

**CALIFORNIA COASTAL COMMISSION**

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Staff: Liliana Roman-LB  
Staff Report: December 22, 2011  
Hearing Date: January 12-14  
Commission Action:

# Item W7a

## STAFF REPORT: CONSENT CALENDAR

**APPLICATION NUMBER:** 5-11-177

**APPLICANT:** Mr. and Mrs. Vince Respatelli

**AGENT:** James Bachelier

**PROJECT LOCATION:** 235 Avenida Monterey, San Clemente  
(Orange County)

**PROJECT DESCRIPTION:** Removal of an existing chain link fence within a coastal canyon and construction of a new six foot tall cement block wall along the side property lines and setback from the coastal canyon

**LOCAL APPROVALS RECEIVED:** San Clemente Planning Division Approval in Concept dated July 14, 2011

**SUBSTANTIVE FILE DOCUMENTS:** City of San Clemente Certified Land Use Plan

### SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending **APPROVAL** of the proposed project with three (3) special conditions, which require 1) final plans 2) compliance with construction-related best management practices (BMPs); and 3) future improvements come back to the Commission for review. The primary issue associated with this development is protection of coastal canyon habitat and visual impacts. A landscaping condition has not been recommended because the applicant is not proposing to disturb existing landscaping or install new landscaping.

### LIST OF EXHIBITS:

1. Location Map
2. Assessors Parcel Map
3. Coastal Canyon Map
4. Coastal Access Points Map
5. Project Plans
6. Aerial Photos

**MOTION:**            *I move that the Commission approve the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.*

**STAFF RECOMMENDATION TO ADOPT CONSENT CALENDAR:**

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:**

**I. APPROVAL WITH CONDITIONS**

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:**

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:

#### 1. Revised Final Plans

- A. **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 to the hand drawn project plan on a Toal Engineering topographic survey site plan dated 6/21/11. The revised final plan shall substantially conform to the preliminary plan, except that those plans must clearly show the existing unpermitted wood deck and terrace retaining walls within and adjacent to the canyon slope shaded and clearly marked *“these existing elements are not permitted by any coastal development permit and are not approved as part of coastal development permit 5-11-177-any maintenance, repair and/or replacement of these elements requires further review by the Coastal Commission”* on each set of plans;
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission 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:

- (a) No construction materials, debris, or waste shall be placed or stored where it may enter the storm drain system leading to the Pacific Ocean;
- (b) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
- (c) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into the storm drain system and a pre-construction meeting to review procedural and BMP guidelines;
- (d) 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. Debris shall be disposed of outside the coastal zone, as proposed by the applicant.

3. Future Development

This permit is only for the development described in Coastal Development Permit No. 5-11-177. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610 (a) shall not apply to the entire parcel. Accordingly, any future improvements to the development authorized by this permit, including but not limited to repair and maintenance activities 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. 5-11-177 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

**IV. FINDINGS AND DECLARATIONS:**

The Commission hereby finds and declares:

**A. PROJECT LOCATION AND DESCRIPTION**

The proposed project is located on a residential lot at 235 Avenida Monterey in the City of San Clemente, Orange County (Exhibits 1 & 2). The 9,923 square-foot lot consists of a generally flat pad on the southern side of the lot (closest to the street), which then gradually slopes down towards Trafalgar Canyon in the rear yard. Surrounding development consists of medium-density duplexes and high-density multi-family residences. There are no residences on the opposite side of the canyon, instead, Trafalgar Lane is located at the top of canyon on the opposite side of the coastal canyon. The site is designated as Residential High Density (24 dwelling units per acre) in the certified Land Use Plan, the site is developed with an existing duplex built in 1953 on the site. The nearest public access to the beach is available at the Municipal Pier or the T-Street access point, approximately 300 yards west of the subject site (Exhibit 4).

The applicant proposes the removal of an existing chain link fence along the perimeter property lines and within the coastal canyon and construction of a new six foot tall cement block wall along the side property lines and setback from the coastal canyon on a residentially developed canyon lot. No grading or landscaping is proposed. The existing residence is on a level pad on Avenida Monterey about 60 feet from the canyon edge which is located at approximately the 160' contour line above Trafalgar Canyon. The existing duplex on the site was constructed in 1953, pre-Coastal Act, however, more recent development has occurred along the canyon side of the lot; there is an existing deck, series of low keystone retaining walls along the canyon and the chain link fence within the canyon. There are no coastal development permit records for any of this development. The applicant proposes to remove the unpermitted chain link fence within the canyon and replace it with a new masonry wall approximately 12' from the canyon edge and at the stringline with existing adjacent primary structures. Construction of the new masonry wall will not result in canyonward encroachment or the loss of any existing native vegetation on the site. At this time, the applicant is not proposing to remove or to

request after-the-fact approval of the unpermitted keystone walls or wood deck on the canyonward side of the lot.

