

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 OceanGate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



W19g

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-12-314

Applicant: Kim and Karen Markuson

Project Location: 168 West Avenida San Antonio, San Clemente,
Orange County

Project Description: Demolition of an existing 1,268 sq. ft. single story residence with attached 262 sq. ft. garage and rear wood deck and construction of a new 1,922 sq. ft. two-story, single family residence with a 290 sq. ft. second story balcony deck, attached 390 sq. ft. garage and 300 sq. ft. basement level, retaining walls, landscaping, and 230 cu. yds. of grading on a canyon lot

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The subject application requests approval for demolition of an existing 1,268 sq. ft. one story single family residence with attached 400 sq. ft. garage and rear wood deck and construction of a new two-story, 25' high, 1,922 sq. ft. two-story, single family residence with a 290 sq. ft. second story balcony deck, plus an attached 390 sq. ft. garage and 300 sq. ft. basement level, deepened footing foundation, retaining walls, fencing, and landscaping (Exhibit #2). Grading will consist of approximately 230 cu. yds. of cut to create the proposed basement storage level.

Major Coastal Act issues associated with the proposed development include concerns regarding habitat, water quality and geologic hazards.

The existing single family residence on this coastal canyon lot in San Clemente was constructed in the 1950s prior to the passage of Proposition 20 in 1972 which then led to passage of the Coastal Act in 1976. The residences constructed along this coastal canyon appear to have been constructed along somewhat of a stringline setback with one another. The existing residence is non-conforming in regards to current canyon setback policies of the City's certified Land Use Plan (LUP).

The applicant proposes to demolish an existing pre-Coastal Act 1,268 sq. ft. one-story single family residence and construct a two-story 1,922 sq. ft. residence in accordance with a stringline setback from the coastal canyon. However, the applicant submitted plans which applied an incorrect definition of the LUP 'stringline setback' which results in the proposed structure encroaching approximately 4 feet more canyonward along the southern section of the residence.

Strict adherence to the stringline definition in the LUP would restrict the size of the development footprint after consideration of all other City required setbacks compared with adjacent residential pattern of development with no significant benefit of increased protection of coastal resources. Therefore, considering the specific site characteristics, and considering that the applicant also proposes to remove existing non-conforming unpermitted development in the canyon, and to improve the canyon habitat by removing non-natives and planting natives; rather than strictly applying one of the canyon setback policies, staff recommends approval of the project with revised plans ensuring that the proposed new residential structure does not encroach further toward the coastal canyon than the existing pre-Coastal Act residential structure. The existing single family residence canyon setback mimics the LUP stringline setback, though it does not strictly adhere to it, and only protrudes 2' past the stringline on a 14' long wall along the southern corner facing the canyon (compared to protruding 4' as proposed by the incorrectly drawn stringline) and would be compatible with the surrounding pattern of development.

To address these potential adverse impacts the Commission staff is recommending the following Special Conditions: **1) Submittal of Final Revised Plans; 2) Conformance with Geotechnical Recommendations; 3) Landscaping; 4) Assumption of Risk, Waiver of Liability and Indemnity; 5) Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris; 6) Future Improvements; and 7) Condition Compliance**

Commission staff recommends **approval** of coastal development permit application 5-12-314, 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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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

- Exhibit 1 – Location Map/Project Site
- Exhibit 2 – Project Plans
- Exhibit 3 – Coastal Access Points Map
- Exhibit 4 – Coastal Canyon Map

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit No. 5-12-314 pursuant to the staff recommendation.*

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby approves 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 will 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

1. **Submittal of Revised Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director two (2) sets of final architectural plans, grading plans, drainage and run-off control plans, and landscaping plans that substantially conform with the plans submitted to the Commission on November 16, 2012, prepared by Braun Building Design which indicates the removal of existing non-conforming unpermitted development beyond the canyon edge, and additionally revised so that the proposed new single family is located no further canyonward than the existing single family residence.

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 plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. **Conformance with Geotechnical Recommendations.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director's review and approval, along with 2 copies of each plan, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans including foundation and grading/drainage plans and certified that each of those final plans is consistent with all the recommendations contained in the geologic engineering investigations.

