

**CALIFORNIA COASTAL COMMISSION**

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## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 6-16-0222

**Applicant:** Brian and Kim Adler

**Agent:** Brian Adler

**Location:** 4925 Rancho Viejo, San Diego County (APN: 302-222-08)

**Project Description:** After-the-fact permit for a 1-story, 4,084 sq. ft. single-family residence including an attached garage and approximately 400 cu. yds. of grading on a 1.13-acre lot.

**Staff Recommendation:** Approval with Conditions

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## SUMMARY OF STAFF RECOMMENDATION

The primary Coastal Act issues raised by this project relate to the protection of the biological resources contained within and adjacent to the subject site.

The applicant purchased the subject site in 2015, and subsequently undertook approximately 400 cubic yards of unpermitted grading. This prompted the involvement of the County of San Diego. Based on the County's involvement, the applicant contacted the San Diego District office in January 2016 to determine if the unpermitted grading had occurred in an open space easement or in a deed restricted area. As a result, staff discovered that in 1977, the Commission approved Coastal Development Permit (CDP) #F5164 for the subdivision of 27.52 acres into 22 parcels including the subject site, the

construction of Rancho Viejo, and the creation of building pads. A building permit was issued by the County of San Diego in 1985 for construction of the existing residence on the site. However, the County apparently did not require confirmation that a CDP was obtained prior to issuance of a building permit. Thus, it appears the property was developed without the benefit of a CDP as there is no permit history for the subject site other than the original subdivision permit CDP #F5164. Therefore, staff advised the applicant to apply for after-the-fact approval of construction of the residence in addition to the grading.

The subject site consists of a flat graded pad adjacent to the road which contains the residence, a pool, and landscaping, and the undeveloped portion of the site which includes both a graded flat area and a steep slope downward to the south. A vegetation survey identified Diegan coastal sage scrub surrounding and contained on the southernmost 50 – 90 ft. of the subject site ([Exhibit 3](#)). The habitat on and adjacent to the site is part of a larger, contiguous swath of Diegan coastal sage scrub ([Exhibit 4](#)). Thus, the Commission's staff ecologist has determined that this vegetation community rises to the status of Environmentally Sensitive Habitat Area. It has also been identified in the County of San Diego's certified Land Use Plan as ESHA.

In reviewing aerial photos, it appears that, in addition to the unpermitted 2015 grading, a portion of the undeveloped slope was graded and vegetation cleared without benefit of a permit sometime between January 2003 and March 2003, prior to the applicant purchasing the property in 2015. The original subdivision permit does not contain a lot-by-lot analysis of the vegetation that existed on each site, though the EIR prepared for the application does indicate the presence of steep, naturally vegetated slopes containing coastal sage scrub habitat and chaparral. However, staff cannot definitively assert that the subject site contained ESHA. Given the lack of information and uncertainty associated with the site history, the proposed project has been evaluated based on the existing vegetation on the site.

Although there is an existing house on the site, because it never received a coastal development permit, it is necessary to determine the appropriate siting for the residence as though reviewing a vacant lot, and provide the required setback from ESHA taking into account the brush management required around a residence. The fire department has indicated that a 100 foot brush management zone is required around any new residential development and recommends that a 100 foot brush management zone is maintained on the subject site. The recently certified San Diego County Land Use Plan (LUP) requires that ESHA buffers be at least 100 ft. in width unless the California Department of Fish and Wildlife (CDFW) indicates that a reduced ESHA buffer of no less than 50 feet is appropriate for the site. For this project, CDFW and the Commission's ecologist have determined that a biologically appropriate ESHA buffer should be at least 50 feet in width, contain no built or maintainable structures, no ornamental or non-native vegetation, and should contain native vegetation appropriate for the adjacent ESHA habitat.

The existing development, including the residence and pool, is located approximately 165 feet from the ESHA on the site. [Exhibit 8](#) shows the area 50 feet from the vegetation on

the site, which includes a portion of the area in which unpermitted grading took place both in 2003 and 2016. A 50-foot wide ESHA buffer can be provided that allows sufficient room to site the existing structure in its current location and provide a 100-foot brush management zone around the existing residence with no encroachment into the ESHA or ESHA buffer. Even with this area preserved as a buffer, the applicant will still have a development area adequate to locate the driveway, the 4,000 sq. ft. single-family residence, pool, lawn and landscaping, plus some additional undeveloped area upslope of the buffer. Providing the buffer area will ensure that no additional impacts occur to the ESHA and is necessary to comply with the resource protection policies of the Coastal Act.

