CALIFORNIA COASTAL COMMISSION

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Filed:	6/30/16
180th Day:	12/27/16
Staff:	L. Roman-LB
Staff Report:	9/15/16
Hearing Date:	10/6/16

STAFF REPORT: CONSENT CALENDAR

Application No.:	5-15-1647
Applicant:	Marcus Avila
Project Location:	315 W. Avenida de los Lobos Marinos, San Clemente, Orange County (APN 692-312-29)
Project Description:	Construction of new hardscape improvements including a concrete paver patio, drainage improvements and 25 ft. x 16 ft. 10 in. pool along the coastal canyon facing side of a single family residential lot.
Staff Recommendation:	Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The subject site is a coastal canyon lot in the City of San Clemente within the first public road and the sea. The applicant is proposing construction of new hardscape improvements, drainage improvements and a pool along the coastal canyon facing side of a single family residence. The proposed pool conforms to the patio/deck stringline setback and is setback 5 feet from the canyon edge. Based on the geotechnical information provided by the applicant the proposed development will be safe from erosion and consistent with Coastal Act section 30253; according to the geotechnical report no slope protection is necessary for the proposed improvements. The

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record of coastal development permit applications and Commission actions has shown that geologic conditions change over time and that predictions based upon the geologic sciences are inexact. Even though there is evidence that geologic conditions change, the Commission must rely upon, and hold the applicant to their information which states that the site is safe for development without the need for protective devices.

Staff is recommending <u>APPROVAL</u> of the proposed project with Six (6) Special Conditions regarding: 1) Conformance with Geotechnical Recommendations; 2) Pool Leak Protection Plan;
3) Assumption of Risk, Waiver of Liability and Indemnity; 4) Future Improvements; 5) Landscaping; and 6) Construction Responsibilities and Best Management Practices.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1 – Area Map

Exhibit 2 – Topographic Map and Geologic Cross-Section

Exhibit 3 – Project Plans

Exhibit 4 – City of San Clemente Coastal Canyons Map

I. MOTION AND RESOLUTION

Motion:

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

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

Resolution:

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

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

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

III. SPECIAL CONDITIONS

1. **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 a copy of each plan, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans including construction and grading/drainage plans and certified that each of those final plans is consistent with all the recommendations contained in the geologic engineering investigations except as modified by Special Condition 2.

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. Pool Leak Protection Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director, two (2) full size sets of a pool protection plan prepared by an appropriately licensed professional that incorporates mitigation of the potential for geologic instability caused by leakage from the proposed pool. The pool protection plan shall incorporate and identify on the plans the following measures, at a minimum: 1) installation of a pool leak detection system such as, but not limited to, leak detection system/moisture sensor with alarm and/or a separate water meter for the pool which is separate from the water meter for the house to allow for the monitoring of water usage for the pool, and 2) use of materials and pool 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 pool 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 pool that conveys any water leakage to an appropriate drainage outlet. The applicants shall comply with the final pool plan approved by the Executive Director.
 - 3. 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 coastal hazards such as slope instability, erosion, and landslides; (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

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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.

- 4. **Future Improvements.** This permit is only for the development described in Coastal Development Permit No. 5-15-1647. 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. 5-15-1647. 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. 5-15-1647 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
- 5. Landscaping – Drought Tolerant, Non-Invasive Plans. Vegetated landscaped areas within the canyon portion of the project site disturbed during construction shall be revegetated to avoid erosion and 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.calipc.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).

- 6. **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 storm drain, open ditch or surface water; and
- (4) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

IV. FINDINGS AND DECLARATIONS:

A. PROJECT DESCRIPTION AND LOCATION

The applicant proposes construction of new hardscape improvements over an existing lawn area including a concrete paver patio, patio drainage improvements and a pool 25 feet by 16 feet 10 inches and 6-feet 6-inch deep with a special hydroshield mixed into the shotcrete to reinforce waterproofing of the pool shell. The proposed accessory developments are along the coastal canyon facing side of a single family residential lot. Proposed project plans including a drainage plan showing drainage from the proposed new rear concrete paver patio directed to the frontage road and away from the canyon edge are included as **Exhibit 3**. The proposed development is located within an existing developed area and is compatible with the character and scale of the surrounding area. The proposed pool is setback a minimum of 5-feet from the canyon edge and is set back according to accessory deck/patio stringline drawn between the nearest corners of the adjacent deck structures. As proposed, the accessory structures do not encroach into the coastal canyon.