The applicants shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment unless the Executive Director determines that no amendment is legally required.

3. **Landscaping – Drought Tolerant, Non-Invasive Plans.** Vegetated landscaped areas within the canyon portion of the project site 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 canyon-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 applicant acknowledges and agrees (i) that the site may be subject to hazards from slope instability, erosion, landslides, and earth movement; (ii) to assume the risks to the applicant 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. **Construction Best Management Practices.** The permittee shall comply with the following construction-related requirements and shall do so in a manner that complies with all relevant local, state and federal laws applicable to each requirement:
 - (1) No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, rain, or tidal 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 stormdrain, open ditch or surface water; and
- (4) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

6. **Future Improvements.** This permit is only for the development described in Coastal Development Permit No. 5-12-314. 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. 5-12-314. 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. 5-12-314 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

7. **Condition Compliance.** Within 90 days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. FINDINGS AND DECLARATIONS:

A. PROJECT LOCATION AND DESCRIPTION

The subject site is a trapezoidal shaped 5,910 sq. ft. inland coastal canyon residential lot located at 168 West Avenida San Antonio, San Clemente, Orange County. The subject lot fronts Avenida San Antonio and extends northwesterly to rear property descending into the canyon on

the southeasterly side of Los Lobos Marinos Canyon between two adjacent residential parcels (Exhibit #1). An ephemeral drainage feature runs at the bottom of the canyon. Two terraces were previously graded along the canyon, below the uppermost break in slope at the subject site. Los Lobos Marinos Canyon is one of seven coastal canyons identified in the City of San Clemente certified Land Use Plan (Exhibit #4). Surrounding development consists of single-family residences. The site is designated as Residential Low Density in the certified Land Use Plan, and the proposed project is consistent with this designation. The nearest public access to the beach is available approximately half a mile south of the site at the Riviera public beach access way (Exhibit #3).

The applicant proposes to demolish an existing 1,268 sq. ft. one story single family residence with attached 400 sq. ft. garage and non-conforming, unpermitted development within the canyon including a rear wood deck, steps, a low garden wall and fencing along the northern property line and to construct a new two-story, 25' high, 1,922 sq. ft. two-story, single family residence with a 290 sq. ft. second story balcony deck, plus an attached 390 sq. ft. garage and 300 sq. ft. basement level (storage area, not living space), retaining walls, fencing, and landscaping (Exhibit #2). The applicant proposes a foundation system which includes deepened footings. Grading will consist of approximately 230 cu. yds. of cut to create the proposed basement storage level.

The height of the proposed single-family residence is consistent with the existing single-family residences that surround the proposed project. The proposed single-family residence would be visible from Ola Vista (designated as a visual corridor in the City's Land Use Plan).

B. HABITAT

Coastal Act and Land Use Plan (LUP) Policies

Section 30240 of the Coastal Act states:

- (a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

San Clemente's certified Land Use Plan (LUP) discusses the importance of coastal canyons and states:

In most cases, coastal canyons are designated for natural open space, which limits potential development and helps to ensure preservation.

Policy VII.12 of the certified LUP states:

Encourage activities which improve the natural biological value, integrity and corridor function of the coastal canyons through vegetation restoration, control of alien plants and animals, and landscape buffering.

Policy XV.13 of the certified LUP states:

The removal of native vegetation and the introduction of non-native vegetation in the canyons shall be minimized. The use of native plant species in and adjacent to the canyons shall be encouraged.

The policy in the certified LUP concerning development setback standards on coastal canyons is found in Chapter 3, Section 302 G, policy VII.15, and states:

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.

Canyon Setback

The proposed development is located on the rim of the Los Lobos Marinos Canyon, one of seven coastal canyons designated as environmentally sensitive habitat area (ESHA) in the certified LUP. The applicant's property extends to the canyon bottom. The canyon at this particular site is considered somewhat degraded due to the presence of both native and non-native plant species. No portion of the area proposed to be developed contains resources that rise to the level of ESHA. Nevertheless, preservation and enhancement of the City's coastal canyons is a goal supported by both the environmental protection policies of the Coastal Act, and the certified LUP. The proposed home as conditioned to be constructed on a section of the lot already developed will therefore not impact the coastal canyon habitat; and the proposed work in the canyon itself will restore the canyon habitat and that restoration is compatible with any ESHA that may exist within the canyon.

