Memorandum

DATE: July 14, 2023

TO: Amber Dobson
Planning Manager
City of Laguna Beach
Community Development Department, Planning Division
505 Forest Avenue
Laguna Beach, CA 92651

FROM: Curtis Zacuto, Principal
Jennifer Johnson, Project Manager
EcoTierra Consulting

RE: Response to Comments for 31451 Coast Highway

This memorandum provides responses to comment letters received on the Initial Study/Mitigated Negative Declaration (IS/MND) prepared for the 31451 Coast Highway Project. Comments are numbered and responses are provided corresponding to each comment.

Responses presented in this memo focus only on those comments which bear a direct relationship to environmental issues discussed in the IS/MND, as required under the California Environmental Quality Act (CEQA). Some comments provide opinion pertaining to matters not germane to the environmental analysis presented in the IS/MND. Where this occurs, such comments are acknowledged only and no responses to opinions is provided or required by the CEQA.

The IS/MND for the 31451 Coast Highway Project (project) was circulated for public comment from May 24, 2023, to June 24, 2023. Written comments were received as follows:

- Comment Letter No. 1: Christopher Moore
- Comment Letter No. 2: Christopher Moore
- Comment Letter No. 3: Joshua and Nicole Strathman

Letter No. 1
Christopher Moore
1278 Glenneyre Street, # 457
Laguna Beach, CA 92651

Comment No. 1:

This is an extremely environmentally significant case, as to my knowledge it is the last undeveloped oceanfront parcel in the city, and not without reason. It is shocking that this project has been allowed to proceed past initial plan check due to the long history of city concerns regarding the

buildability of this parcel due to the presence of protected oceanfront bluffs. The project as proposed is not compliant with the city's certified Local Coastal Program (LCP) and therefore presents a significant environmental impact "due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect".(CEQA Checklist Item 11: Land Use and Planning). The current design as proposed completely disregards the presence of a coastal bluff / oceanfront bluff riser bisecting the parcel in a calculated attempt to ignore the required blufftop setbacks, which would effectively reduce the buildable area of the parcel to a tiny fraction at the landward-most plateau.

Response No. 1-1:

This comment states that the project, as proposed, is not compliant with the LCP and that the current design disregards the presence of a coastal bluff/oceanfront bluff bisecting the parcel.

As described in the IS/MND on page II-120, the City's LCP, certified by the California Coastal Commission on January 13, 1993, is comprised of several components, including, but not limited to the:

- Laguna Beach General Plan Land Use Element (LUE);
- Laguna Beach General Plan Open Space Conservation Element;
- Laguna Beach Coastal Land Use Technical Appendix;
- Laguna Beach Zoning Code (Laguna Beach Municipal Code Titles 16, 21, 22, and 25); and
- Laguna Beach Design Guidelines – A Guide to Residential Development.

Zoning Code, Section 25.50.004, defines an Oceanfront Bluff, but does not define the bluff edge. This section of the code imposes a setback from the 45 degree downward angle. However, the Laguna Beach Zoning Code is not consistent with the updated and certified LUE, which prevails over the Laguna Beach Zoning Code in cases of conflict. The certified Land Use Element (LUE) contains the definition of Oceanfront Bluff Edge or Coastal Bluff Edge. The City of Laguna Beach has been directed by the California Coastal Commission to use the definition contained in the LUE.

GeoSoils, Inc. prepared two memoranda (Appendix A of this Initial Study) that defined the coastal bluff edge location on the project site for the purpose of siting the proposed development. As discussed in the GeoSoils May 2020 memorandum, a distinction is made between a coastal bluff and a bluff associated with the walls of a natural drainage course. In defining the project site's coastal bluff location, GeoSoils used the City of San Diego's model for distinguishing between coastal bluffs and bluffs associated with natural drainage courses in proximity to coastlines.

As described, "according to the City of San Diego (2000), a coastal bluff can only be classified as such if surface runoff, generated thereon, drains directly to the ocean. Conversely, City of San Diego (2000) states that if surface runoff flowing down a bluff discharges into a natural drainage course before entering the ocean, the bluff is not coastal in origin, since it was formed by fluvial processes and not by marine erosion. The City of San Diego (2000) indicates the drainage divide that separates surface flows from entering the ocean and a natural drainage course demarcates the limits of these topographic features." The May 2020 memorandum depicted the approximate location of the coastal bluff edge, the approximate location of the edge of the natural drainage

course and the approximate location of the drainage divide on the project site using the City of San Diego's definitions (see Initial Study, Appendix A, *Figure 3, Coastal Bluff Edge Location Map*).

GeoSoils provided another memorandum (June 2022) for the project site using the City's updated coastal bluff and coastal bluff edge. Using maps, historical aerial photographs and geotechnical report review, GeoSoils concluded that their interpretation of the coastal bluff edge is consistent with the City's Land Use Element definition. The project did not disregard the coastal bluff and the bluff associated with the walls of the natural drainage course and the proposed single family home was cited on the property accordingly. Therefore, the current single family home proposal was designed and cited according to the City's definition of bluff edge and, as such, is consistent and with the Land Use Element which is a component of the LCP. The project as proposed is, therefore, compliant with the City's certified LCP.

Comment No. 1-2:

Project Violates the Local Coastal Program

The Coastal Bluff Evaluations performed by the applicant's consultants fail to meet a plain reading of the definitions of oceanfront bluff / coastal bluff and their respective edges as propounded by the city's approved Local Coastal Program.

Response No. 1-2:

The comment states that the Coastal Bluff Evaluations, prepared by GeoSoils, Inc., do not coincide with the LPC definitions of oceanfront bluff / coastal bluff and their respective edges. There is one definition for coastal bluff edge, contained in the LUE. As discussed in **Appendix A**, the Coastal Bluff Evaluation, dated June 7, 2022, acknowledges that the bluff edge determination was made with the proper definition from the LUE (refer to Response No. 1-1 for definitions). This definition is to be used when determining the coastal bluff and coastal bluff edge for oceanfront property that is to receive new development, including accessory structures, major remodels, and additions. The conclusion of the Coastal Bluff Evaluation, dated June 7, 2022, states that the location of the coastal bluff edge is consistent with the updated LUE definition. Therefore, the project has been designed accordingly.

Comment No. 1-3:

Analysis of Applicant's Deficient Coastal Bluff Evaluations

The GeoSoils, Inc. (GSI) report dated May 15th, 2020 (Appendix A) relies on a City of San Diego guidelines publication to claim that the landward bluff riser is actually a "natural drainage course" and not an oceanfront bluff. This logic was explicitly rejected on appeal by the California Coastal Commission (CCC) on March 10th, 2021 (Case # A-5-LGB-21-0012). This case involved nearly identical facts and circumstances, namely the logical deficiency of the coastal bluff edge determination, performed by the same consultant, GSI. The CCC rightfully disregarded reliance on the City of San Diego guidelines for the simple fact that it is not a component of the Laguna Beach Local Coastal Program, and the aforementioned LCP is the ***only*** *standard of review for an oceanfront bluff determination. Due to the faulty bluff edge determination, the CCC found that "Substantial Issue" exists and denied the coastal development permit. Therefore, it is reasonable*

to conclude in this case that the May 15th, 2020 Coastal Bluff Edge Evaluation (Appendix A) is not consistent with the LCP and therefore violates the Coastal Act.

Likely due to the precedent set by the CCC decision, in May 2021 the city published a handout clarifying the coastal bluff determination process for applicants, including a restatement of the oceanfront bluff definitions in the LCP. Subsequently, the applicant's consultants published an updated Coastal Bluff Edge Evaluation report dated June 7th, 2022. This update did not address their faulty previous report and instead considered it "valid and applicable" despite being invalidated by the CCC a year prior. This report failed to analyze both definitions of oceanfront bluff / coastal bluffs and only focused on one definition. The Section 25.50.004 definition was conveniently absent from the discussion. Additionally, GSI departs from the LCP definition to make a vague case with grainy photos that the lower terrace soil composition is "undocumented fill" and therefore not an oceanfront bluff, and continued to rely on the CCC-rejected narrative of "natural drainage course". Therefore this second evaluation is also not consistent with the Laguna Beach LCP.

Response No. 1-3:

The comment states that the GSI report, dated May 15, 2020, was not consistent with the LCP and violates the Coastal Act. The comment further states that the GSI report, dated June 7, 2022, did not address the "faulty" previous report and that it failed to analyze both definitions of oceanfront bluff / coastal bluffs, the Laguna Beach Zoning Code, Section 25.50.004, and the LUE, and only focused on the LUE. Furthermore, the commenter states that the lower terrace soil composition is incorrectly defined as "undocumented fill".

The reader is referred to Response No. 1-1 with regards to consistency with the LCP. The Land Use Element is one of seven state mandated elements of the General Plan. Zoning is an implementation tool and determines what is permissible to build on a given parcel of land. Zoning is required to be consistent with the general plan (California Government Code Section 65860). Changes to a general plan may require changes to zoning. Therefore, the definition of coastal bluff edge in the General Plan is the definition to use and the zoning code will need to be modified to the definition provided in the Land Use Element. As described in the IS/MND, on page II-87, subsurface exploration, conduction as part of the Geotechnical Report (see Appendix D.1 of the IS/MND), determined that the project site is underlain by fill soil and older colluvium, which is undocumented fill material.

Comment No. 1-4:

Analysis of the Local Coastal Program Text

*There are **two** references for oceanfront/coastal bluffs provided in the certified LCP, one in the zoning code component of the implementation plan (IP) and one in the land use element component of the certified LUP.*

Section 25.50.004 of the certified implementation plan defines "oceanfront bluff" as:

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

i. In cases where an oceanfront bluff possesses an irregular or multiple slope condition, the setback will be taken from the most inland forty-five degree or greater slope.

ii. In cases where the landform constitutes an oceanfront bluff whose slope is less than forty-five degrees, a determination as to whether or not the specific landform is subject to this provision shall be made by the director of community development.

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

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

Response No. 1-4:

This comment references definitions of oceanfront bluff/coastal bluff edge. Refer to Response 1-1 for explanation for definitions used. Refer to Response 1-1 for explanation of these definitions. Refer to Response 1-3 for discussion of general plan versus zoning and their hierarchy. The comment does not state any specific concern or question regarding the adequacy of the IS/MND. No further response is required.

