

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: CONSENT CALENDAR

Application No.: 5-13-011

Applicant: Gant and Shelly Penick

Location: 3826 Calle Ariana, San Clemente, Orange County

Project Description: Improvements to an existing 4,974 sq. ft. single family residence consisting of a complete interior remodel including removal of 93 sq. ft. in one area and addition of 113 sq.ft. in another, plus a 76 sq. ft. addition to an existing 3-car garage, new doors, new windows and exterior façade improvements, new hardscape improvements and no landscaping on a 7,809 sq. ft. coastal bluff top lot.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The applicant proposes improvements to an existing 4,974 sq. ft. one story single-family residence with attached 3-car garage and rear bluff side concrete patio consisting of a complete interior remodel and exterior façade improvements (Exhibit #2). Minor drainage improvements and no grading or landscaping is proposed. There is an unpermitted bluff stairway from the bluff top residence down the bluff face to the sandy beach below. The applicant is not proposing any work to the bluff stairs nor is the applicant proposing to remove the unpermitted development. Although a complete interior remodel, the proposed work does not involve demolition of more than 50% of the existing structure. For instance the proposal involves less than 50% demolition

(approximately 37%) of existing exterior walls, less than a 50% addition, no change to the roof's structural components and less than 50% work to the foundation/floor; therefore the proposed project would not be considered a 'major remodel' or re-development of the site. The existing and proposed residence will be located within 15 feet of the bluff edge. In San Clemente, the certified Land Use Plan requires a 25 foot setback from the bluff edge. Thus, the existing and remodeled residence will have a non-conforming bluff edge setback. Staff is not recommending conditions to remedy the non-conformities at this time because the proposed project is not considered to be a major remodel/re-development. The Commission's enforcement division will evaluate further actions to address the unpermitted development (e.g. bluff stairway) not resolved under this permit.

Major Coastal Act issues associated with this project include development on a coastal bluff lot and the potential adverse impacts to water quality and marine resources during the construction phase of the project. To address these potential adverse impacts the Commission staff is recommending **Special Condition 1: Final Revised Plans; Special Condition 2: Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris; Special Condition 3: Landscaping; Special Condition 4: Assumption of Risk and Waiver of Liability; Special Condition 5: Future Improvements; Special Condition 6: No Future Shoreline/Bluff Protection Device; and Special Condition 7: Deed Restriction.**

Commission staff recommends **approval** of coastal development permit application 5-13-011 as conditioned.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of San Clemente only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

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Appendix A – Substantive File Documents

EXHIBITS

- Exhibit 1 – Area Map
- Exhibit 2 – Project Plans
- Exhibit 3 – Demolition Plan
- Exhibit 4 – Coastal Access Points Map

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** the Coastal Development Permit Applications included in the consent calendar in accordance with the staff recommendations.*

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Submittal of Revised Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, two (2) sets of final site and building plans that substantially conform with the project plans by James L. Glover Jr., Designer dated December 13, 2012 but shall be revised to include the following:

- 1) The bluff face stairway located entirely seaward of the bluff edge depicted at the 71' contour line shall be shaded and clearly marked "*this element not permitted by this or any other coastal development permit*" on each set of plans;

The permittee shall undertake the development authorized by the approved plans. Any proposed changes to the approved plans, including but not limited to any change in the quantity of proposed demolition, replacement or new development, shall be reported to the Executive Director. No changes to the plans or the development authorized in those plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. **Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.** The permittee shall comply with the following construction-related requirements:
- (1) No construction materials, debris, or waste shall be placed or stored where it may be subject to wind or rain erosion and dispersion;
 - (2) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
 - (3) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;
 - (4) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMP's shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and

- (5) All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

Best Management Practices (BMP's) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the onset of such activity. Selected BMP's shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:

- (1) The applicant shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. It shall be located as far away from the receiving waters and storm drain inlets as possible;
- (2) The applicant shall develop and implement spill prevention and control measures;
- (3) The applicant shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50 feet away from a storm drain, open ditch or surface water; and
- (4) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

3. **Landscaping – Drought Tolerant, Non-Invasive Plans.** Vegetated landscaped areas adjacent to the bluff shall only consist of drought tolerant plants native to coastal Orange County and appropriate to the habitat type. Native plants shall be from local stock wherever possible. No permanent in-ground irrigation systems shall be installed on the bluff-facing portion of the site. Temporary above ground irrigation is allowed to establish plantings. Vegetated landscaped areas on the street-side of the residence are encouraged to use native plant species, however, non-native drought tolerant non-invasive plant species may also be used in that area. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (<http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>).
4. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this

permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from geologic instability, sea level rise, wave uprush, and erosion; (ii) to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