Encroachment into the canyon by structures and other appurtenances increases the potential for the introduction of non-native plant species, and predation of native species by domestic animals, and destabilization of the canyon from excess irrigation. Encroaching structures also threaten the visual quality of the canyons. The above-cited policies of the LUP were designed for habitat protection and enhancement; to minimize visual impacts and landform alteration; to avoid cumulative adverse impacts of the encroachment of structures into the canyon; and as a means to limit brush management necessary for fire protection.

The certified LUP identifies three canyon setback choices which are to be selected based upon 'site characteristics'. There are seven canyons identified in the LUP and these setback choices exist because conditions from canyon to canyon, and within each canyon, are highly variable. Each canyon has a different shape, width and depth. The degree of existing disturbance within each canyon is also different. The land uses, density and intensity of development also vary. Public views of the canyons vary from point to point. The lots along and in these canyons vary with regard to lot size and shape. The topography of each lot can be highly variable, where in some cases there are canyon-top areas to site structures, there are other lots comprised mostly of canyon slope and canyon bottom. The pattern of existing development along the canyon changes from place to place. Another site characteristic that changes is presence or absence of native vegetation and/or a stream on the lot. Considering these site characteristics, a setback must be chosen that achieves habitat protection and enhancement, minimizes visual impacts and landform alteration, and avoids cumulative adverse impacts of the encroachment of structures into the canyon. Finally, sometimes equity is a consideration (i.e. size of development footprint available under each setback scenario compared with adjacent development) and a stringline approach to siting is adopted for particular projects so long as the stringline setback doesn't impact other coastal resources (i.e., geologic stability, habitat protection, etc.).

A coastal canyon setback utilizing option "a" in the City's LUP Chapter 3, Section 302 G, policy VII.15, would considerably minimize the site's buildable area after consideration of all other setbacks. The canyon edge (i.e., uppermost break in slope) was identified at approximately the 149' contour line by staff geologist Dr. Mark Johnsson on a site visit in March 2012. The existing structure is setback approximately 10' from the canyon edge. Setback option "a" would require a minimum 15' setback from the canyon edge for the new development. The existing homes along this segment of West Avenida San Antonio are roughly in alignment with one another on the canyon side of the lot. If the 15' setback from canyon edge was used in this case, the new residence would be further landward than all of the other homes along this segment. Thus, it would not be consistent with the existing pattern of development.

While there is a mixture of native and non-native vegetation on the subject site, vegetation on the lot is predominately ornamental along the top of canyon including fruit trees. As there is no riparian vegetation or a discernible line of coastal sage scrub vegetation, setback option "b" is not useful in this case.

The proposed project should be sufficiently set back to be consistent with the pattern of development in the surrounding area, to protect habitat and avoid frustration of future canyon habitat enhancement efforts by avoiding encroachment into the canyon (both individually and cumulatively). The applicant has designed the project to meet the stringline setback; setback option "c" of the certified LUP. Staff agrees that the use of a stringline setback would adequately protect coastal resources. However, the stringline was not correctly drawn on the submitted plans. A correctly applied stringline which is a line "*drawn between the nearest corners of the adjacent structures*" would result in a loss of approximately 4' of buildable area between the front and rear setbacks on the property resulting in approximately 42' depth of lot of buildable area. The applicant has already received a variance from the City to exceed the front yard setback. No such variance exists for canyon setback. The correctly drawn stringline setback would further restrict the size of the development footprint compared with adjacent

pattern of development with no significant benefit of increased protection of coastal resources. Therefore, considering the specific site characteristics, and the fact that the applicant proposes to remove existing non-conforming development in the canyon, and to improve the canyon habitat by removing non-natives and planting natives, staff recommends that the proposed new residential structure not encroach further toward the coastal canyon than the existing pre-Coastal Act residential structure. The existing single family residence mimics the stringline setback, only protruding 2' past the stringline on a 14' long wall along the southern corner facing the canyon and is compatible with the surrounding pattern of development. **Special Condition #1** requires the applicant to submit revised plans to pull the proposed structure back a few feet from the canyon edge so that the setback of the new structure on the canyonward side of the lot maintains the same footprint as the existing pre-Coastal Act residence ensuring the new structure does not encroach further into the canyon. Furthermore, the applicant proposes, and **Special Condition #1** ensures, the removal of unpermitted development in the canyon to protect habitat and avoid frustration of future canyon habitat enhancement efforts by avoiding encroachment into the canyon.