Comment No. 1-5:

In the aforementioned appeal decision, the Coastal Commission stated that "the two definitions must be read together and harmonized as much as possible." From a plain language reading of these definitions it is obvious that the entire landform on the parcel in question here is a coastal bluff regardless of the actual soil composition because the majority of the land area of both bluff risers are sloped greater than 45 degrees. Therefore, at a minimum the 25-foot setback ***must*** *be taken from the most landward 45 degree slope. This initial definition has been completely disregarded by GSI. In addition, the Director of Community Development already made a determination in 2009 per Section 25.50.004(ii) that the setback line is roughly at the 115-116 ft contour (Attachment 4). Per the Entry 102 definition, the bluff edge GSI proposed actually aligns with the lower "sea cliff" part of the bluff, and is only one component of the much larger bluff.*

Response No. 1-5:

The comment discusses that the California Coastal Commission A-5-LGB-21-0012 Appeal for a property located at 6 Lagunita, Laguna Beach, on March 10, 2021, that stated that the applicant must "include specific analysis and discussion of how the bluff top location was determined, based on the two definitions provided in the City's Municipal Code and the General Plan Land Use Element." The comment also states that the bluff edge GSI proposed actually aligns with the lower "sea cliff" part of the bluff, and is only one component of the much larger bluff. The Community Development Director did make an informal determination of the bluff edge and setback in 2009, however that was prior to the 2012 amended definition of Coastal Bluff Edge, which is the current

and proper standard. The reader is referred to Response No. 1-1 for discussion on definitions and Response 1-3 for discussion on general plan and zoning hierarchy.

Comment No. 1-6:

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/Coastal Bluff Edge':…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."

Since the parcel's entire sloped landform is considered an oceanfront bluff per the two definitions of oceanfront bluff/ coastal bluff, the edge definition further instructs that since there is a step-like feature on the bluff, that the "landward edge of the topmost riser" must be considered the bluff edge. This indicates that the true legal position of the oceanfront bluff top is along the 115-116 ft elevation contour, in agreement with the 2009 blufftop determination (Attachment 4). The "buried beneath fill" portion that GSI relies upon for the crux of their argument is qualified by the preceding sentence, intended to prevent developers moving the setback line seaward using artificial fill. In fact, the combined intent of these two sentences is to move the bluff edge as landward as possible, the opposite effect GSI intended.

Moreover, the topographical map (Total Engineering, surveyed 2003) relied upon for their analysis switches from 2-foot to 5-foot contour intervals in several critical bluff areas, creating a misleading impression that there is less slope than truly present. This is also in violation of the City of Laguna Beach Site Survey Requirements (Attachment 5) which requires 1-foot elevation contours on sloped sites. Therefore these reports should have never been accepted for review by the city.

Response No. 1-6:

As discussed in Appendix A, the Coastal Bluff Evaluation, dated June 7, 2022, of the IS/MND, based on the aerial photograph, and geotechnical report reviews, and the field mapping performed in preparation of GSI, as well as the recent reviews of the 1885 USGS T-Sheet and the circa 1928 oblique aerial photograph, the location of the coastal bluff edge at the project site is coincident with the geologic contact between the lower terrace deposits and the overlying undocumented fill. The geologic contact occurs between approximate elevations 55 and 57½ feet. This is considered the likely position of the coastal bluff edge prior to the placement of fill within the lower site elevations. As shown in Figure 3, Appendix A of the IS/MND, the slope breaks between the coastal terrace and the sidewalls of the natural drainage course to the north and south of the former spur, which are identified as the approximate location of the edge of the natural drainage courses. Therefore, the interpretation of the coastal bluff edge is consistent with the updated LUE definition and the project has been designed accordingly.

Comment No. 1-7:

*Further, this issue is well known to the applicant as the city has expressed the same concerns as I have over the past two decades as Mr. Reyna has repeatedly made aborted attempts to develop this parcel. The public planning record shows that the present parcel was grown from a much smaller parcel in 2008 by a lot line adjustment between 31451 Coast Hwy. and 31461 Coast Hwy. Per a staff memo by Zoning Administrator Liane Schuller, city staff "advised the applicants that a lot line adjustment would not alter the location of the bluff for setback purposes, and that although the lot would be larger in size, "**the existing bluff location would still impose significant limitations on site development** [emphasis added]" (Attachment 3) These limitations are shown on a 2008 city-annotated topographic map in the lot line adjustment file detailing the development constraints on the site, notably the bluff edge and associated setbacks consuming most of the buildable area on the parcel, in agreement with my position (Attachment 1).*

Despite the city's position, Mr. Reyna still filed several development applications for a 7500 sf mansion, only to be rebuffed by city planners due to the bluff edge position. The Director of Community Development, John Montgomery made the blufftop determination to be along the 115-116 ft elevation contour line, again in agreement with my position, per the map in the planning file (Attachment 4). In 2010, Principal Planner Nancy Csira required the project to get a variance for encroachment into the blufftop setback (Attachment 4) and remanded the application to the Design Review Board for blufftop determination to, "avoid a staff determination being modified by the board at a later date, after time and effort have been invested in siting and designing the proposed structures" (Attachment 2). The application was subsequently withdrawn. None of the LCP definitions or site topography have changed since 2010, yet somehow this project has evaded any meaningful blufftop setbacks or requisite variances. It appears that the City has been wholly reliant on the judgment of the applicant's own consultant which is an obvious conflict of interest. It is apparent that the intent of the applicant is to wear down the city's vigilance with repeated development applications for decades until one slips through the cracks.

Response No. 1-7:

The comment states that the Applicant has filed several development applications, which have been denied and/or withdrawn, in regards to the determination of the bluff location. The comment further states that the LCP definitions and the site topography have not changed since 2010. The LUE definition of Coastal Bluff Edge was updated in 2012. The determination of bluff edge made by the Community Development Director in 2009 was not based on the current definition. The bluff edge determination for the proposed project reflects the current standard, uses the proper definition of bluff edge, was prepared by a licensed Geologist and was peer-reviewed by the City's consulting Geologist for accuracy. The reader is referred to Response 1-1 regarding bluff definitions and citing of the proposed home and compliance with the LUE which is a component of the LCP.

Comment No. 1-8:

After reviewing the relevant facts and circumstances of this case, it is obvious that the Oceanfront Blufftop Determination of this project as proposed is not compliant with the city's certified Local Coastal Program (LCP), and is likely to be denied a CDP upon appeal to the Coastal Commission per recent CCC precedent and the City's own record of disapproval. This noncompliance therefore presents a significant environmental impact "due to a conflict with any land use plan, policy, or

regulation adopted for the purpose of avoiding or mitigating an environmental effect". Due to the permanent nature of development, the impact this project will have on the coastal bluff can not be mitigated. Therefore a Mitigated Negative Declaration is not acceptable and an Environmental Impact Report (EIR) must be prepared.

This letter does not exhaust any other environmental impacts that may not be covered.

Response No. 1-8:

The comment states that the Oceanfront Blufftop Determination for this project is not compliant with the LCP and that an IS/MND is not acceptable and an EIR must be prepared. The reader is referred to Response No. 1-1 regarding bluff definitions and citing of the proposed home and compliance with the LUE which is a component of the LCP. Impacts of the proposed development on the project site has been analyzed in the Initial Study that supports a Mitigated Negative Declaration. The Initial Study was prepared in accordance with the California Environmental Quality Act (Sections 15063 and 15064) using thresholds of significance (Section 15064.7) and identified measures to mitigate impacts (have been provided. No significant impacts remain after mitigation and thus an environmental impact report is not required (Section 15064(f)(1)).

Letter No. 2
Christopher Moore
1278 Glenneyre Street, # 457
Laguna Beach, CA 92651

Comment No. 2-1:

This is my second comment letter regarding the draft Mitigated Negative Declaration (MND) proposed for the project at 31451 S. Coast Hwy, this time specifically about the aesthetic impact it will have. As you know, this is an extremely environmentally significant case as it is the last undeveloped oceanfront parcel in the city to my knowledge.

Response No. 2-1:

This comment is an introductory statement and is acknowledged for the record. Responses to issues raised are provided below.

Comment No. 2-2:

The draft Initial Study Checklist item number 1(a) ("Would the project have a substantial adverse effect on a scenic vista?") states that the property is fenced off, "therefore, although views are available from the project site, those views are not accessible to the public". This is misleading to the stakeholders who might not be aware of the historical facts and circumstances of this property and deceives the magnificent public vistas enjoyed on this parcel for decades up until the recent erection of a temporary construction fence. My family has lived across the street from this parcel for decades, and I am intimately familiar with its history. I personally witnessed the fence being erected on April 25th, 2019. To accurately capture the existing aesthetic value of this parcel, the environmental baseline needs to be considered as it was before the temporary fence obstructions.

The construction staging plan required for the neighboring 31497 Bluff Dr. pre-grading meeting on May 9th, 2019 shows 31451 S. Coast Hwy. being used as a staging area with fencing. However, grading has long since ceased years ago but the fence and opaque covering remains. In fact, there have been story-poles erected on the property for almost a year obstructing any possible staging use, yet the fence inexplicably remains. The applicants can not have it both ways, by hiding the impacts to significant public environmental assets on their property under the guise of construction staging.

Further, prior to the erection of the temporary fence in 2019, the parcel had never been fenced, the public enjoying free access to the entire lot. People of all backgrounds enjoyed free magnificent panoramic and focal views from its multiple bluff-top promontories, including the beach in all directions, the Pacific Ocean, the tidepools of West Street Beach, Aliso Peak, Catalina Island, and was a common location to view migrating whales and dolphins which come close to shore at this point. These views could not be seen anywhere else since it is the only undeveloped oceanfront bluff in South Laguna. As a de-facto public open space with rich coastal and environmental resources, and observable unique marine fauna, it is a significant public aesthetic resource. Therefore with the true environmental baseline for this lot being prior to the temporary fence erection, the public view impact must be evaluated from the entire area of public access (the entire lot), not just through the lot from the PCH right-of-way. (see attached photos)

As of the date of this letter, there is not, nor has there been any fence permits, or any other building permits issued by the City for this parcel. The present fence is over 6 feet tall, of chain-link construction, and located within the front yard near the property line. Nor could there ever be a fence permitted here in the future, since it is clearly in violation of the City's Zoning Code Section 25.50.012 (B) (1) and (5).

Section 25.50.012 (B) (1) states: "Fences, walls, hedges, latticework or screens ***not more than four feet*** *in height may be erected, installed or maintained within the front yard… [emphasis added]".*

Section 25.50.012 (B) (5) states: "Chain link fences and other metal fences in residential areas are subject to design review."

Therefore it can only be a transient structure and is not representative of the permanent generally existing conditions. A temporary structure that would otherwise be impossible to build should not be considered as part of the existing baseline conditions as it would be misleading the public.

There is a long precedent for removing any fence coverings during the planning process. Per the 2014 temporary fence permit (B14-0026) for neighboring 31497 Bluff Dr. showing the fence overlapping onto 31451 S. Coast Hwy. However the permit approved by the City on January 7th, 2014 specifically states that "no covering or material panels of any kind" can be used. Additionally it states that it must be removed once the staking poles for 31497 Bluff Dr. were removed. Another temporary fence permit (B16-1307) was approved in 2016 for staking purposes at 31497 Bluff Dr., but this time did not encroach onto 31451 S. Coast Hwy. The same conditions applied that "no covering or material panels of any kind" can be used. The city needs to order the removal of the current fence and , if so desired, issue a temporary fence permit for the purpose of staking protection without any coverings. This is the only way the impact on public views can begin to be properly assessed.

