CALIFORNIA COASTAL COMMISSION

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Filed:	1/21/14
180th Day:	7/20/14
Staff:	L. Roman-LB
Staff Report:	3/20/14
Hearing Date:	4/11/14

STAFF REPORT: CONSENT CALENDAR

Application No.:	5-14-0161
Applicant:	Chau Shin Hsu
Agent:	Lampert Diaz Architects, Inc.
Location:	325 Boca del Canon, San Clemente, Orange County (APN 692-282-34)
Project Description:	Construction of a new 5,064 sq. ft., three story, 25' tall, single family residence including spa, barbeque, hardscape, retaining walls, privacy walls, fences, and landscaping and outdoor lighting on a 6,005 sq. ft. vacant lot at the toe of a coastal bluff.
Staff Recommendation:	Approval with conditions.

I. MOTION AND RESOLUTION

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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. **Conformance with Geotechnical Recommendations.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants 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 investigation. Any foundation design other than slab on-grade and conventional foundations shall require a permit amendment.

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.

- 2. **Spa Protection Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for review and approval of the Executive Director, two (2) full size sets of a spa protection plan prepared by an appropriately licensed professional that incorporates mitigation of the potential for geologic instability caused by leakage from the proposed spa. The spa protection plan shall incorporate and identify on the plans the follow measures, at a minimum: 1) installation of a leak detection system such as, but not limited to, leak detection system/moisture sensor with alarm and/or a separate water meter for the spa which is separate from the water meter for the house to allow for the monitoring of water usage for the spa, and 2) use of materials and spa design features, such as but not limited to double linings, plastic linings or specially treated cement, to be used to waterproof the undersides of the spa to prevent leakage, along with information regarding the past and/or anticipated success of these materials in preventing leakage; and where feasible 3) installation of a sub drain or other equivalent drainage system under the spa that conveys any water leakage to an appropriate drainage outlet. The applicants shall comply with the final spa plan approved by the Executive Director.
- 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-face 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 (<u>http://www.CNPS.org/</u>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<u>http://www.cal-ipc.org/</u>), 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 (<u>http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf</u>).

- 4. **Lighting.** PRIOR TO ISSUANCE OF THE PERMIT, the permittee shall submit for review and approval of the Executive Director, a lighting plan. All outdoor lighting within the property shall be directed and shielded so that light is directed away from the coastal bluff. Floodlamp shielding and/or sodium bulbs shall be used in outdoor areas to reduce the amount of stray lighting onto the bluff face areas. Furthermore, no skyward-casting lighting shall be used. The lowest intensity lighting shall be used that is appropriate to the intended use of the lighting.
- 5. 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.
- 6. No New or Additional Bluff 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 bluff protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-14-0161 including, but not limited to, the residence, garage, foundations and any future improvements, in the event that the development is threatened with damage or destruction from landslide, 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, accessory buildings, 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.

- 7. Future Improvements. This permit is only for the development described in Coastal Development Permit No. 5-14-0161. 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. 5-14-0161. 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. 5-14-0161 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
- 8. 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 stormdrain, open ditch or surface water; and
- (4) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

IV. FINDINGS AND DECLARATIONS:

A. PROJECT LOCATION AND DESCRIPTION

The proposed development is located at 325 Boca del Canon in the City of San Clemente, Orange County (**Exhibit 1**). The applicant proposes construction of a new 5,064 sq. ft. single family residence; the proposed development is located on a vacant lot at the toe of a coastal bluff between the sea and the first public road. The site is surrounded by single-family residences, to the south by the frontage street (Boca del Canon) and to the north by a near vertical coastal bluff. The bluff slope descends to the Boca del Canon a private gated street. While the site is at the toe of a natural bluff, substantial development is located seaward, including the frontage road, a row of single-family residences, and the railroad r-o-w which is protected by a rock revetment. The subject site is designated RL (Residential Low Density) in the San Clemente certified Land Use Plan (LUP).

The coastal bluffs in San Clemente are not subject to direct wave action because they are separated from the beach by Orange County Transit Authority (OCTA) railroad tracks and railroad right-of-way and at this location, the bluff is additionally setback from direct wave action from a row of houses and Boca del Canon street. 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 site is located at the toe of a coastal bluff.

Adequate public access to the public beach exists nearby at the T-Street access point (less than a half mile upcoast). The T-street access point has metered on-street parking at the top of the bluff and a safe pedestrian bridge railroad crossing (vertical access) to the beach beyond. Vertical

public beach is also available from Boca del Canon approximately 50 feet south (downcoast) of the subject site at the end of the Boca del Canon cul-de-sac at an at-grade railroad crossing and the public beach beyond. However, this access point is only available to pedestrians as Boca del Canon is a gated, private residential street. On-street parking is only available for residents and their guests. **Exhibit 2** provides a map of coastal access points throughout San Clemente.

The applicant proposes construction of a new 5,064 sq. ft., three story, 25' tall, single family residence including a basement level. Grading for the proposed basement level will require 830 cu. yds. of cut. Additionally, new hardscape including a new spa, barbeque, landscaping and retaining walls are proposed in the back yard area, a slough barrier wall along a portion of the of the toe of the bluff, landscaping, outdoor lighting and fencing is proposed along the street-facing side of the lot. No vegetation removal or landscaping or any other type of work is proposed on the bluff face. Proposed project plans are included as **Exhibit 3**.

Geotechnical Recommendations

The 6,005 square foot lot at the toe of a coastal bluff is currently developed with a graded pad, a low retaining wall and a concrete drainage v-ditch at the rear of the graded pad and along the base of the adjacent bluff slope. The graded pad is covered with ice plant, brush and acacia trees.