5. **No New or Additional Bluff or Shoreline Protective Device.** By acceptance of this permit, the applicants agree, on behalf of themselves and all other successors and assigns, that no new or additional shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-13-011 including, but not limited to, the residence, garage, foundations, and bluff top concrete patio, and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, sea level rise, or other natural hazards in the future. By acceptance of this permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

By acceptance of this permit, the applicants further agree, on behalf of themselves and all successors and assigns, that the landowner(s) shall remove the development authorized by this permit, including the residence, garage, foundations, and bluff top concrete patio, if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner(s) shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

6. **Future Improvements.** This permit is only for the development described in Coastal Development Permit No. 5-13-011. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to this development governed by the Coastal Development Permit No. 5-13-011. Accordingly, any future improvements to the structures authorized by this permit, including but not limited to, repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-13-011 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
7. **Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval

documentation demonstrating that the applicant has executed and recorded against the parcel governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing all Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS:

A. PROJECT LOCATION AND DESCRIPTION

The proposed development is located at 3826 Calle Ariana in the private gated community of Cypress Shores in the City of San Clemente, Orange County (Exhibit 1). The proposed development is located within 50 feet of a coastal bluff between the sea and the first public road. The subject site is designated RL (Residential Low Density) in the San Clemente certified Land Use Plan (LUP).

The 8,498 square foot site bluff top lot is currently developed with a two-level single-family residence with rear yard (ocean bluff-facing) hardscape improvements, planter landscaping, and an unpermitted coastal bluff face stairway (discussed further below). Coastal development permit (CDP) P-7-3-73-1388(Stark) was approved in August 1973 for construction of a single family residence on a vacant lot. The residence is setback 15' from the bluff edge and according to a structural stringline (typical to all blufftop residences along this subdivision). Hardscape currently extends to the bluff edge. There is a concrete planter along the bluff edge at the seaward edge of the hardscape. The site is surrounded to the north by a single-family residence, to the south by a single-family residence, to the east by the frontage street (Calle Ariana) and to the west by an approximately 70 foot high coastal bluff. The bluff slope descends to the Orange County Transportation Authority (OCTA) railroad tracks and right-of-way and a public sandy beach.

The coastal bluffs in San Clemente are not subject to direct wave attack because they are separated from the beach by Orange County Transit Authority (OCTA) railroad tracks and railroad right-of-way. The railroad tracks have a rip-rap revetment which protects the tracks from erosion and wave overtopping. Though not subject to direct wave attack, the bluffs are subject to erosion caused by natural factors such as wind and rain, adverse bedding orientations, soils conducive to erosion and rodent burrowing. Bluffs are also subject to erosion from human activities, such as irrigation, improper site drainage and grading. The seaward property line at

the subject site roughly coincides with the coastal bluff edge. The actual bluff face at this location is not part of this property, but is within the railroad right of way.

The applicant proposes improvements to an existing single family residence consisting of a complete interior remodel of an existing 4,974 sq. ft. single family residence including removal of 93 sq. ft. in one area of the main floor and addition of 113 sq.ft. in another area, plus a 76 sq. ft. addition to an existing 3-car garage. No addition is proposed to the basement level which daylights onto a bluff facing concrete patio. The bluff facing concrete patio slab is proposed to be demolished and re-constructed in the same size and layout, a new plaster finish is proposed to the existing concrete planters cantilevered over the bluff edge to match proposed façade improvements. The concrete patio is located between the existing residence and an integrated below-grade line of caissons and above-grade cantilevered concrete planter along the bluff edge (the caissons and cantilevered planter were approved under CDP 5-93-349). There are also existing concrete planters on the upcoast and downcoast sides of the patio. Thus, the concrete patio slab to be reconstructed is entirely within existing development that is proposed to be retained. The balcony deck guard rail is proposed to be demolished and replaced with a new glass railing system with tinted glazing to prevent bird strike hazards. New doors, new windows and exterior façade improvements, new hardscape improvements including minor drainage improvements and no landscaping is proposed. No grading, vegetation removal or landscaping or any other type of work is proposed on the bluff face. Proposed project plans are included as Exhibit 2.