Response No. 2-2:

The comment states that 31451 S. Coast Highway was being used as a staging area for development of 31497 Bluff Drive and fencing was erected on April 25, 2019. The comment further states that grading ended years ago, however, the fencing remains. Additionally, there have been story-poles erected on the property, for close to a year, which would obstruct the site from being utilized for staging. The comment claims that the public enjoyed free access to 31451 S. Coast Highway, which provided panoramic and focal views, prior to the fencing being erected.

As shown in Figure 1, Views of Surrounding Uses, in the IS/MND, on page II-5, 31497 Bluff Drive is currently under construction. The California Building Code mandates a safe and secure building site. Therefore, the temporary construction fencing must remain in place during active construction.

For purposes of determining significance of scenic vistas under CEQA, scenic resources are the visible natural and cultural features of the landscape that contribute to the public's enjoyment of the environment. A scenic vista is defined as a public viewpoint that provides expansive views of a highly valued landscape for the benefit of the general public. Public views are those that are experienced from a publicly accessible vantage point, such as a roadway or public park. As stated in the IS/MND, on page II-21, the Laguna Beach Landscape and Scenic Highways Resource Document, describes that public views from the project site would be scenic views from Coast Highway, Laguna Canyon Road, or other streets up to the hillsides, canyons, or down to the ocean, or views to or from other public areas including parks, beaches, trails, and viewpoints. The project site is a private property and is not considered a public vantage point. The Laguna Beach Design Guidelines-A Guide to Residential Development, includes criteria that the Design Review Board utilizes to review projects. View Equity is one such criteria:

> *…that a development, including its landscaping, shall be designed to protect existing views from neighboring properties without denying the subject property the reasonable opportunity to develop as described and illustrated in the city's "design guidelines." The "design guidelines" are intended to balance preservation of views with the right to develop property.*

As detailed in the IS/MND, page III-124, the project would be consistent with guidelines related to view equity as the project would not exceed the City's building height standards and would be consistent with adjacent development. Therefore, the project conforms to the Design Guidelines. For a full analysis of the project's consistency with the City's Residential Design Guideline policies, please see Appendix I.2 of the IS/MND.

Furthermore, as detailed in the IS/MND, page III-121-122, the project would be consistent with applicable policies and actions in the General Plan adopted for the purpose of avoiding or mitigating an environmental effect, including impacts to views. For a full analysis of the project's consistency with the General Plan policies and actions, please see Appendix I.1 of the IS/MND.

Throughout the Design Review process, the project was intentionally confined to a small portion of the lot, in order to accommodate view concerns, which included view preservation. The overall design of project was driven by view equity, mass and scale, proximity to the bluff, and setbacks. Furthermore, the related landscape plan has been designed to maintain existing view sheds across

the project site towards the ocean. As discussed in more detail in Section 1, Aesthetics, of the IS/MND, views of Aliso Peak, the San Joaquin Hills, and the Pacific Ocean would still be available via street corridors, as are currently available. The proposed single-family residential use would be a maximum of 30 feet, which is in line with existing residential development in the vicinity and does not exceed the City's building height standards. Furthermore, the project has been designed in a split-level style and setback 20 feet from Coast Highway, further reducing view impacts.

Comment No. 2-3:

The jurisprudence supports my contention that modifying the "normally" existing conditions is necessary when a temporary aberration is present. The seminal 2010 California Court of Appeals decision in Sunnyvale West Neighborhood Assn. v. City of Sunnyvale City Council (Sunnyvale West) states the following:

It is important to keep in mind that the administrative regulations implementing CEQA (§ 21083) cannot contravene that governing statute, which consistently requires a determination whether a project would significantly impact the existing environment. The word "normally" as used in the regulation is most reasonably understood as recognizing, with respect to individual projects not previously analyzed under CEQA, ***that the physical conditions existing exactly at the time the notice of preparation is published or at the time the environmental analysis begins*** *(if a notice of preparation is not published)* ***may not be representative of the generally existing conditions*** *and, therefore, an agency may exercise its discretion to apply appropriate methodology to determine the "baseline" existing conditions. Thus, for example, if traffic congestion and vehicular travel has temporarily decreased due to an unusually poor economy so that traffic conditions at the time specified by CEQA Guidelines section 15125 are inconsistent with the usual historic conditions, a lead agency might use appropriate methodology, perhaps historical data and traffic modeling, to determine the generally existing conditions. [emphasis added] (Sunnyvale West Neighborhood Assn. v. City of Sunnyvale City Council, 190 Cal.App.4th 1351, 1379-80 (Cal. Ct. App. 2010)).*

This principle was further reaffirmed three years later by the California Supreme Court in Neighbors for Smart Rail v. Exposition Metro Line Construction Authority (Neighbors): "Concluding that existing conditions is the normal baseline under CEQA, but that ***factual circumstances can justify an agency departing from that norm when necessary to prevent misinforming or misleading the public and decision makers****, we then ask whether the administrative record here contains substantial evidence of such circumstances. [emphasis added]" (Neighbors for Smart Rail v. Exposition Metro Line Construction Authority, 57 Cal.4th 439, 448 (Cal. 2013))*

The record shows that this fence is clearly temporary, therefore it is obviously misleading to include it as an environmental baseline. Per Sunnyvale West and Neighbors, there is strong legal precedent that the right thing to do is to ascertain the pre-fence historical conditions, and incorporate that as the correct environmental baseline for the revised analysis for the Initial Study Checklist item 1: Aesthetics.

Response No. 2-3:

The comment cites two court cases that determined if the baseline environmental physical environmental conditions may not be representative of the prior existing conditions a lead agency

may determine the environmental baseline. The comment further states that the fencing on the project site is temporary. Therefore, the correct environmental baseline for the analysis in the IS/MND Checklist 1: Aesthetics, should be comprised of no fencing.

The fencing has been on the site since April 25, 2019. Therefore, the baseline utilized in the IS/MND is an accurate assumption of the existing conditions currently found on the site for the past four years. The commenter is referred to Response No. 2-2, with regards to aesthetic impacts.

Comment No. 2-4:

Once oriented by the true historical baseline condition, it is obvious that this project presents a significant environmental impact. Per item 1(a), a significant impact may occur if a proposed project introduces incompatible visual elements within a field of view containing a scenic vista or substantially blocks a scenic vista. This is the last publicly accessible oceanfront scenic vista in South Laguna with literally irreplaceable visual resources. Per the proposed project plans, it will be eradicated. Due to the permanent nature of development, the impact this project will have on the public views can not be mitigated. Therefore a Mitigated Negative Declaration is not acceptable and an Environmental Impact Report (EIR) must be prepared.

This letter does not exhaust any other environmental impacts that may not be covered.

Response No. 2-4:

The comment states that the project site is the last publicly accessible oceanfront scenic vista in South Laguna Beach. The commenter is referred to Response No. 2-2.

Letter No. 3
Joshua and Nicole Strathman
31461 Monterey Street
Laguna Beach, CA 92651

Comment No. 3-1:

I am writing in response to the proposed intent to adopt a Mitigated Negative Declaration for the parcel at 31451 Coast Highway. The existing plans would require excavation of the upper portion of the parcel's costal bluff and construction the proposed residence into the bluff face. In no way is the size and scope of this proposed 7,500 sq. ft. project in compliance with the Local Coastal Program. Ever since 2010, the City has recorded a long history of concerns regarding the limitations to building on this site. These plans disregard prior determinations by the City's planning division in an attempt to skirt required blufftop setbacks to permit the erection of a structure that the bluff simply cannot not sustain.

Response No. 3-1:

The comment states that the project, which is not in compliance with the LCP, would require the excavation of the upper portion of the parcel's coastal bluff, which could not sustain the proposed 7,500 sq. ft. residence. The commenter is referred to Response No. 1-1, which states that the project would be in compliance with the LCP. Furthermore, as described in the IS/MND, on page

II-87, the Geotechnical Report prepared for the project concluded that development of the project is feasible from a geotechnical engineering standpoint, provided that the advice and recommendations contained in the report are included in the project plans and implemented during construction.

Comment No. 3-2:

The larger, adjacent parcel of 31461 Coast Highway also attempted to build a 7000+ sq. ft. residence, but those applicants also had to adhere to the LCP and reduce the size of their proposed building to adhere to the bluff setbacks. I am formally requesting that you require this applicant to do the same.

Response No. 3-2:

This comment refers to the adjacent parcel, located at 31461 Coast Highway, and adherence to the LCP, but the comment does not state a specific concern or question regarding the adequacy of the information contained in the IS/MND. However, the comment is acknowledged for the record and will be forwarded to the decision-making bodies for their review and consideration.

ATTACHMENTS

Amber Dobson
Planning Manager
City of Laguna Beach, Planning Division
505 Forest Ave.
Laguna Beach, CA 92651
(949) 497-0362
adobson@lagunabeachcity.net

RE: Notice of Intent to Adopt a Mitigated Negative Declaration for 31451 S. Coast Hwy. APN: 056-032-26

Dear Ms. Dobson,

This is an extremely environmentally significant case, as to my knowledge it is the last undeveloped oceanfront parcel in the city, and not without reason. It is shocking that this project has been allowed to proceed past initial plan check due to the long history of city concerns regarding the buildability of this parcel due to the presence of protected oceanfront bluffs. The project as proposed is not compliant with the city's certified Local Coastal Program (LCP) and therefore presents a significant environmental impact "due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect". (CEQA Checklist Item 11: Land Use and Planning). The current design as proposed completely disregards the presence of a coastal bluff / oceanfront bluff riser bisecting the parcel in a calculated attempt to ignore the required blufftop setbacks, which would effectively reduce the buildable area of the parcel to a tiny fraction at the landward-most plateau. 1

Project Violates the Local Coastal Program

The Coastal Bluff Evaluations performed by the applicant's consultants fail to meet a plain reading of the definitions of oceanfront bluff / coastal bluff and their respective edges as propounded by the city's approved Local Coastal Program. 2

Analysis of Applicant's Deficient Coastal Bluff Evaluations

The GeoSoils, Inc. (GSI) report dated May 15th, 2020 (Appendix A) relies on a City of San Diego guidelines publication to claim that the landward bluff riser is actually a "natural drainage course" and not an oceanfront bluff. This logic was explicitly rejected on appeal by the California Coastal Commission (CCC) on March 10th, 2021 (Case # A-5-LGB-21-0012). This case involved nearly identical facts and circumstances, namely the logical deficiency of the coastal bluff edge determination, performed by the same consultant, GSI. The CCC rightfully disregarded reliance on the City of San Diego guidelines for the simple fact that it is not a 3

component of the Laguna Beach Local Coastal Program, and the aforementioned LCP is the **only** standard of review for an oceanfront bluff determination. Due to the faulty bluff edge determination, the CCC found that "Substantial Issue" exists and denied the coastal development permit. Therefore it is reasonable to conclude in this case that the May 15th, 2020 Coastal Bluff Edge Evaluation (Appendix A) is not consistent with the LCP and therefore violates the Coastal Act.

