote 15 of the staff report, Staff claims that "it is unclear exactly how the appellant [Chris Moore] arrived at those [1,168 sq. ft.] measurements for the structure itself". I used the applicant's own site plan included as Exhibit 7 of the staff report which explicitly states the remaining buildable area. It is

1. *Long Beach Equities, Inc. v. County of Ventura*, 231 Cal.App.3d 1016, 282 Cal.Rptr. 877 (Cal. App. 1991)
2. *Ewing v. City of Carmel-By-The-Sea*, 286 Cal.Rptr. 382, 234 Cal.App.3d 1579 (Cal. App. 1991)

perfectly feasible to build a trapezoidal structure amounting substantially to 1,168 sq. ft. on the buildable area shown in Exhibit 7. Such a design is extremely popular among modernist architects, coincidentally by one of whom the applicant is represented. The staff report does not impartially question the applicant's claimed 775 sq. ft. number, which appears to merely be a rectangular fit on the same area.

Staff's Exhibit 12 shows that 31321 Coast Hwy is only 1,200 sq. ft. and yet is substantially valued at over $8 million. A 432 sq ft oceanfront cottage in Laguna just went on the market for 18 million (1041 Marine Dr.). It is unclear how any taking claim could arise when Mr. Reyna could retain significant economic use of his property. It stands to reason then that a 1,168 sq. ft. home is compatible with a reasonable investment-backed expectation considering the strict regulations in existence at the time, the extraordinary topography and location of the lot, and the fact that these development risks were knowable in advance and necessarily incorporated into the purchase price. Mr. Reyna's wish to build a larger home is rooted in speculative possibility and not objective expectation. The courts caution that the takings clause is not an insurance policy for ultimately unsuccessful investment opportunities (See *Long Beach Equities*).

Aside from the takings test, staff has not discussed the possibility of implementing the 25 ft bluff edge setback as a special permit condition of approval. This would avoid an outright denial of the project, providing the applicant with economic use of the property, eliminating the risk of a takings claim, while ensuring maximum protection of coastal resources. Strict application of the Coastal Act in this case does not even approach a takings claim by any objective assessment, other than in the mind of the applicant. Therefore it is patently obvious that § 30010 should never have been triggered in this instance, and the LCP must be enforced to the fullest extent.

2) Staff's proposed stringline violates §30007.5 of the Coastal Act

The § 30010 takings exemption is intended to be extremely narrow and may only be made <u>to the extent necessary</u> to avoid a taking of property, (See *McAllister v. California Coastal Com.*, 169 Cal.App.4th 912, 87 Cal. Rptr. 3d 365 (Cal. App. 2008)) This is affirmed in the staff report, on page 53: "...<u>provided Coastal Act inconsistencies are avoided/minimized as much as possible</u> while still avoiding a taking", yet Staff does not provide any discussion or justification on how in fact the inconsistencies were minimized as much as possible. Instead, the staff report's sole justification repeats the debunked comparison to 31651 Coast Hwy. Therefore, even if the Commission hypothetically deems that leeway must be given pursuant to § 30010, Staff has not upheld their statutory duty to narrowly tailor that exemption to maximize coastal protections.

The Coastal Act is clear that environmental protections must be maximized, "when a provision of the Coastal Act is at issue, we are enjoined to construe it liberally to accomplish its purposes and objectives, giving the highest priority to environmental considerations. (See Pub. Res. Code § 30009; *Dunn v. County of Santa Barbara* (2006) 135 Cal.App.4th 1281). Furthermore, the

Commission must make findings identifying the conflict per § 30200(b) and § 30007.5 (See *McAllister*):

Cal. Pub. Res. Code § 30200(b). *Where the commission or any local government in implementing the provisions of this division identifies a conflict between the policies of this chapter, Section 30007.5 shall be utilized to resolve the conflict and the resolution of such conflicts shall be supported by appropriate findings setting forth the basis for the resolution of identified policy conflicts.*

Cal. Pub. Res. Code § 30007.5. *The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources.*

There is clearly a conflict here between several sections of the Coastal Act and Laguna Beach LCP, and section § 30010. However Special Condition 1A is not tailored to be maximally protective of coastal resources, nor did Staff make the required written findings supporting how they did so.

The "building stringline" method in Special Condition 1A comically does not require the applicant to make any material reduction of his originally proposed building footprint. There is effectively no bluff protection. With the application of the stringline setback, only 0.4% of the 4,406 sq. ft. footprint will be reduced, with 99.6% remaining as is. The entire building footprint will continue unabatedly to be gouged out of the middle of the bluff face itself. This absurd result does not in any way maximize the oceanfront bluff protections, and makes a mockery of the Coastal Act and LCP. Staff has not made any findings to justify how allowing the building footprint to remain intact on the bluff face resolves the conflict in a manner balanced towards being most protective of coastal resources. On the contrary, the fact that there was virtually no change to the building footprint in the bluff face implies that no balancing test was ever attempted nor alternatives considered. Rather, staff has accepted the applicant's suggestions at face value by insisting on a false choice between a 1,168 sq. ft. home or a 5,675 sq. ft. home. Moreover, eliminating the top floor of the building (Special Condition 1B) does nothing to mitigate the significant impact to the bluff face, and makes the side view corridor redundant.