Although a complete interior remodel, the proposed work does not involve demolition of more than 50% of the existing structure. For instance the proposal involves less than 50% demolition (approximately 37%) of existing exterior walls, less than a 50% addition, no change to the roof's structural components and less than 50% work to the foundation/floor; therefore the proposed project would not be considered a 'major remodel' or re-development of the site. A demolition plan is included as Exhibit 3. The proposed development will not result in an increase in the density or intensification of use of the property or seaward encroachment of the existing structure.

There is an unpermitted, non-conforming stairway from the bluff top residence down the 70' high face of the coastal bluff to the OCTA railroad tracks and the sandy beach beyond. Though not actually on the applicant's property, the existing bluff stairway is only accessible from the subject site, thereby providing private access from the applicant's residential property down the coastal bluff face to the beach. The existing bluff stairway is not a pre-Coastal Act structure and there are no coastal development permits approving its construction. The applicant is not seeking approval nor has he proposed removal of the unpermitted, non-conforming coastal bluff stairs. The Commission's enforcement division will evaluate further actions to address this matter.

Prior Permit History

On August 6, 1973, the South Coast Regional Commission approved Permit No. P-7-3-73-1388(Stark) for the construction of a single story 2,763 square foot single-family residence with a two-car garage on a vacant bluff top lot subject to no special conditions. No bluff stairs are depicted on the approved plans.

On November 4, 1981, the Commission approved Permit 5-81-356(Cox) for the remodel of an existing single family dwelling including replacement of doors and windows and installation of a new bay window on a bluff top lot in a locked gate community. However, it appears that a different two-level, 5,809 sq. ft. single family residence was constructed sometime between 1973 and 1981 than the smaller single story 2,763 square foot single-family residence approved by the Commission in 1973 through Permit No. P-7-3-73-1388(Stark), as this 1981 remodel was to an existing two-level (ground and basement level) 5,547 sq. ft. 22' high single family residence. The footprint of the existing residence at the site in 1981 mostly matches the current footprint of the existing 5,809 sq. ft. residence on the subject site. No bluff stairs or other development was depicted seaward of concrete block planters along the side property walls on the bluff side patio on the 1981 Commission approved Permit 5-81-356 Cox residence remodel plans.

On February 7, 1994, Emergency Permit G5-93-349(Cox) was approved for the construction of a caisson and grade beam system on a bluff top due to continuing surficial bluff failure. The system involved six, 24-inch diameter caissons 33 feet deep below grade and five 6-inch diameter tie-backs extending inland 35 feet from the caissons and connected by a grade beam; repaving of the bluff top concrete patio and construction of a new cantilevered concrete planter along the bluff edge A follow-up CDP 5-93-349(Cox) was approved by the Commission on April 14, 1994.

There was no discussion in the staff report for CDP 5-93-349(Cox) regarding the construction of coastal bluff stairs at the site.

Public Access

Public access to the nearest public beach is available approximately half a mile upcoast of the subject lot at San Clemente State Beach. Lateral public access to the Pacific Ocean and sandy beach areas is available immediately adjacent to the subject site, seaward of the railroad right-of-way located at the toe of coastal bluff.

The proposed development involves improvements to an existing single family residence located within 50 feet of a coastal bluff between the sea and the first public road, however, it does not impact access either directly or indirectly to the beach. The existing residence is located in a private community. It is the gated nature of the community that creates an impediment to public access along this stretch of coast. The proposed improvements will not create any new individual or cumulative direct adverse impacts on existing public access or recreation and will not result in an intensification of use of the site. Additionally, adequate public access to the beach exists nearby.

Biological Resources

The City of San Clemente Certified LUP includes coastal bluffs and canyons under the "Environmentally Sensitive Habitat" heading. The LUP reads,

The coastal bluffs and canyons contain important natural habitat....The coastal bluffs support Coastal Bluff Scrub habitat, a variation or subset of Coastal Sage Scrub. This habitat is characterized by species especially tolerant of coastal

conditions...The primary environmental value of these habitat areas is that they represent an ever diminishing resource within urbanized portions of the coast.

Preservation and enhancement of the City's coastal bluffs is a goal supported by both the environmental protection policies of the Coastal Act, and the certified Land Use Plan (LUP). Encroachment onto the bluff by development increases the potential for the introduction of non-native plant species, and predation of native species by domestic animals, and destabilization of the coastal bluff from excess irrigation.