Likely due to the precedent set by the CCC decision, in May 2021 the city published a handout clarifying the coastal bluff determination process for applicants, including a restatement of the oceanfront bluff definitions in the LCP. Subsequently, the applicant's consultants published an updated Coastal Bluff Edge Evaluation report dated June 7th, 2022. This update did not address their faulty previous report and instead considered it "valid and applicable" despite being invalidated by the CCC a year prior. This report failed to analyze both definitions of oceanfront bluff / coastal bluffs and only focused on one definition. The Section 25.50.004 definition was conveniently absent from the discussion. Additionally, GSI departs from the LCP definition to make a vague case with grainy photos that the lower terrace soil composition is "undocumented fill" and therefore not an oceanfront bluff, and continued to rely on the CCC-rejected narrative of "natural drainage course". Therefore this second evaluation is also not consistent with the Laguna Beach LCP. 3 cont.

Analysis of the Local Coastal Program Text

There are **two** references for oceanfront/coastal bluffs provided in the certified LCP, one in the zoning code component of the implementation plan (IP) and one in the land use element component of the certified LUP.

Section 25.50.004 of the certified implementation plan defines "oceanfront bluff" as:
…an oceanfront landform having a slope of forty-five degrees or greater from horizontal whose top is ten or more feet above mean sea level.

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

4

Entry 102 of the Land Use Element (LUE) Glossary, a component of the City of Laguna Beach certified LCP, contains the following definition of 'Oceanfront Bluff/Coastal Bluff':
…A bluff overlooking a beach or shoreline **or** that is subject to marine erosion. Many oceanfront bluffs consist of a gently sloping upper bluff and a steeper lower bluff or sea cliff. The term "oceanfront bluff' or "coastal bluff' refers to the entire slope between a marine terrace or upland

area and the sea. The term "sea cliff" refers to the lower, near vertical portion of an oceanfront bluff. 4 cont.

In the aforementioned appeal decision, the Coastal Commission stated that "the two definitions must be read together and harmonized as much as possible." From a plain language reading of these definitions it is obvious that the entire landform on the parcel in question here is a coastal bluff regardless of the actual soil composition because the majority of the land area of both bluff risers are sloped greater than 45 degrees. Therefore, at a minimum the 25-foot setback **must** be taken from the most landward 45 degree slope. This initial definition has been completely disregarded by GSI. In addition, the Director of Community Development already made a determination in 2009 per Section 25.50.004(ii) that the setback line is roughly at the 115-116 ft contour (Attachment 4). Per the Entry 102 definition, the bluff edge GSI proposed actually aligns with the lower "sea cliff" part of the bluff, and is only one component of the much larger bluff. 5

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/Coastal Bluff Edge': …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."

Since the parcel's entire sloped landform is considered an oceanfront bluff per the two definitions of oceanfront bluff/ coastal bluff, the edge definition further instructs that since there is a step-like feature on the bluff, that the "landward edge of the topmost riser" must be considered the bluff edge. This indicates that the true legal position of the oceanfront bluff top is along the 115-116 ft elevation contour, in agreement with the 2009 blufftop determination (Attachment 4). The "buried beneath fill" portion that GSI relies upon for the crux of their argument is qualified by the preceding sentence, intended to prevent developers moving the setback line seaward using artificial fill. In fact, the combined intent of these two sentences is to move the bluff edge as landward as possible, the opposite effect GSI intended. 6

Moreover, the topographical map (Total Engineering, surveyed 2003) relied upon for their analysis switches from 2-foot to 5-foot contour intervals in several critical bluff areas, creating a misleading impression that there is less slope than truly present. This is also in violation of the City of Laguna Beach Site Survey Requirements (Attachment 5) which requires 1-foot elevation

contours on sloped sites. Therefore these reports should have never been accepted for review by the city. 6 cont.

Further, this issue is well known to the applicant as the city has expressed the same concerns as I have over the past two decades as Mr. Reyna has repeatedly made aborted attempts to develop this parcel. The public planning record shows that the present parcel was grown from a much smaller parcel in 2008 by a lot line adjustment between 31451 Coast Hwy. and 31461 Coast Hwy. Per a staff memo by Zoning Administrator Liane Schuller, city staff "advised the applicants that a lot line adjustment would not alter the location of the bluff for setback purposes, and that although the lot would be larger in size, "**the existing bluff location would still impose significant limitations on site development** [emphasis added]" (Attachment 3) These limitations are shown on a 2008 city-annotated topographic map in the lot line adjustment file detailing the development constraints on the site, notably the bluff edge and associated setbacks consuming most of the buildable area on the parcel, in agreement with my position (Attachment 1).

Despite the city's position, Mr. Reyna still filed several development applications for a 7500 sf mansion, only to be rebuffed by city planners due to the bluff edge position. The Director of Community Development, John Montgomery made the blufftop determination to be along the 115-116 ft elevation contour line, again in agreement with my position, per the map in the planning file (Attachment 4). In 2010, Principal Planner Nancy Csira required the project to get a variance for encroachment into the blufftop setback (Attachment 4) and remanded the application to the Design Review Board for blufftop determination to, "avoid a staff determination being modified by the board at a later date, after time and effort have been invested in siting and designing the proposed structures" (Attachment 2). The application was subsequently withdrawn. None of the LCP definitions or site topography have changed since 2010, yet somehow this project has evaded any meaningful blufftop setbacks or requisite variances. It appears that the City has been wholly reliant on the judgment of the applicant's own consultant which is an obvious conflict of interest. It is apparent that the intent of the applicant is to wear down the city's vigilance with repeated development applications for decades until one slips through the cracks. 7

After reviewing the relevant facts and circumstances of this case, it is obvious that the Oceanfront Blufftop Determination of this project as proposed is not compliant with the city's certified Local Coastal Program (LCP), and is likely to be denied a CDP upon appeal to the Coastal Commission per recent CCC precedent and the City's own record of disapproval. This noncompliance therefore presents a significant environmental impact "due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect". Due to the permanent nature of development, the impact this project will 8

have on the coastal bluff can not be mitigated. Therefore a Mitigated Negative Declaration is not acceptable and an Environmental Impact Report (EIR) must be prepared.

8 cont.

This letter does not exhaust any other environmental impacts that may not be covered.

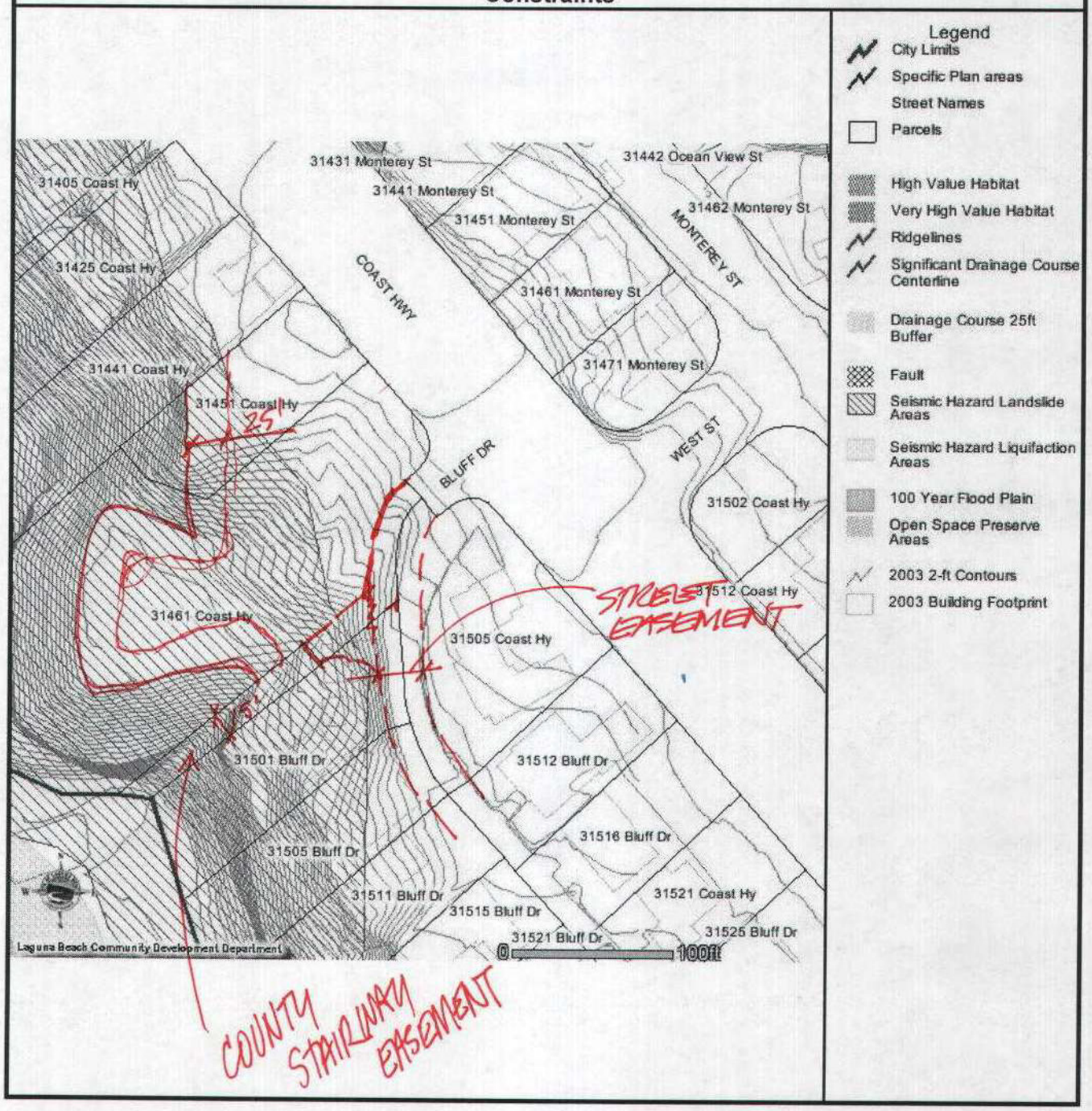
Sincerely,

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

Attachments

1. Lot Constraints Map, Jan 22, 2008 (Lot Line Adjustment 08-05, CDP 08-49)
2. Principal Planner Nancy Csira Letter to Applicant February 1st, 2010
3. Zoning Administrator Liane Schuller Memo to Design Review Board, March 25th, 2010
4. Principal Planner Nancy Csira Letter to Applicant, March 31st, 2010. Includes Community Development Director John Montgomery Blufftop Determination Map
5. City of Laguna Beach Site Survey Requirements, December 1st, 2016
6. California Coastal Commission Substantial Issue Appeal A-5-LGB-21-0012, March 10th, 2021

Constraints



February 1, 2010

Chris Light
C.J. Light Associates
1401 Quail Street, Suite 120
Newport Beach, CA 92660

Re: Blufftop Determination (31451 and 31461 Coast Highway)

Chris,

Staff has reviewed the supplemental geologic information submitted by your office to assess the appropriate location of the oceanfront bluff for these adjacent project sites. The topography in this area is arguably irregular and open to a certain amount of interpretation.