Landscaping

San Clemente's certified LUP advocates the preservation of native vegetation and discourages the introduction of non-native vegetation in coastal canyons. Rare or endangered species have been documented to exist within the relatively undisturbed Marblehead coastal canyons of San Clemente. However, the City has designated all coastal canyons, including Los Lobos Marinos Canyon, as environmentally sensitive habitat areas (ESHA), as depicted in Exhibit #4. 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 somewhat degraded due to previous grading (cut/fill) forming terraces on the canyon face and the presence of both native and non-native plant species. No portion of the area on the subject site that is proposed to be graded or otherwise developed with structures contains resources that rise to the level of ESHA. However, to decrease the potential for canyon instability, deep-rooted, low water use plants, preferably native to coastal Orange County should be selected for general landscaping purposes in order to minimize irrigation requirements and saturation of underlying soils. Low water use, drought tolerant, native plants require less water than other types of vegetation, thereby minimizing the amount of water introduced into the canyon slope. Drought resistant plantings and minimal irrigation encourage root penetration that increases slope stability. The term drought tolerant is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" (a.k.a. WUCOLS) prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>

Additionally, since the proposed development is adjacent to a coastal canyon, designated as ESHA by the City, the the protection and enhancement of habitat values is sought, and therefore the placement of vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants

and spread quickly. 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/) in their publications. The Commission typically requires that applicants utilize native plant species, particularly along coastal canyons. In the areas on the canyon ward side of the lot, landscaping should only consist of plant species that are appropriate to the habitat type and native to coastal Orange County. Elsewhere on the site, while the use of native plants is still encouraged, non-native plant species that are drought-tolerant and non-invasive may be used.

The applicant proposes to remove existing non-conforming development in the canyon by demolishing an existing non-conforming and unpermitted wood deck built over the canyon edge, steps, a low garden/retaining wall and a chain link fencing along the northern property line. The applicant submitted a landscape plan which also proposes removal of fruit trees within the canyon and replanting the canyon with native, drought tolerant, non-invasive trees, shrubs and groundcover plant species approved by the Orange County Fire Authority (OCFA). No grading within the canyon is proposed. New landscaping on the street-facing side of the site is proposed utilizing 'low water use' non-invasive plants (e.g., lavender, rosemary and manzanita). **Special Condition #3** requires the applicant adhere to the proposed drought-tolerant, non-invasive landscaping plan. Additionally, because the proposed development is located adjacent to a coastal canyon, the applicant has submitted Orange County Fire Authority (OCFA) approval of the proposed landscaping plan and determination that a fuel modification plan is not required for the proposed development.

The special conditions of this staff report are designed to protect and enhance Los Lobos Marinos Canyon as an environmentally sensitive habitat area. Therefore, as conditioned, the Commission finds that the proposed development is consistent with Section 30240 of the Coastal Act and the canyon protection policies of the certified LUP.

C. HAZARDS

Section 30253 of the Coastal Act states in part:

New development shall do all of the following:

- a) *Minimize the risk to life and property in areas of high geologic, flood, and fire hazard.*
- b) *Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along coastal bluffs.*

The applicant submitted a preliminary geotechnical investigation prepared by Via Geos, Consulting Engineering Geologists. The geotechnical investigation consisted of the review of available geologic maps, subsurface exploration by drilling, logging and laboratory testing of two site borings, stability analyses and geotechnical analysis of the site conditions in relation to proposed improvements. The report provides recommendations related to site preparation and

grading, conventional deepened footing foundation for the proposed residence, and retaining walls.