The existing balcony deck guard rail is proposed to be replaced with a new glass railing. Due to the coastal bluff top location of the proposed tempered glass balcony screenwall there is a substantial risk of bird strikes to the screenwall. Glass walls are known to have adverse impacts upon a variety of bird species. Birds are known to strike glass walls causing their death or stunning them which exposes them to predation. Some authors report that such birds strikes cause between 100 million to 1 billion bird deaths per year in North America alone. Birds strike the glass because they either don't see the glass, or there is some type of reflection in the glass which attracts them (such as the reflection of bushes or trees that the bird might use for habitat). The applicant proposes a tinted glaze to the glass railing in order to prevent bird strike hazard due to the coastal bluff top location of the proposed new glass railing.

Furthermore, due to the fragile nature of coastal bluffs and their susceptibility to erosion, the Commission requires a special condition regarding the types of vegetation that may be planted. The use of non-native vegetation that is invasive can have an adverse impact on the existence of native vegetation. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society (www.CNPS.org). No plant species listed as problematic and/or invasive by the California Native Plant Society or the California Invasive Plant Council shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California shall be utilized within the property.

No vegetation removal or new landscaping is proposed on the bluff face. The existing residence is all paved hardscape on the back yard bluff side of the lot with a sealed raised concrete planter located at the bluff edge and along the side property walls. The Commission imposes **Special Condition 3**, which requires plantings within the raised concrete planters adjacent to the coastal bluff consist of native, drought tolerant, non-invasive plants.

Water Quality

The protection of water quality is an important aspect of the Coastal Act. Water from the project site will flow into the City of San Clemente's storm drain system ultimately draining to the Pacific Ocean. Beach closures occurring throughout Orange County, are typically attributed to polluted urban runoff discharging into the ocean through outfalls. As illustrated by these beach closures, polluted runoff negatively affects both marine resources and the public's ability to access coastal resources.

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain or wind would result in

adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species' ability to see food in the water column. In order to minimize adverse construction-related impacts upon marine resources, **Special Condition 2** requires the applicant comply with construction-related best management practices (BMPs) to ensure that construction materials, debris and waste does not enter receiving waters or be subject to dispersion and that prevent spillage and/or runoff of demolition or construction related materials and to contain sediment or contaminants associated with demolition or construction activities.

The existing drainage patterns on the subject residential site will remain the same. Existing drain inlets along the bluff facing side of the lot and the northern side yard will remain unchanged. The applicant proposes to direct roof and surface water runoff away from the bluff face toward the frontage road, via new drainage inlets to collect water runoff along the southern side yard that will direct runoff directly to existing City storm drains, per City requirements.

Geologic Stability

The proposed development is located on the bluff top portion of a coastal bluff that is not subject to wave erosion. Though not subject to direct wave erosion, the bluffs are subject to weathering caused by natural factors such as wind and rain, poorly structured bedding, soils conducive to erosion and rodent burrowing. Construction of a caisson and grade beam system on a bluff top due to continuing surficial bluff failure was approved by the Commission through emergency permit G5-93-349(Cox) in 1994.

The geologic hazard findings in the follow-up CDP 5-93-349(Cox) staff report state:

“The consulting geologist notes in the geotechnical evaluation of the coastal bluff conditions that the rear yard of the property experienced shallow slippage during the 1992-1993 rainy season. The consultant states that deterioration of the rear yard bluff could impact the performance of the residential foundation system at the subject site. The residence is currently not experiencing any damage.

As stated in the geotechnical report: The rear portion of the subject site can be reinforced with a structural system that would mitigate the potential for loss of foundation support to the residential structure. A line of 24-inch diameter caissons connected at the top to a tied-back grade beam constructed near the existing top of the bluff in accordance with the recommendations in this report would be adequate for this purpose.”

The applicant submitted a preliminary geotechnical assessment by William R. Munson, Consulting Engineering Geologist dated December 28, 2012, providing an opinion regarding the feasibility of the proposed residential remodel. The consulting engineering geologist conducted a non-invasive (i.e., no subsurface explorations) reconnaissance examination/evaluation of the site and bluff conditions and concluded that the proposed remodel is geotechnically feasible subject to its recommendations. The plans submitted have been reviewed by the applicant's consulting

engineering geologist and were found to be consistent with recommendations. His conclusions further state that the bluff degradation that prompted the 1994 caisson-grade beam/tie-back stabilization system did not affect the residence and was “pre-cautionary” and did not compromise the structural integrity of the residence. To date, the system appears to be functioning as intended.