The City of San Clemente does not have a certified Local Coastal Program, only a certified Land Use Plan (LUP). Therefore, the Coastal Commission is the coastal development permit issuing entity for development on that parcel and the standard of review is Chapter 3 of the Coastal Act. The certified LUP may be used for guidance.

The proposed project site is located at 315 W. Avenida de los Lobos Marinos, San Clemente. The subject site is located on an inland lot between the first public roadway and the sea on a coastal canyon lot (**Exhibit 1**). The site is designated Low Density Residential by the City of San Clemente Land Use Plan (LUP); the proposed project adheres to this designation. The project is located within an existing developed urban residential area. The site is surrounded by single-family residential development. The nearest coastal access is available approximately 500 feet west of the subject site at the Lost Winds public access way providing a stairway down the coastal bluff to the beach.

Canyon Setback

The proposed development is located on the rim of the Lobos Marinos Canyon, one of seven coastal canyons designated as environmentally sensitive habitat area (ESHA) in the certified LUP (**Exhibit 4**). The subject site is a rectangularly-shaped residential property fronting 67+/- feet on Avenida de los Lobos Marinos and extends southeasterly 151 to 154 feet to the rear property boundary. The applicant's property does not extend to the canyon bottom (**Exhibit 2**). The canyon slope continues beyond the subject site's property line. The canyon slope is developed with an off-site paved basketball court (part of the adjacent lot) located on a level pad graded onto the canyon slope between the subject property and the canyon bottom. The canyon at this particular site is considered somewhat degraded due to the presence of development within the canyon and ornamental non-native plant species mixed into the native vegetation of the canyon. 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 pool and hardscape improvements are proposed to be constructed on top of

canyon areas of the lot already developed and will therefore not encroach further into the canyon or impact the coastal canyon slope.

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 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.

In this case, the existing residence was approved by the Commission in 1992 under CDP 5-92-083(Reenders) with a minimum of 30% depth of lot setback. The proposed pool and concrete paver patio accessory development meets the stringline setback for accessory development in the LUP and will therefore not encroach further into the canyon than the existing adjacent accessory structures.

No adverse visual impact to public views is anticipated by the proposed pool and concrete paver patio as no significant public coastal views currently exist across the site and views of the site from public viewing vantage points across the coastal canyon on W. Avenida San Antonio are currently obstructed by existing residential structures.

Special Condition 1 requires the applicant submit final construction and grading/drainage plans with evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all the recommendations contained in the geologic engineering investigation except as modified by Special Condition 2. Although the applicant indicates in their application submittal an intent to use a special hydroshield mixed in with the shotcrete to reinforce the waterproofing of the pool shell, this proposal is not reflected in the plans submitted by the applicant. Therefore, Special **Condition 2** requires the applicant submit final plans depicting a pool leak protection plan prepared by an appropriately licensed professional that incorporates mitigation of the potential for geologic instability caused by leakage from the proposed pool. The pool protection plan shall incorporate and identify on the plans the following measures, at a minimum: 1) installation of a pool leak detection system such as, but not limited to, leak detection system/moisture sensor with alarm and/or a separate water meter for the pool which is separate from the water meter for the house to allow for the monitoring of water usage for the pool, and 2) use of materials and pool 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 pool 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 pool that conveys any water leakage to an appropriate drainage outlet.

Furthermore, **Special Condition 5** requires vegetated landscaped areas within the canyon portion of the project site disturbed during construction to be re-vegetated with drought tolerant plants native to coastal Orange County and appropriate to the habitat type to avoid erosion and to restore the canyon.

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 3**. 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 which could potentially adversely impact the geologic stability, or other coastal resources, the Commission imposes **Special Condition 4**. This condition informs the applicant that future development at the site requires an amendment to this permit 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.

In order to minimize adverse construction-related impacts upon marine resources, **Special Condition 6** 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.

B. DEVELOPMENT

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 cannot 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 for a drainage and runoff control plan to minimize percolation of water into the slope, for landscaping, and to require that the landowner or and 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.

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

D. 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 design

features to minimize the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, reducing runoff through the use of permeable surfaces, the use of non-invasive drought tolerant vegetation to reduce and treat the runoff discharged from the site, and for the use of post-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 with 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. 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.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that 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.

APPENDIX A

SUNSTANTIVE FILE DOCUMENTS

- 1. City of San Clemente LUP, certified March 14, 1996
- 2. Approval-in-Concept from the City of San Clemente dated 10/08/15
- 3. CDP 5-5-92-083(Reenders)