Coastal Canyon Slope Stability

The report found the site is grossly stable; the results of a slope stability analysis indicate a factor of safety for static conditions in excess of 1.5 and a factor of safety in excess of 1.1 for pseudo-static conditions. No faults are located on the property and no significant landslides were observed to have been previously mapped on the property. Furthermore, the report states:

The potential for future gross slope instability, as would affect proposed site improvements, is considered very low based upon the massive, cemented character of the sandstone bedrock, as observed in exposures in the canyon slope, and the non-adverse geologic structure. Limited instability of sandstone along steeper, lower portions of the canyon slope is considered possible but should not adversely impact proposed site improvements which are adequately set back from this slope.

It is evident that the steeper portions of the canyon slope will be subject to surficial instability of residual soils overlying the bedrock, as scarp and debris from recent erosion are present, and slope wash deposits, apparently deposited from similar past surficial instability, occur locally at the bottom of the canyon slope.

The more gradual upper slope, where backed by fill and terrace deposits, may be subject to shallow soil creep. By founding structural elements below the upper creep-prone earth materials and using the setbacks provided herein, the potential effects of surficial instability and soil/rock creep on structural elements can be substantially mitigated.

Groundwater was not encountered nor anticipated to be a constraint, provided that adequate surface and subsurface drainage provisions are incorporated into the project. The report concludes that all runoff onto and from the site must be intercepted, controlled and discharged off site to avoid potentially damaging erosion and saturation of earth materials in the canyon that could lead to instability of the proposed development.

Section 30253(b) of the Coastal Act states that new development shall assure stability and structural integrity and shall not contribute to erosion, geologic instability or destruction of the site or require the construction of protective devices which would substantially alter natural landforms. The preliminary geotechnical report concludes that based upon slope stability analyses, the site may be safely developed from a geotechnical viewpoint and that the planned project is not anticipated to impact adjacent properties or the canyon slope.

The applicant has submitted foundation plans utilizing continuous deepened concrete footings and slab-on-grade foundation. **Special Condition #2** requires the applicant submit final plans including foundation plans signed by the consulting geotechnical experts verifying conformance with all geotechnical recommendations. As such, these special conditions guarantee that the final development plans are consistent with Section 30253 of the Coastal Act.

Proposed Site Drainage Improvements

In order to minimize erosion and ensure stability of the project site, the project must also include adequate drainage and erosion control measures as recommended by the preliminary geotechnical investigation. The applicant has adequately addressed site drainage issues that could otherwise contribute to erosion and geologic instability. As proposed, the preliminary grading plan and an erosion control plan prepared by Toal Engineering (Exhibit #, page #-#) indicate new drain lines and surface runoff directed to area drains and piped directly to an existing City storm drain at the street. Runoff and storm water will be directed away from the canyon. A buried 4" diameter gravity flow drain line from a storm water drain lift station on the canyonward side of the lot will outlet to the street. Minor cut/fill grading for site preparation is proposed and 230 cubic yards of cut for construction of the basement level storage room. No canyon disturbance will occur during site grading activities.

Conclusion

Although the conditions described above render the project sufficiently stable to satisfy the requirements of Section 30253, most projects along the coast involve some form of unpredictable risks whether it be from flooding, wave uprush, erosion, earthquakes or fires, to name a few. The proposed project is located atop a coastal canyon rim, which is an area that may be subject to potential damage or destruction from natural hazards, including slope instability, erosion, landslides, and earth movement given the general nature of coastal canyons in certain parts of the California coast and seismic activity of nearby faults. If the applicant nevertheless chooses to proceed with the project, the Commission requires the applicant to assume the liability from these associated risks and therefore imposes **Special Condition #4**. Through the assumption of risk condition, the applicant acknowledges the nature of the geologic hazards that exists on the site and that may affect the safety of the proposed development.