For this reason, staff recommends that the information be presented to the Design Review Board for determination of the bluff location and setback for both subject properties. This will avoid a staff determination being modified by the Board at a later date, after time and effort have been invested in siting and designing the proposed structures.

To schedule for Design Review Board consideration, please submit seven (7) reduced copies of the topographic site plan, along with any supplemental information you would like to include. A 300' mailing list and filing fee of $525 will also be required.

If you have any questions or would like to discuss this matter further, please feel free to contact me at (949) 497-0332 or ncsira@lagunabeachcity.net.

Sincerely,

Nancy Csira

Nancy Csira, Architect
Principal Planner
(949) 497-0332

cc: property file

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056-032-17

MEMORANDUM

DATE: March 25, 2010

TO: Members of the Design Review Board

FROM: Liane Schuller, Zoning Administrator

SUBJECT: Bluff Determination (31451 Coast Highway)

The applicants are currently processing development plans for this site, and are also involved with the adjacent site to the south, for which they plan to submit a future development proposal. On January 15, 2008, staff met onsite with the applicants and conducted an on-site pre-submittal site development meeting encompassing both project sites. The meeting notes are attached for reference. At that time, the applicants were contemplating a lot line adjustment to equalize the size of the two project sites. As illustrated on the attached aerials, the 31451 site was considerably smaller in size.

A lot line adjustment to balance the land area between the two sites was approved by the City Council in October, 2008. The current lot configurations are illustrated in the attached aerials.

Based on the topographic information available at the time of the pre-submittal meeting, staff advised the applicants that a lot line adjustment would not alter the location of the bluff for setback purposes, and that although the lot would be larger in size, the existing bluff location would still impose significant limitations on site development.

The applicants have now submitted architectural plans for zoning plan check, and disagree with staff's determination of the bluff location. Rather than expending further staff and applicant time and effort on this issue, the matter is presented to the Board for a determination. Based upon the Board's determination, the applicants can then make an informed decision as to how to proceed with the development and processing of their plans.

Staff's bluff determination is illustrated on the attached exhibits. The staff determination is based upon the Toal Engineering survey submitted by the applicant, which identifies sloped area in excess of 45° near the northerly side property line and crossing onto the property immediately to the north of the project site.

The applicants believe that the bluff location should be determined to be located further down slope, ocean ward of the location determined by staff.

LBMC 25.50.004 (B)(4)(a)
(Code definition of an Oceanfront Bluff)

Pursuant to LBMC 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.

File

CITY OF LAGUNA BEACH
ZONING DIVISION

PROJECT TITLE: New Single-Family Dwelling **DATE: 3/31/10**

PROJECT ADDRESS: 31451 Coast Highway

PLAN CHECK BY: Nancy Csira, Principal Planner

Your project application and plans have been reviewed for compliance with City Zoning standards. Please note in the left hand margin where requested corrections have been made or provide a separate response list identifying revisions/corrections. Please return this Plan Check List along with two sets of revised plans, red lined plans and any additional documentation.

1. Please provide the information circled or noted on the attached blue Zoning Plan Check Correction List.
2. Please refer to the red lined notes on the plans.
3. **Geological Report:** As previously requested, please submit two copies of a geological report, which specifically addresses improvements proposed for the subject site and adjacent right-of-way. Geological reports should include, but are not limited to, subsurface investigation, characterization of geological site conditions, analysis of slope stability, potential destabilization of adjacent properties and recommendations for appropriate foundation and grading design. The report must have the current property owner's name and be less than five years old. A $1,500 deposit is also required for review by the City's contract geologist prior to Design Review.
4. **Landscape Plan Review**: The City requires a landscape plan for all new development on vacant building sites. Upon submittal of the landscape plans, please submit the required $420 initial landscape plan check fee (please note the $210 fee for each landscape re-check). Staff may have additional comments or corrections related to the proposed landscape plan once comments are received from the City's landscape plans checker.
5. **Fire Department Review:** Please respond to the attached requirements from the Fire Department.
6. The proposed project requires Design Review Board / Board of Adjustment approval and a Coastal Development Permit for the new structure, ***stringline violation***, ***excess lot coverage,*** skylights, elevated decks, grading, retaining walls, pool, two spas, water features, air conditioning units, water quality management plan, landscaping, and construction in an environmentally sensitive area due to ocean front and water quality.

Staff recommends eliminating all new variances. As designed, the following variances are required:

a) To encroach into the blufftop setback [LBMC 25.50.004((B)(4)].

b) To exceed the maximum allowable 30 foot building height measured above the lowest finished floor [LBMC 25.10.008(D)(1)(a)].

c) To exceed the maximum allowable 36 foot maximum height for elevators [LBMC 25.08.016"Height, building"(4)].

7. FYI: All improvements proposed within the Coast Highway right-of-way **dedication area** are subject to approval through CalTrans. This approval may take place following the Design Review process. **Please consult CalTrans to verify any ADA requirements for new required sidewalk.**

8. FYI: The Water Quality Management Plan (WQMP) is a deferred submittal and can now be submitted at Structural Plan Check. Peer review of the WQPM is required prior to obtaining a Building Permit.

9. FYI: All projects subject to design review are required to have story pole height certified 28 calendar days prior to the scheduled Design Review hearing.

10. FYI: Requests for design changes to design review approved plans are required to be returned to the approval body as a noticed public hearing item. This includes window and door changes, roofline changes, skylights, chimney relocation, additional grading more than 10 cubic yards, pools/spas, air conditioning units and any other exterior modifications. To avoid additional public hearings, please incorporate all desired design elements in the original plans.

Additional corrections may be required after the drawings with the additional information requested have been resubmitted.

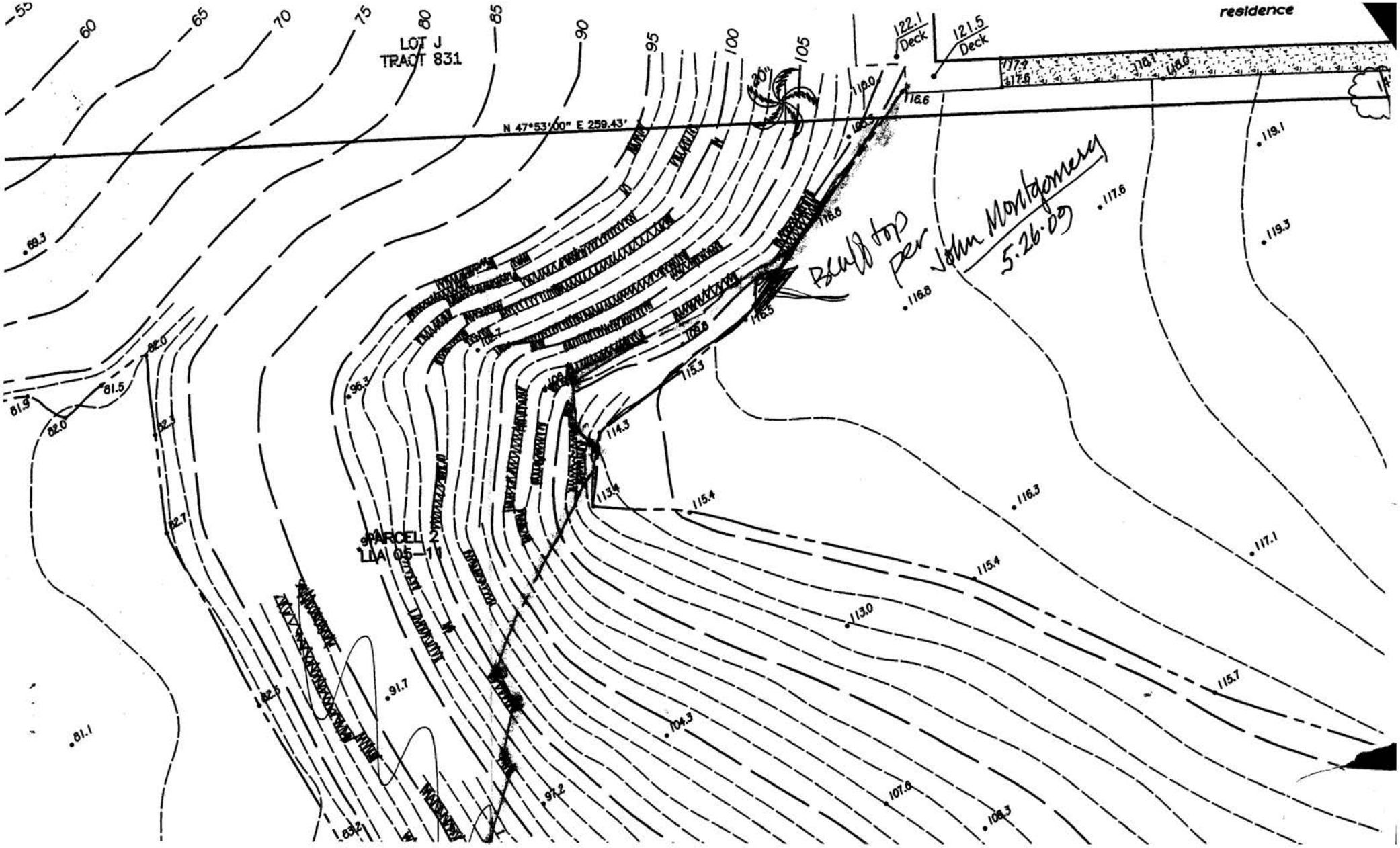
If you have questions regarding these corrections/comments please contact:
Nancy Csira (949) 407-0332

For additional information regarding the parking and zoning standards, the City has a website at the following address: **www.lagunabeachcity.net** (look under the Reference Library for "Municipal Code").

Note to Applicant:
IT IS THE RESPONSIBILITY OF THE PROPERTY OWNER TO ENSURE THAT DISCREPANCIES DO NOT EXIST BETWEEN THE PROJECT'S DESCRIPTION ON THE PERMIT, THE ARCHITECTURAL PLANS AND THE STRUCTURAL PLANS. IF DISCREPANCIES EXIST BETWEEN THE ARCHITECTURAL PLANS AND THE STRUCTURAL PLANS, THE ARCHITECTURAL PLANS SHALL TAKE PRECEDENCE.

ULTIMATELY, THE SCOPE OF WORK, AS DESCRIBED ON THE PERMIT THAT IS AUTHORIZING THE CONSTRUCTION, TAKES PRECEDENCE OVER THE PLANS. IF THERE IS A DISCREPANCY BETWEEN THE PLANS AND THE DESCRIPTION ON THE PERMIT, THE PERMIT GOVERNS.