The applicant provided a recent Preliminary Geotechnical Investigation prepared by ViaGeos dated November 8, 2013. The report investigated previous grading conducted at the site and reports that the site and vicinity were developed by cut and fill grading in the late 1950's (undocumented) and in 1963, during rough grading of the tract. Site grades were constructed at that time by excavating into the former sea bluff and placement of fill within lower (buried) portions of a re-entrant gully that occurs beneath the site. The lower portions of the bluff slope were locally modified by excavation that created a 25' +/- high near vertical bluff. Other portions of the bluff slope are in a generally natural state. Grades of the level pad and slope at the front of the site were manufactured with fill placed above buried portions of the bluff slope and above a sub-horizontal pad constructed into bedrock at the base of the excavated upper bluff slope. On the basis of field exploration, the depth of fill beneath the level pad is typically 3-4 feet, but may be up to 15 feet over the axis of the buried re-entrant gully. The property is underlain by bedrock strata of the Capistrano Formation. Loose slopewash occurs within the lower portion of the adjacent, exposed re-entrant gully and was encountered within buried portions of the gully. A geotechnical plot plan and cross-sections are included as **Exhibit 4.** The existing fill and slopewash deposits were deemed unsuitable in their present state for structural support, but may be compacted as engineered fill. Additionally, unweathered bedrock is suitable to support proposed engineered fill and structural loads.

Regarding site stability, the report states that no landslides are mapped as underlying the site and there is no geomorphologic evidence of past gross bedrock instability. The steep cut slope of the bluff at the rear of the site is backed predominantly by competent, cemented sandstone and the slope has not changed much since graded over 50 years ago. Therefore, gross instability of the bluff above the subject site was considered unlikely. However, the bluff and cut slopes may be subject to surficial instability in the form of sloughing or block toppling of weathered near surface materials (the volume of materials likely to be involved in such surficial instability was

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considered small), therefore, the consultant recommends a slough barrier below the steepest portions of the bluff to protect rear yard improvements.

The report concludes that the proposed residence may be supported primarily on conventional foundations and slabs-on-grade constructed into competent bedrock and that the proposed development is considered geotechnically feasible provided the recommendations in the report are incorporated in design, construction and maintenance of the property. **Special Condition 1** requires the applicant provide final design and construction plans including foundation and grading/drainage plans reviewed and approved by an appropriately licensed professional certifying that each of those final plans is consistent with all the recommendations contained in the submitted and any future geologic engineering investigations for the proposed project. Any foundation design other than slab on grade and conventional footings shall require a permit amendment.

The existing drainage patterns on the subject residential site will remain. Surface runoff occurs as sheet flow toward the front of the site. A concrete lined drainage swale occurs at the rear of the graded pad intercepts surface water originating from the adjacent bluff slope. The report recommends that all water runoff onto and originating from the site must be intercepted, controlled and discharged off site to avoid potentially damaging erosion and saturation of earth materials. The applicant proposes to direct roof and surface water runoff away from the bluff toe and toward the frontage road, via new drainage inlets collecting and directing water runoff to existing City storm drains, per City requirements. Additionally, **Special Condition 2** requires the applicant provide a spa protection plan to ensure against the potential for geologic instability caused by leakage from the proposed spa.

In order to minimize adverse construction-related impacts upon marine resources, **Special Condition 8** 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.

No vegetation removal or new landscaping is proposed on the bluff face inland of the existing retaining wall. Seaward of the retaining wall, mostly paved hardscape with some planter areas is proposed over most of the rear back yard (toe of bluff side of the lot) and minor landscaping along the side yards and frontage road. **Special Condition 3** requires any plantings on the bluff side of the lot inland of the retaining wall to consist of native, drought tolerant, non-invasive plants and plantings throughout the rest of the lot (i.e., seaward of the retaining wall) to be either native or non-native drought tolerant, non-invasive plants. **Special Condition 4** requires the applicant submit a lighting plan to ensure the protection of biological resources on the adjacent bluff by avoiding excess lighting impacts at night.

B. 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, 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.

С. НАВІТАТ

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. 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 6** 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.

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 and as conditioned, the project conforms to Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

F. 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.

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 of the Coastal Act.

H. 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 Categorically 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

- 1) City of San Clemente LUP
- 2) City of San Clemente Approval in Concept dated January 7, 2014
- 3) Preliminary Geotechnical Investigation for Proposed Residence, 325 Boca del Canon, San Clemente, CA; prepared by Via Geos dated November 8, 2013



COASTALCOMMISSION

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Chapter 2: Area Description Coastal Zone Boundary 1 (2)3 (4) (5 6 7 8 9 7-street Access Point 10 Boca del Canon Access Point (11 12 (13 (14 15 (16)COASTAL COMMISSION (17 18 EXHIBIT Secondary Access **Primary Access** - T- STREET - BOCA DEL CANON - LOST WINDS - FIMERA - MONTALVO - AVE, CALAFIA - SAN CLEMENTE STATE PARK - AVE DE LAS PALMERAS - CALLE ARIANA 0 PAGE 10 11 POCHE CAPISTRANO SHORES NORTH BEACH DIJE COURT EL PORTAL MARIPOSA PRESIDIO-CENTRAL ESTRELLA-NORTH-- 12 - 13 - 14 _ 3 PICO-PALIZADA 15 CALAFIA-SOUTH 16 17 6 LINDA LANE PARK CORTO LANE MIUNICIPAL PIER _ ത്രീ PRESIDIO-CENTRAL 8 _ -----FIGURE 2-5 CITY OF SAN CLEMENTE COASTAL ACCESS POINTS

























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