Because of the potential for future improvements to the proposed residence or associated landscaping which could potentially adversely impact the geologic stability and/or environmentally sensitive habitat area concerns expressed in this staff report, the Commission imposes **Special Condition #6**. This condition informs the applicant that future development at the site requires an amendment to this permit (5-12-314) or a new coastal development permit. Future development includes, but is not limited to, structural additions, installation of any hardscape and/or decks, landscaping and fencing. Therefore, as conditioned, the Commission finds that the development conforms to the requirements of Sections 30251 and 30253 of the Coastal Act regarding the siting of development in areas that minimize landform alteration and addresses hazards.

D. WATER QUALITY

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters both during construction and post-construction. Due to this, the Commission has imposed **Special Condition #4**, which requires the applicant to comply with construction-related requirements related to storage of construction materials, mechanized equipment and removal of construction debris.

Other sources of polluted runoff could include runoff from impervious surface on the lot and over-watering, which sometimes occurs from installation of landscaping with a high water demand. Plants with a high-water demand are typically not well-suited to the Mediterranean climate of southern California, and therefore often require intense fertilization and application of pesticides/herbicides as a maintenance regime, in addition to regular irrigation. Thus, this type of landscaping can add pollutants to both dry weather and stormwater runoff. Therefore, the use of drought tolerant plants or low-maintenance landscaping is a preferred alternative.

Therefore the Commission imposes **Special Condition #3** requiring the applicant comply with the proposed planting/landscaping plan which includes non-invasive, drought tolerant native vegetation within and adjacent to the canyon and non-invasive, drought tolerant vegetation on the street-facing side of the lot. Native, drought tolerant plants are required because they require little to no watering once they are established (1-3 years), they have deep root systems that tend to stabilize the soil, and are spreading plants that tend to minimize erosion impacts of rain and water run-off continue to maintain the natural plant communities.

Combined with the proposed use of non-invasive drought tolerant vegetation to reduce water runoff discharged from the site, the project will minimize the project's adverse impact on coastal waters to such an extent that it will not have a significant impact on marine resources, biological productivity or coastal water quality. 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 protect marine resources, promote the biological productivity of coastal waters and to protect human health.

E. SCENIC AND VISUAL RESOURCES

Section 30251 of the Coastal Act states that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to

protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

San Clemente's certified Land Use Plan (LUP) visual resource policies:

Plan policy provides for maintaining the visual character and aesthetic resources of the City through the preservation of: open space areas, coastal bluffs and canyons and public view corridors.

Policy VII.3 of the certified LUP states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed:

- a. To protect public views to and along the ocean and scenic coastal area.*
- b. To minimize the alteration of coastal bluffs and canyons.*
- c. Where feasible, to restore and enhance visual quality in visually degraded areas.*
- d. Require that projects be designed and developed to achieve a high level of quality, distinctive character, and compatibility with existing uses and development in accordance with this Element and the Urban Design Element (GP Policy 1.3.6)*

Policy XII.3 of the certified LUP states:

Require the following coastal roadways be maintained and preserved as scenic corridors in accordance with the scenic highways element of the General Plan (GP Policy 5.1.1):

- Avenida Pico*
- El Camino Real/Pacific Coast Hwy*
- Ola Vista*
- El Camino Real*

Policy XII.5 of the certified LUP states:

Preserve the aesthetic resources of the City, including coastal bluffs, visually significant ridgelines, and coastal canyons, and significant public views (GP Policy 10.2)

Policy XII.6 of the certified LUP states:

Preserve the designated undeveloped "natural" coastal canyon areas where appropriate that were originally intended to be open space buffers (See Figure 2-1) (GP Policy 10.2.3)

The proposed development is located on a private coastal canyon parcel designated as Residential Low Density in the City's certified Land Use Plan (LUP). The subject site is only one lot away from Ola Vista, a designated scenic corridor in the City's certified LUP. However, the subject site/residence is obstructed from view by existing single and two story residences on the corner of Ola Vista and Avenida San Antonio and is not visible to motorists and pedestrians looking north from Ola Vista toward the canyon (and looking away from the ocean). The residential street is mostly traveled by local residents and is not a regional corridor. There are no public trails, public parks, or other such public vantage points with direct views of the coastal canyon through the subject site. Public views of the coastal canyon are available along Ola Vista. Public ocean views are looking south from Ola Vista, the site subject site is north of Ola Vista.