IF THE REQUIRED CORRECTION/ITEMS ARE NOT RECEIVED BY THE DEPARTMENT WITHIN SIX MONTHS OF THE DATE OF THIS LETTER, THE DEVELOPMENT WILL AUTOMATICALLY BE DEEMDED ABANDONDED. SHOULD THIS OCCUR A NEW APPLICATION AND PAYMENT OF CURRENT FEES WILL BE REQUIRED.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City of Laguna Beach

Community Development Department

INFORMATION GUIDE FOR

Site Survey Requirements

Purpose

Land is one of California's most valued and cherished assets. The location and configuration of land is derived from land surveys, which employ survey monuments to physically mark the location of property boundaries. Therefore, survey monuments are vital evidence of property boundaries and critical infrastructure, enabling property to be peacefully enjoyed, further developed, and conveyed with certainty.

A licensed land surveyor or registered civil engineer must establish the location of the property corners. The property monuments must be verified or re-established with a corner record or record of survey if found missing or destroyed. Contractors need guidance from the surveyor before and during construction to ensure they build and excavate in the proper locations. The availability of precise, accurate, and complete data can help prevent a project from experiencing complications and unnecessary costs and time delays.

Description of Requirements

A. A site survey including elevations and boundary is required for the following types of projects:
   - New construction
   - Building addition when required by the Zoning or Building Division due to proposed height of addition or proposed location in relation to the property line.

B. Property corners along the sides of the property that adjoin a building addition are required to be monumented prior to foundation inspection.

C. Property corners are required to be monumented prior to starting construction of a masonry and wood fence unless an agreement is signed by the property owner on both sides of the property line.

The minimum requirements for the site survey drawing for new construction are as follows:

1. Show north point and scale.
2. Show location and description of all corner monuments.
3. Show and identify all property lines. Dimension length and specify bearing.
4. Show driveway, curb and gutter, and all existing site improvements (structures, walls, planters, stairs, etc.).
5. Identify all finish surface materials.
6. Provide a legend for all symbols used.
7. Locate all trees in public-right-of-way facing or within 20 feet of the subject property, power poles, utility boxes, etc.
8. Show center line of street and dimension width or ½ width.
9. Provide an on-site bench mark elevation near one of the front property corners. For sites within the special flood hazard areas, use the elevation as determined from an Orange County benchmark. Specify datum of benchmark (NGVD29 or NAVD88).

10. Provide relative elevations at the following locations for new construction:
    (a) All property corners.
    (b) Around existing structures(s) at corners, including corners at jogs of exterior walls.
    (c) At interior finish floor elevations.
    (d) At bottom of all site walls. Indicate wall height.
    (e) At bottom of elevated planters. Indicate planter height.
    (f) A maximum spacing of 25' along the length and width of the property on all sides of an existing structure.
    (g) Elevation contours for sloping sites every one foot elevation change.
    (h) Three elevations equally spaced in the side yard of adjacent properties.
    (i) Three elevations along the flow line in gutter and alley adjacent to site.
    (j) "Survey reference elevation" to be used for roof elevation by architect.
    (k) Show all easements.

Site improvements such as retaining walls, exterior fireplaces, patio covers, or gazebos, unless waived by the Building Official must comply with the following requirements:

1. Property corners must be based on found record corner monuments or must be replaced with a corner record or record of survey filed with the Orange County Surveyor.
2. Foundations set along property lines must be "Certified" by a licensed land surveyor or licensed civil engineer.
3. Any structure built within a view corridor must be surveyed for elevation.

For masonry walls and wood fences built on the property line, a survey would not be required if each neighbor signs a property line agreement (Request to Waive Survey Requirement) form.

Property corners to be monumented by a licensed land surveyor or registered civil engineer authorized to perform land surveying by the State Board of Professional Engineers and Land Surveyors (Pre-1982 with numbers prior to 33,966).

The land surveyor or civil engineer must submit a "Corner Record" or "Record of Survey" to the County Surveyor if a new monument is replaced or re-established. Evidence of the "Record of Survey" submittal must be provided to the Building Inspector at or prior to the foundation inspection.

CALIFORNIA COASTAL COMMISSION
SOUTH COAST DISTRICT OFFICE
301 E. OCEAN BLVD, SUITE 300
LONG BEACH, CA 90802-4325
VOICE (562) 590-5071
FAX (562) 590-5084

W11a

Filed:	01/25/2021
49th Day:	04/06/2021
Staff:	M. Alvarado-LB
Staff Report:	02/24/2021
Hearing Date:	03/10/2021

STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

Appeal No.:	**A-5-LGB-21-0012**
Applicant:	**Sung-Tsei Chen & Lina Chen**
Agents:	James Conrad
Local Government:	City of Laguna Beach
Local Decision:	Approval with Conditions
Appellants:	Mark & Sharon Fudge
Project Location:	6 Lagunita, Laguna Beach, Orange County (APN: 656-171-13)
Project Description:	Appeal of City of Laguna Beach Coastal Development Permit 20-7743 for demolition of a 1,385-sq. ft., 27-ft. high single-family residence, and construction of an approximately 3,350-sq. ft., 30-ft. high single-family residence with attached 421-sq. ft. garage on a lot overlooking the beach and shoreline.
Staff Recommendation:	Find that a substantial issue exists.

SUMMARY OF STAFF RECOMMENDATION

The subject site is a 6,307-square-foot lot located at 6 Lagunita Drive in Laguna Beach. The City of Laguna Beach's action on Local CDP No. 20-7743 approved the demolition of a 1,385-square-foot, 27-foot-high single-family residence that currently exists at this site, and construction of an approximately 3,350-square-foot, 30-foot-high single-family residence with attached 421-square-foot garage, elevated decks, mechanical area, onsite parking, spa, grading, retaining walls, and landscaping in its place.

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which appeal number A-5-LGB-21-0012 has been filed because the City's decision that the development is consistent with the provisions of the certified LCP regarding new development on a property that potentially meets the LCP's definition of a coastal bluff was not adequately supported by documents in the record file or the local CDP's findings. Further information is required to determine whether or not the project is consistent with the relevant policies of the LCP. A summary of the appellants' contentions may be found on page 4 of this report. The complete appeal is included as **Exhibit 3**.

IMPORTANT HEARING PROCEDURAL NOTE: The Commission will not take public testimony during the "substantial issue" phase of the appeal hearing unless at least three Commissioners request it. The Commission may ask questions of the applicant, any aggrieved person, the Attorney General or the executive director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. (14 CCR § 13115(d).) If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally and at the discretion of the Chair limited to 3 minutes total per side. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing. (14 CCR § 13117.) If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony.

PLEASE NOTE THAT THIS WILL BE A VIRTUAL MEETING. As a result of the COVID-19 emergency and the Governor's Executive Orders N-29-20 and N-33-20, this Coastal Commission meeting will occur virtually through video and teleconference. Please see the Coastal Commission's Virtual Hearing Procedures posted on the Coastal Commission's webpage at www.coastal.ca.gov for details on the procedures of this hearing. If you would like to receive a paper copy of the Coastal Commission's Virtual Hearing Procedures, please call 415-904-5202.

TABLE OF CONTENTS

I. MOTIONS AND RESOLUTIONS 4
II. APPELLANTS' CONTENTIONS 4
III. LOCAL GOVERNMENT ACTION 4
IV. APPEAL PROCEDURES 5
IV. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE 6
A. PROJECT LOCATION AND DESCRIPTION 6
B. LOCAL COASTAL PROGRAM CERTIFICATION 7
C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS 7
D. SUBSTANTIAL ISSUE ANALYSIS 8

EXHIBITS

Exhibit 1 – Project Location
Exhibit 2 – Site Plans
Exhibit 3 – Appeal
Exhibit 4 – City Resolution for Local CDP No. 20-7743

I. MOTIONS AND RESOLUTIONS

Motion: I move that the Commission determine that Appeal No. A-5-LGB-21-0012 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 will result in a de novo hearing on the application, and adoption of the following resolution and findings. 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 I:

The Commission hereby finds that Appeal No. **A-5-LGB-21-0012** 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

On January 25, 2021, Mark and Sharon Fudge filed an appeal during the ten (10) working day appeal period (**Exhibit 3**). No other appeals were received. Mark and Sharon Fudge submitted an email of concern regarding the project to the City of Laguna Beach Design Review Board and thus qualify as "aggrieved persons" pursuant to Coastal Act Section 30801 and Title 14, California Code of Regulations, Section 13111. The appellants contend that the City's approval is not consistent with the City's certified LCP. More specifically, the appellants contend that a coastal bluff determination has not been made pursuant to the certified LCP's definition to determine whether the lot is on a "coastal bluff," and that all requirements relating to blufftop development have potentially not been properly assessed (such as bluff top setbacks, prohibition of private development on the bluff face, waiver of future shoreline/bluff protection devices, minimization of landform alteration, preservation of visual resources, and more).

III. LOCAL GOVERNMENT ACTION

On December 10, 2020, the City of Laguna Beach Design Review Board (DRB) held a public hearing for consideration and subsequent conditional approval of the Local CDP subject to this appeal (No. 20-7748), Design Review 20-7747, and a CEQA Categorical Exemption authorizing the applicant's request to:

> "…demolish an existing single-family dwelling and construct a 3,350 square-foot single-family dwelling with an attached 421 square-foot two-car garage in the Lagunita zone. Design review is required for the new structure, elevated decks (805 square feet), trash enclosure in front setback, spa, grading, retaining walls, and landscaping."

No local appeal was filed. On January 8, 2021, the Commission received the City's Notice of Final Action for the approval of the local CDP and opened a 10-working-day appeal period. On January 25, 2021, Mark and Sharon Fudge filed an appeal to the California Coastal Commission during the appeal period. No other appeals were received by the Commission.

IV. APPEAL PROCEDURES

After certification of an LCP, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on CDP applications. Development approved by cities or counties may be appealed if located within certain geographic appealable areas, such as development 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. Furthermore, developments approved by counties may be appealed if they are not a designated "principal permitted use" under the certified LCP. Finally, any local government action on a proposed development that would constitute a major public work or a major energy facility may be appealed, whether approved or denied by the city or county [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 is within 300 feet of the inland extent of a beach. The issues raised in the subject appeal, on which the Commission finds there is a substantial issue as described 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):

(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 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 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 review on the merits of the project. A de novo review on the merits of the project uses the certified LCP as the standard of review. (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. (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 three 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 applicants, persons who opposed the application before the local government (or their representatives), and the local government. In this case, the City's record reflects that Mr. Mark Fudge opposed the project in person at the local hearing. Testimony from other persons 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 follow at a later date during which the Commission will take public testimony.