Special Condition 5 requires the applicant to agree, on behalf of himself and all successors and assigns, that no new or additional bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant under this permit in the event that the development is threatened in the future with damage or destruction from erosion, storm conditions, bluff retreat, landslides or other natural coastal hazards in the future.

B. UNPERMITTED DEVELOPMENT

Development has occurred on the subject site without benefit of the required coastal development permit consisting of construction of a bluff stairway. All work occurred on the bluff face or within 50 feet of the edge of a coastal bluff. The work that was undertaken constitutes development that requires a coastal development permit application. A coastal development permit was not issued by the Commission to authorize the bluff stairway. Any development activity conducted in the Coastal Zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act. The applicant does not propose to retain or remove the unpermitted stairway as part of this application; therefore enforcement staff will evaluate further action to resolve the violation.

Special Condition 1 requires submittal of revised project plans showing the existing wooden bluff face stairway clearly shaded and clearly marked “this element not permitted by this or any other coastal development permit.”

Special Condition 7 is imposed to require the applicant to record a deed restriction against the property so as to notify all prospective future property owners of the terms and conditions of approval to which they will also be required to adhere. It thus ensures that future owners of the property will be informed of existing unpermitted development that needs to be remedied.

Consideration of the permit application by the Commission has been based solely on the consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. The certified San Clemente Land Use Plan was used as guidance by the Commission in reaching its decision. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit. The

C. HAZARDS

Development adjacent to the ocean and the edges of coastal bluffs and hillsides is inherently hazardous. Development which may require a bluff, hillside, or shoreline protective device in the future cannot be allowed due to the adverse impacts such devices have upon public access, visual resources, and shoreline processes. To minimize risks to life and property and to

minimize the adverse effects of development on coastal bluffs, hillsides, and shoreline processes the development has been conditioned to require one or more of the following: adherence to the geotechnical recommendations, an appropriate set-back from the edge of a bluff or hillside, to prohibit the construction of protective devices (such as a retaining wall or shoreline protective device) in the future, for a drainage and runoff plan to minimize the percolation of water into the hillside or bluff, and to require that the landowner or any successor-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

D. HABITAT

As conditioned, the development will not result in significant degradation of adjacent habitat, recreation areas, or parks and is compatible with the continuance of those habitat, recreation, or park areas. Therefore, the Commission finds that the project, as conditioned, conforms to Section 30240(b) of the Coastal Act.

E. DEVELOPMENT

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that any future repair and maintenance of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act and the Commission's regulations. Section 13252 of the Commission's regulations provides that certain repair and maintenance activities require a coastal development permit because they involve a risk of substantial adverse impacts to coastal resources. Therefore, to assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission imposes **Special Condition 4** requiring the applicant to apply for an amendment to this CDP or a new CDP, if applicable, for any future development within the subject site. As conditioned the development conforms to the Chapter 3 policies of the Coastal Act.

F. PUBLIC ACCESS

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, as proposed and as conditioned, the project conforms to Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

G. WATER QUALITY

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. The development, as proposed and as conditioned, incorporates construction best management practices to minimize the effect of construction activities on the marine environment. These conditions include, but are not limited to, one or more of the following: the appropriate management of equipment and construction materials and construction best

management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

H. LOCAL COASTAL PROGRAM

The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City re-submitted on June 3, 1999, but withdrew the submittal on October 5, 2000. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 of the Coastal Act.

I. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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

The City of San Clemente is the lead agency responsible for CEQA review. The City deemed the project Categorical Exempt, citing Section 15301. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which will substantially lessen any significant adverse impact the activity would have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is consistent with CEQA and the policies of the Coastal Act.

APPENDIX A

SUBSTANTIVE FILE DOCUMENTS

5-13-011(Penick)

- 1) William R. Munson, "Preliminary Geotechnical Assessment/Review of Residence Remodel Plans, 3826 Calle Ariana, Cyprus Shore, San Clemente, California", 37 p. geotechnical report dated December 28, 2012 and signed by William R. Munson (CEG 866).
- 2) City of San Clemente Approval in Concept dated January 2, 2013
- 3) Emergency Permit G5-93-349(Cox); CDP 5-93-349(Cox); CDP 5-81-356(Cox); and P-7-3-73-1388(Stark)