Section 30251 of the Coastal Act requires that the scenic and visual qualities of coastal areas be protected and where feasible to be restored and enhanced. As the applicant proposes the complete demolition and reconstruction of the existing structure the new development at this location must also be sited and designed to be visually compatible with the character of the neighborhood in this area.

One of the objectives of the setback line for coastal canyon lots is to protect views, that even though this project extends 2' beyond the stringline, the proposed development as conditioned no further encroachment canyonward than the existing structure is still compatible with the objective of a stringline setback since that two foot extension doesn't impact coastal views. Given this, and the fact that the LUP is used as guidance and not the standard of review, the Commission finds that the proposed setback doesn't conflict with the underlying goals of the LUP and is consistent with visual resource protection policies of the Coastal Act.

The proposed new residence meets the City's height limits and is compatible with existing single family residences in the area. No adverse visual impact to public views is anticipated by construction of the proposed two-story structure as no significant public coastal views currently exist across the site and the site is currently obstructed by existing single and two-story residences on Ola Vista from public coastal canyon viewing vantage points on Ola Vista, a scenic corridor identified in the City's certified LUP.

As proposed, the Commission finds the proposed development consistent with Section 30251 of the Coastal Act.

F. UNPERMITTED DEVELOPMENT

Development has occurred on the subject site without benefit of the required coastal development permit including construction of wood deck, a stairway, fencing and landscaping. This development occurred on the canyon face or within 15 feet of the edge of a canyon that is identified in the City's certified Land Use Plan as an environmentally sensitive habitat area. As further described above, a site specific review confirms that the habitat on the canyon slope on this property is somewhat degraded due to the predominance of non-native plant species

interspersed with scattered native species. As such, no portion of the area at this particular subject site that is proposed to be developed contains resources that rise to the level of ESHA. Nevertheless, preservation and enhancement of the City's coastal canyons is a goal supported by both the environmental protection policies of the Coastal Act, and the certified LUP. The proposed home as conditioned to be constructed on a section of the lot already developed will therefore not impact the coastal canyon habitat; and the proposed work in the canyon itself will restore the canyon habitat and that restoration is compatible with any ESHA that may exist within the 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.

The applicant proposes to resolve the unpermitted development on the subject site through this Coastal Development Permit application by proposing the demolition and removal of the nonconforming unpermitted development. The applicant submitted a landscape plan which also proposes removal of non-native fruit trees within the canyon and replanting the canyon with native, drought tolerant, non-invasive trees, shrubs and groundcover plant species. **Special Condition #3** requires the applicant to adhere to the final, approved native plant species landscaping plan.

Additionally, to ensure that the unpermitted development components of this application are resolved in a timely manner, **Special Condition #7** requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 90 days of Commission action. The Executive Director may grant additional time for good cause.

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.

G. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms to Chapter 3 policies of the Coastal Act. 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.

The proposed development, as conditioned, is consistent with the policies contained in the certified Land Use Plan. Moreover, as discussed herein, the development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for San Clemente that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 Title 14 of the California Code of Regulations requires Commission approval of a coastal development permit application 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 for purposes of CEQA compliance. The City determined that the project is categorically exempt from CEQA. Furthermore, the proposed development has been conditioned to assure the proposed project is consistent with the resource protection policies of the Coastal Act. The conditions also serve to mitigate significant adverse impacts under CEQA. The conditions are: 1) submittal of revised final plans; 2) conformance with geotechnical recommendation; 3) landscaping; 4) assumption of risk, waiver of liability and indemnity; 5) compliance with construction best management practices; and 6) future development.

There are no other feasible alternatives or mitigation measures available which will 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 the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A

SUNSTANTIVE FILE DOCUMENTS

Approval-in-Concept from the City San Clemente dated October 18, 2012

Preliminary Geotechnical Investigation for Proposed Residence, 168 W. Avenida San Antonio, San Clemente, CA, dated June 12, 2012, prepared by Via Geos, Consulting Engineering Geologists

Letter from Lynee Pivaroff, Fire Prevention Analyst, Orange County Fire Authority dated December 4, 2012