IV. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

A. PROJECT LOCATION AND DESCRIPTION

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

The City of Laguna Beach's action on Local CDP No. 20-7743 approved the demolition of a 1,385-square-foot, 27-foot-high single-family residence, and construction of an

approximately 3,350-square-foot, 30-foot-high single-family residence with attached 421-square-foot garage, elevated decks totaling approximately 805 square feet, mechanical area (approximately 72 square feet), two onsite parking spaces, spa (8 feet x 6 feet x 4 feet), grading (approximately 1,091 cubic yards), retaining walls, and landscaping (**Exhibit 2**).

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 more than 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 LCPA 1-10 in 2012. The Open Space/Conservation Element and Title 25 have been amended a number of times since original certification. Laguna Beach has a certified Local Coastal Program (LCP), but there are four areas of deferred certification in the City: Irvine Cove, Blue Lagoon, Hobo Canyon, and Three Arch Bay. The project site is located within the City of Laguna Beach's certified jurisdiction and is subject to the policies of the certified LCP.

C. Factors to be Considered in Substantial Issue Analysis

Section 30625(b)(2) of the Coastal Act requires 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). Section 13115(c) of the Commission regulations provides that the Commission may consider the following five factors when determining if a local action raises a substantial issue:

1. The degree of factual and legal support for the local government's decision that the development, as approved, is consistent with the applicable standard of review;

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. Staff is recommending that the Commission find that substantial issue exists with respect to the grounds on which this appeal has been filed pursuant to Section 30603(a) of the Coastal Act.

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 non-conformity with the policies of the LCP (or the public access policies of the Coastal Act). The subject coastal development permit is appealable to the Commission due to the project's location between the first public road and the sea. The appellants' grounds for appeal are attached as **Exhibit 3**.

The appellants assert that the City's approval is not consistent with the City's certified LCP. More specifically, the appellants assert that a coastal bluff determination has not been made pursuant to the certified LCP's definition to determine whether the lot is on a "coastal bluff," and that all requirements relating to blufftop development have not been properly assessed (such as bluff top setbacks, prohibition of private development on the bluff face, waiver of future shoreline/bluff protection devices, minimization of landform alteration, and more), and consequently none of the applicable blufftop/bluff face policies were applied

The appellants state that the City properly instructed the applicant to submit a geological report for the subject site with an analysis on the location of the blufftop. In a Zoning Plan Check letter dated October 11, 2019, the City instructed the applicant to submit two copies of a geological report that must "include specific analysis and discussion of how the bluff top location was determined, based on the two definitions provided in the City's Municipal Code and the General Plan Land Use Element, and the attached documents from the California Coastal Commission. Each of the definitions and documents must be referenced in the bluff top determination discussion."

The appellants assert, however, that instead of submitting a report that met the requirements of the October 2019 letter, the applicant submitted a report prepared by GeoSoils dated October 14, 2019, that failed to address any of the LCP definitions of a coastal bluff in Laguna Beach. In this report, GeoSoils concludes that the project site is located within a coastal canyon and not on a coastal bluff and, therefore, there is no coastal bluff edge on the site. In addition, GeoSoils indicates that the site is not a coastal bluff because the site not been subject to marine erosion. The report references San Diego Coastal Bluff and Beaches Guidelines but fails to reference or analyze the definitions of 'oceanfront bluff/coastal bluffs' provided by the certified LCP, which is the standard of review.

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

> …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.

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

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

Pursuant to the LUP's definition, an 'oceanfront bluff/coastal bluff' is a bluff that overlooks a beach or shoreline, **or** a bluff that is subject to marine erosion. The subject site overlooks the beach and shoreline, and therefore may be a coastal bluff under the operative standard of review (Laguna Beach certified LCP).

There are two references for oceanfront/coastal bluffs provided in the certified LCP, one in the zoning code component of the implementation plan (IP) and one in the land use element component of the certified LUP. The two definitions must be read together and harmonized as much as possible. In this case, there is no rationale in the City's record that was made available to Commission staff prior to the publication of this staff report supporting the applicant's determination or the City's determination that the site is not on an oceanfront bluff/coastal bluff based on these definitions of the certified LCP. The GeoSoils report does not provide such rationale. Additional information provided to Commission staff following the appeal is not sufficient to adequately understand the geomorphology of the subject area and determine whether the project site is located on an oceanfront bluff/coastal bluff, coastal canyon, or both (transitional area between bluff and canyon). Consequently, a site visit by Commission staff may be warranted.

The fact that the subject site may be on a coastal bluff is important because Policy 7-A of LUP of the certified LCP (cited in Appendix A) requires that the quality of public views from the hillsides and along the city's shoreline be preserved to the maximum extent feasible. Setting development farther back from the edge of the coastal bluff decreases the project's visibility from the beach below, which the public may access below the mean high tide line. The City's record does not consider such alternative locations or alternative smaller project designs, as would be required if the site were determined to be located on a coastal bluff and setback policies were applied.

In addition, Policies 7.3 and 10.2 and Actions 7.3.3, 7.3.5, 10.2.6, and 10.2.8 of the of the LUP (cited in Appendix A) require that new development minimize the alteration of natural landforms and not contribute to geologic instability. Setting development back from the edge of the bluff can substantially decrease risk to life and property, because the farther from the bluff edge development is located, the less likely it is that that development will become jeopardized by erosion, landslides, and similar hazards. Likewise, setbacks decrease the likelihood of destruction of a structure caused by geologic instability. The added weight and disturbance of development, irrigation, and human activity closer to the bluff edge all could increase the rate of erosion and bluff retreat. For these reasons, the LCP requires a bluff edge (or top of the bluff) setback as a condition of approval for development on bluff sites.

Therefore, concerns regarding the project site's location on a potential coastal bluff and whether the proposed development is consistent with the LCP policies concerning development on a bluff face and bluff edge setbacks have not been adequately addressed by the City of Laguna Beach in approving the local coastal development permit. The City's record does not demonstrate that the City-approved development is wholly consistent with the policies of the LCP or that all the necessary and appropriate requirements have been assessed. The City's findings fail to provide an adequate degree of factual and legal support for its decision to approve the proposed development and grant a Local CDP.

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's consistency with all of the applicable policies of the certified LCP and the public access provisions of the Coastal Act (specifically the coastal bluff definition and bluff top/face policies). Therefore, there is a low degree of factual and legal support for the local government's decision, 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 local government granted a local CDP for the demolition of a single-family residence and construction of new single-family residence and accessory structures on the subject site located on property that may be blufftop. The record does not consider smaller alternative project designs, as would be required if the site were determined to be located on a coastal bluff and setback policies applied. Therefore, it is not possible at this time to determine how the extent and scope of the project compares to the allowable scope of development at this site, and this factor supports a finding of substantial issue.

3. **The significance of the coastal resources affected by the decision.**
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 also can have significant impacts on scenic resources and public access opportunities. The LCP and the Coastal Act include special protections for coastal bluffs. This factor supports a finding of substantial issue.

4. **The precedential value of the local government's decision for future interpretations of its LCP.**
Allowing the local government's decision to approve improvements or authorize the perpetuity of structures potentially encroaching into bluff edge setback areas or sited on a bluff face would set negative precedent for future interpretations of the City's certified LCP. If the subject local CDP is found to be consistent with the LCP based on the current

record, there is a potential that future applicants, especially within the vicinity, will reference this permit if they wish to develop other coastal bluff sites, of which there are hundreds in Laguna Beach. Without adequate information to determine whether the lot is on a coastal bluff, and potentially need to determine the bluff edge, allowing the City's local CDP approval to stand would result in adverse precedent regarding application of the LCP's various resource protection policies (specifically relating to bluff top/face development). 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 bluff top development are issues of statewide significance, given that coastal bluffs are an important coastal resource throughout the state, not just in Laguna Beach. (See third factor above.) Requiring consistency with the certified LCP (particularly policies relating to bluff face/top development) and the public access provisions of the Coastal Act is significant to all the people of California who wish to enjoy the public beaches of California. Unsubstantiated and erroneous application of these policies could have regional or statewide ramifications regarding other similar LCPs and LCP 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.

APPENDIX A – RELEVANT LCP POLICIES

Laguna Beach Land Use Element:

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

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

Action 7.3.3 states: 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 states: 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 states: Prohibit development on oceanfront bluff faces, except public improvements providing public access, protecting coastal resources, or providing for public safety. Permit such improvements only when no feasible alternative exists and when designed and constructed to minimize landform alteration of the oceanfront bluff face, to not contribute to further erosion of the oceanfront bluff face and to be visually compatible with the surrounding area to the maximum extent feasible.

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

Action 7.3.8 states: On oceanfront bluff sites, require applications where applicable, to identify and removal all unpermitted and/or obsolete structures, including but not limited to protective devices, fences, walkways, and stairways, which encroach into oceanfront bluffs.

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

Action 7.3.10 states: Allow oceanfront and oceanfront bluff homes, commercial

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

Action 7.3.12 states: 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).

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

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

Action 10.2.5 states: 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 states: 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=O.15 or determined through analysis by the geotechnical engineer) for the economic life of the structure.

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

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

Open Space/Conservation Element Policies:

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

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

Policy 10-C states:
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 states:
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.

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RE: Notice of Intent to Adopt a Mitigated Negative Declaration for 31451 S. Coast Hwy.
APN: 056-032-26

Dear Ms. Dobson,

This is my second comment letter regarding the draft Mitigated Negative Declaration (MND) proposed for the project at 31451 S. Coast Hwy, this time specifically about the aesthetic impact it will have. As you know, this is an extremely environmentally significant case as it is the last undeveloped oceanfront parcel in the city to my knowledge. 1

The draft Initial Study Checklist item number 1(a) ("Would the project have a substantial adverse effect on a scenic vista?") states that the property is fenced off, "therefore, although views are available from the project site, those views are not accessible to the public". This is misleading to the stakeholders who might not be aware of the historical facts and circumstances of this property and deceives the magnificent public vistas enjoyed on this parcel for decades up until the recent erection of a temporary construction fence. My family has lived across the street from this parcel for decades, and I am intimately familiar with its history. I personally witnessed the fence being erected on April 25th, 2019. To accurately capture the existing aesthetic value of this parcel, the environmental baseline needs to be considered as it was before the temporary fence obstructions.

The construction staging plan required for the neighboring 31497 Bluff Dr. pre-grading meeting on May 9th, 2019 shows 31451 S. Coast Hwy. being used as a staging area with fencing. However, grading has long since ceased years ago but the fence and opaque covering remains. In fact, there have been story-poles erected on the property for almost a year obstructing any possible staging use, yet the fence inexplicably remains. The applicants can not have it both ways, by hiding the impacts to significant public environmental assets on their property under the guise of construction staging. 2

Further, prior to the erection of the temporary fence in 2019, the parcel had never been fenced, the public enjoying free access to the entire lot. People of all backgrounds enjoyed free magnificent panoramic and focal views from its multiple bluff-top promontories, including the

beach in all directions, the Pacific Ocean, the tidepools of West Street Beach, Aliso Peak, Catalina Island, and was a common location to view migrating whales and dolphins which come close to shore at this point. These views could not be seen anywhere else since it is the only undeveloped oceanfront bluff in South Laguna. As a de-facto public open space with rich coastal and environmental resources, and observable unique marine fauna, it is a significant public aesthetic resource. Therefore with the true environmental baseline for this lot being prior to the temporary fence erection, the public view impact must be evaluated from the entire area of public access (the entire lot), not just through the lot from the PCH right-of-way. (see attached photos)

As of the date of this letter, there is not, nor has there been any fence permits, or any other building permits issued by the City for this parcel. The present fence is over 6 feet tall, of chain-link construction, and located within the front yard near the property line. Nor could there ever be a fence permitted here in the future, since it is clearly in violation of the City's Zoning Code Section 25.50.012 (B) (1) and (5).