The staff report claims that "there is no project alternative that would avoid all impact on the bluff slope that would not result in potential take." This is false. Staff failed to make required findings analyzing any other alternative options that could be used to mitigate impacts to the bluff face. One possible alternative that has not been considered is merely reducing the bluff edge setback, thereby protecting the entire bluff face, while permitting an increase in buildable area. For example, reducing the setback from 25 to 10 ft, as similarly used in Action 10.2.8 for accessory structures, would permit 2,562 sq. ft. in buildable area. This number is in close alignment with the 2,792 sq. ft. average building area of the comparable properties in Exhibit 12 (excluding 31461 Coast Hwy for reasons mentioned above). As some of the properties listed in Exhibit 12 are pre-Coastal Act nonconforming, and some of the listed homes are multi-level, the true average buildable area is likely lower. It is nevertheless a useful tool to establish the unadjusted average building area as a rough ceiling on the possible buildable area that could have been contemplated in 2004 with reasonable probability. By using a 10 ft bluff edge setback, the Commission could unquestionably extinguish any possibility of a takings claim, and make the required findings that the conflict was "resolved in a manner which on balance is the most protective of significant coastal resources" per Section 30007.5.

Therefore, the "building stringline method" of Special Condition 1A as proposed is clearly not narrowly tailored to only the extent necessary to prevent a taking per § 30007.5, and must be thrown out. Nor has Staff made any of the findings to support how the exceptions to the LCP in Special Condition 1A maximize protection of the bluff face as required by § 30020. If the Commission approves the "building stringline method" it will have abused its discretion.

Conclusion.
I respectfully urge the Commission to uphold the Coastal Act and decades of binding precedent by rejecting the phantom takings claim notion, and require the strict application of the LCP. I request that the commission modify Special Condition 1A to incorporate the 25 ft bluff edge setback. Alternatively, if the Commission remains convinced that a takings somehow still exists, it must choose a compromise (like a 10-ft setback) that avoids and minimizes Coastal Act inconsistencies as much as possible, not the "building stringline method".

Sincerely,

Christopher Moore

Attached:
Appendix A. Erroneous CDP Approval of 31461 Coast Hwy.

Appendix A. Erroneous CDP Approval of 31461 Coast Hwy.

The CDP approval of the site directly to the south of the project, 31461 Coast Hwy. has been claimed as a precedential baseline by the applicant and staff, which by operation of law is disqualified due to its date of approval over a decade after the time of investment. However there is another significant reason as to why it should not be used as precedent in this case. Namely, the CDP was erroneously approved in violation of the Coastal Act due to misrepresentations of the bluff edge by its applicant. The initial definition of oceanfront bluff was defined in the Zoning Code:

25.50.004(B)(4)(a). An "oceanfront bluff" is an oceanfront landform having a slope of forty-five degrees or greater from horizontal whose top is ten or more feet above mean sea level.

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

The upper riser of the Reyna property bluff exceeds 45 degrees in several areas, and therefore it was always known that its bluff edge existed at 115 ft MSL per the Zoning Code definition, as evidenced by several pre-2012 bluff edge determinations made by the city (see attachments to my letter dated 12/1/2025. However the critical distinction is that the upper riser of 31461 is gentler, below the 45 degree zoning code threshold for oceanfront bluff, that would have allowed the currently-permitted home.

Yet, a critical change happened. The Laguna Beach Land Use Element updated on May 9, 2012 added the current definition of “Oceanfront Bluff/ Coastal Bluff” and “Oceanfront Bluff Edge or Coastal Bluff Edge” as found in LUE Glossary definitions 101 and 102. This LUE definition is more restrictive on development than the Zoning Code definition, not less, because according to the CCC Staff Geologist, “the coastal bluff and bluff edge definitions in the LUE, which are determinative in this case, contain no slope-based restrictions on what qualifies as an “oceanfront bluff” (Gray, A-5-LGB-22-0025). This change had no effect on Reyna, as the bluff edge remained in the same place, but it did significantly impact 31461, as the legal bluff edge was raised from 55 ft MSL to 115 ft MSL, identical to Reyna. However there was significant confusion over which definition took precedence, until the Commission directed that the LUE is in fact the controlling definition. (Meehan, A-5-LGB-13-0223) on March 12th, 2015.