The City's certified LUP (Policy VII.15), to which the Commission may look for guidance, requires new development on coastal canyon lots to be set back as follows:

*“New development shall not encroach into coastal canyons and shall be set back either: a. a minimum of 30% of the depth of the lot, and not less than 15 feet from the canyon edge; or b. a minimum of 30% of the depth of the lot, and set back from the line of native vegetation (not less than 15 feet from coastal sage scrub vegetation or not less than 50 feet from riparian vegetation); or c. in accordance with house and deck/patio stringlines drawn between the nearest corners of the adjacent structures. The development setback shall be established depending on site characteristics.”*

The current residence conforms to the canyon setback policies in the certified LUP, as the development is set back a minimum of 30% depth of lot, meets the structural stringline and is also 15 feet from the canyon edge. The proposed project would remove existing unpermitted development in the canyon (i.e, chain link fence). The applicant proposes to construct a new more substantial cement block wall to serve as a privacy fence along the side property lines and the rear (canyonward) side of the lot, as the rear property line extends deep into the canyon, the applicant is proposing the new cement block wall setback approximately 12' from the uppermost break in the canyon slope (approximately the 160' contour line) at a location that also meets the structural stringline. As proposed, the 6' tall cement block wall will be consistent with the LUP stringline canyon setback policy, one of three possible applicable canyon setback policies in the LUP.

San Clemente's certified LUP advocates the preservation of native vegetation and discourages the introduction of non-native vegetation in coastal canyons. While no rare or endangered species have been reported to exist within the coastal canyon habitat of San Clemente, the City has designated all coastal canyons, including Trafalgar Canyon, as environmentally sensitive habitat areas, as depicted in Exhibit 3. The coastal canyons act as open space and potential wildlife habitat, as well as corridors for native fauna. Decreases in the amount of native vegetation due to displacement by non-native vegetation have resulted in cumulative adverse impacts upon the habitat value of the canyons. As such, the quality of canyon habitat must be assessed on a site-by-site basis. The canyon adjacent to the subject site is considered degraded due to the presence of both native and non-native plant species. The site is currently covered with non-native shrubs and grasses. No information has been provided to indicate that the site or any portion thereof qualifies as ESHA. The applicant proposes no new landscaping to improve the habitat value of the adjacent canyon. Since no existing landscaping will be disturbed and no new landscaping is proposed, the Commission has not imposed a landscaping condition.

During construction, the applicant will be required to implement best management practices (BMPs) designed to minimize erosion and prevent debris from entering the storm drain system leading to the ocean.

**B. DEVELOPMENT (HAZARDOUS AREAS)**

Development adjacent to slopes such as those found on canyons or hillsides is inherently hazardous. Development which may require a protective device in the future can not be allowed due to the adverse impacts such devices have upon public access, and visual resources. To minimize risks to life and property the development has been conditioned to: require an appropriate set-back from the top of the slope, for conformance with a drainage and runoff control plan to minimize percolation of water into the slope and that future improvements must come back to the Commission for review. 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.

**C. HABITAT, RECREATION AND PARK IMPACTS**

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.

**D. WATER QUALITY**

The proposed work will be occurring in a location where there is a potential for a discharge of polluted runoff from the project site into coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be carried into coastal waters would result in an adverse effect on the marine environment. Furthermore, uncontrolled runoff from the project site and the percolation of water would also affect the structural stability of the canyon. To reduce the potential for construction and post-construction related impacts on water quality, the Commission imposes special conditions requiring, but not limited to, the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters and for the use of on-going best management practices following construction. As conditioned, the Commission finds that the development 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.

**E. 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, the development conforms to Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

## **F. UNPERMITTED DEVELOPMENT**

Development has occurred on the subject site without benefit of the required coastal development permit, including a rear yard wood deck attached to the residence and a series of three low keystone retaining walls. Work occurred on the canyon ward side of the lot consisting of a wood deck and three low keystone retaining walls, one of the low retaining walls is within the 5' buffer from the edge of the coastal canyon. Consequently, even if it were considered to be the sort of work that is normally associated with a single-family residence, the work that was undertaken constitutes development that requires a coastal development permit application. **Special Condition 1** requires revised project plans showing the existing wood deck and three low keystone retaining walls shaded and clearly marked "*These existing elements are not permitted by any coastal development permit and are not approved as part of coastal development permit 5-11-177, any maintenance, repair and/or replacement of these elements requires further review by the Coastal Commission.*"

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 Commission's enforcement division will evaluate further actions to address unpermitted development not resolved under this permit.

## **G. 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.

## **H. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.