Section 25.50.012 (B) (1) states: "Fences, walls, hedges, latticework or screens **not more than four feet in height** may be erected, installed or maintained within the front yard… [emphasis added]".
Section 25.50.012 (B) (5) states: "Chain link fences and other metal fences in residential areas are subject to design review." 2 cont.

Therefore it can only be a transient structure and is not representative of the permanent generally existing conditions. A temporary structure that would otherwise be impossible to build should not be considered as part of the existing baseline conditions as it would be misleading the public.

There is a long precedent for removing any fence coverings during the planning process. Per the 2014 temporary fence permit (B14-0026) for neighboring 31497 Bluff Dr. showing the fence overlapping onto 31451 S. Coast Hwy. However the permit approved by the City on January 7th, 2014 specifically states that "no covering or material panels of any kind" can be used. Additionally it states that it must be removed once the staking poles for 31497 Bluff Dr. were removed. Another temporary fence permit (B16-1307) was approved in 2016 for staking purposes at 31497 Bluff Dr., but this time did not encroach onto 31451 S. Coast Hwy. The same conditions applied that "no covering or material panels of any kind" can be used. The city needs to order the removal of the current fence and , if so desired, issue a temporary fence permit for the purpose of staking protection without any coverings. This is the only way the impact on public views can begin to be properly assessed.

The jurisprudence supports my contention that modifying the "normally" existing conditions is necessary when a temporary aberration is present. The seminal 2010 California Court of 3

Appeals decision in Sunnyvale West Neighborhood Assn. v. City of Sunnyvale City Council (Sunnyvale West) states the following:

It is important to keep in mind that the administrative regulations implementing CEQA (§ 21083) cannot contravene that governing statute, which consistently requires a determination whether a project would significantly impact the existing environment. The word "normally" as used in the regulation is most reasonably understood as recognizing, with respect to individual projects not previously analyzed under CEQA, that ***the physical conditions existing exactly at the time the notice of preparation is published or at the time the environmental analysis begins*** *(if a notice of preparation is not published)* ***may not be representative of the generally existing conditions*** *and, therefore, an agency may exercise its discretion to apply appropriate methodology to determine the "baseline" existing conditions. Thus, for example, if traffic congestion and vehicular travel has temporarily decreased due to an unusually poor economy so that traffic conditions at the time specified by CEQA Guidelines section 15125 are inconsistent with the usual historic conditions, a lead agency might use appropriate methodology, perhaps historical data and traffic modeling, to determine the generally existing conditions. [emphasis added]* (Sunnyvale West Neighborhood Assn. v. City of Sunnyvale City Council, 190 Cal.App.4th 1351, 1379-80 (Cal. Ct. App. 2010))

This principle was further reaffirmed three years later by the California Supreme Court in Neighbors for Smart Rail v. Exposition Metro Line Construction Authority (Neighbors): "Concluding that existing conditions is the normal baseline under CEQA, but that **factual circumstances can justify an agency departing from that norm when necessary to prevent misinforming or misleading the public and decision makers**, we then ask whether the administrative record here contains substantial evidence of such circumstances. [emphasis added]" (Neighbors for Smart Rail v. Exposition Metro Line Construction Authority, 57 Cal.4th 439, 448 (Cal. 2013)) 3 cont.

The record shows that this fence is clearly temporary, therefore it is obviously misleading to include it as an environmental baseline. Per Sunnyvale West and Neighbors, there is strong legal precedent that the right thing to do is to ascertain the pre-fence historical conditions, and incorporate that as the correct environmental baseline for the revised analysis for the Initial Study Checklist item 1: Aesthetics.

Once oriented by the true historical baseline condition, it is obvious that this project presents a significant environmental impact. Per item 1(a), a significant impact may occur if a proposed project introduces incompatible visual elements within a field of view containing a scenic vista or substantially blocks a scenic vista. This is the last publicly accessible oceanfront scenic vista in South Laguna with literally irreplaceable visual resources. Per the proposed project plans, it will be eradicated. Due to the permanent nature of development, the impact this project will 4

have on the public views can not be mitigated. Therefore a Mitigated Negative Declaration is not acceptable and an Environmental Impact Report (EIR) must be prepared.

4 cont.

This letter does not exhaust any other environmental impacts that may not be covered.

Sincerely,

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

(photographs attached)

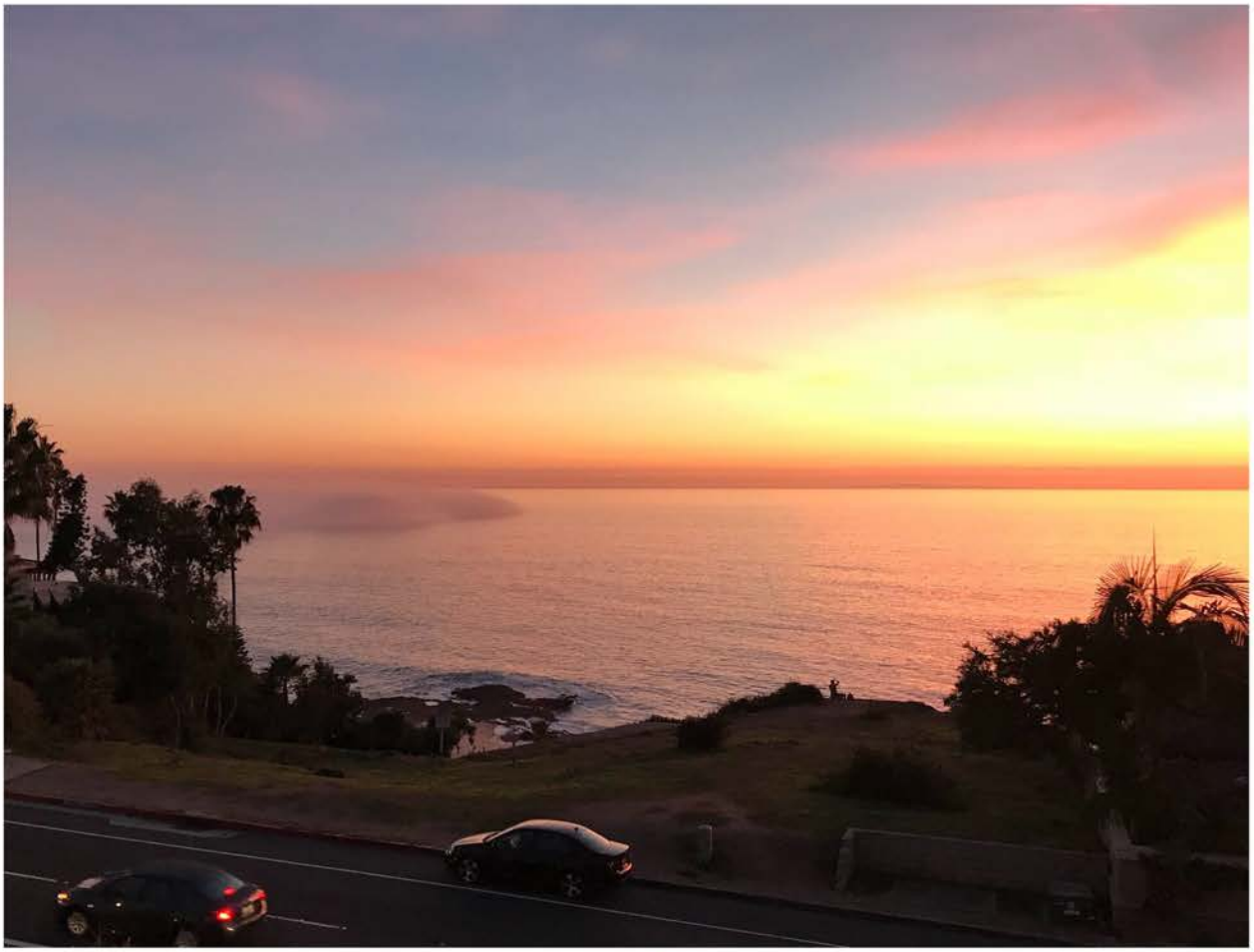
Historical Baseline Photos

Image 1. Jan 24, 2016. An average day under normal historical conditions

Image 2. The public gathering on the parcel to enjoy the scenic vista's panoramic and focal views. (Jan 9, 2019)

Image 3. Migrating whale visible from parcel (May 1st, 2016)

Image 4. April 25, 2019, the first day of the temporary fence erection



Images 5 and 6. Members of the public (inset) enjoying the views of the sunset and unique cloud formations on beach chairs (Feb 1, 2018)

Images 7 and 8, members of the public enjoying panoramic views of the ocean and hills
Screenshots of a Google Maps 360 degree image (Jan 2018)

Image 9. members of the public enjoying panoramic views of the ocean and hills
Screenshots of a Google Maps 360 degree image (Jan 2018)

Image 10. Panoramic southern view from lower sea cliff
Screenshots of a Google Maps 360 degree image (Jan 2017)

Comment Letter No. 3

Amber Dobson
Planning Manager
Planning Division, City of Laguna Beach
505 Forest Ave.
Laguna Beach, CA 92651

RE: Notice of Intent to Adopt a Mitigated Negative Declaration for 31451 S. Coast Hwy.
APN: 056-032-26

Dear Ms. Dobson,

I am writing in response to the proposed intent to adopt a Mitigated Negative Declaration for the parcel at 31451 Coast Highway. The existing plans would require excavation of the upper portion of the parcel's costal bluff and construction the proposed residence into the bluff face. In no way is the size and scope of this proposed 7,500 sq. ft. project in compliance with the Local Coastal Program. Ever since 2010, the City has recorded a long history of concerns regarding the limitations to building on this site. These plans disregard prior determinations by the City's planning division in an attempt to skirt required blufftop setbacks to permit the erection of a structure that the bluff simply cannot not sustain. 1

The larger, adjacent parcel of 31461 Coast Highway also attempted to build a 7000+ sq. ft. residence, but those applicants also had to adhere to the LCP and reduce the size of their proposed building to adhere to the bluff setbacks. I am formally requesting that you require this applicant to do the same. 2

Thank you for your time and consideration.

Best,
Joshua & Nicole Strathman
31461 Monterey Street, Laguna Beach