The development permit application for the current home under construction at 31461 Coast Hwy was filed on Jan 25, 2013 per city records, undergoing several Design Review Board hearings over the course of 3 years. During DRB consideration, the Coastal Commission staff sent a letter of concern to the city on April 6th, 2015 informing them about the Meehan decision, and that the bluff edge for 31461 must be delineated by a qualified geologist in accordance with the LUE definition. Yet it appears that this instruction was misinterpreted. At the subsequent DRB hearing on Jun. 18th, 2015, one DRB member did raise the concern that the bluff edge did not comply with the Coastal Commission, and the project architect rebutted that their geologist made a proper determination. However, in reality, their geologist did not in fact adhere to the LUE definition of bluff edge, instead finding it at the sea cliff (in an identical situation to what they attempted to do for Reyna). This false claim silenced any further discussion of the LUE bluff edge definition during the remaining city proceedings. In fact, the Staff report for the Sept. 24, 2015 Design Review Board hearing explicitly reverted back to the 45 degree slope standard of the Zoning Code definition. The city made final approval of the CDP on September 1, 2016, going unappealed as most laypersons are ignorant of esoteric geotechnical nuances. In fact, the city apparently never again enforced the LUE definition, as evidenced by the table of several Coastal Commission Appeals I compiled in my initial letter of appeal.

Consequently, in our current case, the project applicant and the Coastal Commission staff have poisoned their entire argument with a project that was erroneously approved in defiance of the LCP and Coastal Act. Therefore the Commission should avoid reinforcing a negative precedent harmful to coastal resources and reject 31461 Coast Hwy from being used as a precedent for 31451 Coast Hwy. If anything, the Commission should be considering revocation proceedings as the building is still under construction and illegally issued permits have no vested rights.

May 9, 2026

Delivered via email

To: Meagan Harmon, Chair, California Coastal Commission
CC: Kate Huckelbridge, Executive Director, California Coastal Commission,
Steve Hudson, Deputy District Director, South Coast District

Re: W17a, Appeal No. A-5-LGB-24-0018 (Reyna, Laguna Beach)

Dear Chair Harmon, Commissioners, and South Coast Staff,

Surfrider Foundation submits these comments on Appeal No. A-5-LGB-24-0018 (Reyna) in connection with the scheduled de novo hearing. We appreciate the extensive work staff has invested in this matter and do not dispute the finding of substantial issue. We write to raise concerns about the scope of development proposed for approval and to urge the Commission to consider a less expansive alternative that better reflects the requirements of the certified LCP.

Staff acknowledges that the proposed project is inconsistent with the bluff setback policies of the Laguna Beach LCP, that virtually all development would occur on the bluff face, and that strict application of those policies would render the project non-approvable. The Commission's authority to approve a non-conforming project under Coastal Act Section 30010 is intended to avoid an unconstitutional taking of property — not to authorize development beyond what is minimally necessary to provide a viable economic use of the property. Those are different standards, and we are concerned the staff recommendation does not adequately distinguish between them.

The core question is how much development is necessary to avoid a taking, not simply whether some development must be allowed. The U.S. Supreme Court has made clear that a taking requires denial of all economically viable use of property (Lucas v. South Carolina Coastal Council), or a regulatory burden so severe that it crosses a constitutional line under a case-by-case analysis (Penn Central Transportation Co. v. New York). Neither standard requires the Commission to approve a project of this scale. Indeed, staff's own analysis acknowledges that Section 30010 “allows the Commission to approve some amount of development in order to avoid such a taking.” The standard isn't how much is possible, but how much is enough. The site retains an LCP-compliant buildable area of approximately 1,168 square feet — modest, but not nothing — and a meaningfully smaller home sited to make greater use of that area could still provide a viable economic use of the property.

Equally important, the Coastal Act and the Laguna Beach LCP were both firmly in place when the applicant purchased this property in 2004. Any investor purchasing a coastal blufftop lot in 2004 took on the responsibility of understanding any and all applicable development restrictions already in place. The investment-backed expectations analysis under Penn Central is supposed to account for the regulatory environment that existed at the time of purchase. The staff report acknowledges this but proceeds to benchmark the applicant's reasonable expectations against the neighboring property at 31461 Coast Highway — a 5,895 square foot home. That comparison deserves scrutiny because the proposed project, at 7,231 square feet for the principal structure alone, is larger than the neighbor. It's also substantially larger than several other blufftop homes in the immediate area, which range from approximately 2,089 to 2,200 square feet. Approving a home of this size in order to avoid a takings claim goes well beyond what the law requires.

Surfrider urges the Commission to find that the minimum development necessary to avoid a taking is something appreciably smaller than what is currently proposed. The Commission has discretion to require revised plans that reduce the overall size and footprint of the project while still providing the applicant with a meaningful residential use of the property. Doing so would bring the project into greater conformity with the bluff setback and visual resource policies of the LCP, reduce grading and landform alteration on a sensitive coastal bluff, and set a more defensible precedent for similar blufftop applications in Laguna Beach and along the California coast.

We recognize that the conditions of approval as drafted — including the no-future-armoring requirement, the view corridor deed restriction, and the lowered structure elevation — represent meaningful protections. We support those conditions. Our concern is specifically with the overall scale of development being approved on what staff itself describes as a non-compliant site, on the basis of a takings analysis that we believe goes further than what the law requires.

Thank you for your consideration of these comments.

For our Ocean, Waves, and Beaches,

Mitch Silverstein
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