Therefore, **Special Condition 1** requires that the applicant provide final plans establishing a 50 ft. ESHA buffer in the area immediately adjacent to the existing line of ESHA ([Exhibit 8](#)). **Special Condition 1** prohibits any development, other than restoration of Diegan coastal sage scrub habitat, within the ESHA buffer. **Special Condition 2** requires submittal of a final landscape plan that minimizes irrigation and indicates that the use of rodenticides is prohibited on the site. **Special Conditions 3** requires that the ESHA and ESHA buffer is placed into an open space restriction to prevent future development in the buffer area, and **Special Condition 4** requires the permit to be recorded as a restriction against the deed of the site, which will ensure that future owners are aware of the permit conditions and restrictions.

As conditioned, the proposed project will not cause any additional impacts to biological resources. Commission staff recommends **approval** of coastal development permit application 6-16-0222 as conditioned. It is staff's understanding that the applicant is in agreement with the special conditions.

## TABLE OF CONTENTS

<b>I. MOTION AND RESOLUTION.....</b>	<b>5</b>
<b>II. STANDARD CONDITIONS .....</b>	<b>5</b>
<b>III. SPECIAL CONDITIONS .....</b>	<b>6</b>
<b>IV. FINDINGS AND DECLARATIONS.....</b>	<b>9</b>
A. PROJECT DESCRIPTION/PERMIT HISTORY .....	9
B. BIOLOGICAL RESOURCES .....	10
C. VISUAL RESOURCES .....	13
D. LOCAL COASTAL PLANNING.....	14
E. CALIFORNIA ENVIRONMENTAL QUALITY ACT .....	14
F. UNPERMITTED DEVELOPMENT .....	<b>ERROR! BOOKMARK NOT DEFINED.</b>

### APPENDICES

Appendix A – Substantive File Documents

### EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Aerial View](#)

[Exhibit 3 – Site Plan](#)

[Exhibit 4 – Vegetation Survey](#)

[Exhibit 5 – County of San Diego certified ESHA Map](#)

[Exhibit 6 – Slope Survey](#)

[Exhibit 7 – Unpermitted Grading](#)

[Exhibit 8 – 50 ft. ESHA buffer](#)

[Exhibit 9 – Recommended Open Space Deed Restricted Area](#)

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 6-16-0222 subject to the conditions set forth in the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in conditional approval of the permit 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 coastal development permit 6-16-0222 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. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
3. **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.
4. **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. **Revised Final Plans.**

(a) **PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for review and written approval by the Executive Director, the following revised final plans, modified as required below. Said plans shall be stamped approved by the County of San Diego and the Rancho Santa Fe Fire Department and be in substantial conformance with the plans submitted by the applicant, date stamped as received on May 26, 2016, except they shall be revised to reflect the following:

i. A buffer, no less than 50 ft. wide, from the delineated ESHA on the southwestern property line shall be established as depicted in [Exhibit 8](#). Within this buffer, no development shall be permitted except for restoration and maintenance of native plants.

(b) The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

2. **Final Landscaping Plans.**

(a) **PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, in a form and content acceptable to the Executive Director, full size sets of final landscaping and fuel modification plans, prepared by a licensed landscape architect or a qualified resource specialist. Said plans shall be stamped and approved by the County of San Diego and the Fire Department. The consulting landscape architect or qualified landscape professional shall certify in writing that the final landscape and fuel modification plans are in conformance with the following requirements:

i. No brush clearing or fuel modification shall occur within the required 50 ft. ESHA buffer as depicted in [Exhibit 8](#).

ii. Restoration activities within the required 50 ft. ESHA buffer shall consist of entirely of native, Diegan coastal sage scrub species, and if available, obtained from local stock.

- iii. The type and location of all trees on the site, the location of shrubs on the site and an indication if they are native or non-native and invasive or non-invasive, existing and proposed irrigation, and other landscape features.
  - iv. To minimize the need for irrigation all landscaping shall consist of primarily native drought tolerant plants, as listed by the California Native Plant Society. (See <http://www.cnps.org/cnps/grownative/lists.php>.) Some non-native drought tolerant non-invasive plants may be used within 30 feet of habitable structures. 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 shall be planted or allowed to naturalize or persist on the site.
  - v. All irrigation systems shall limit water use to the maximum extent feasible. Use of reclaimed water for irrigation is encouraged. If permanent irrigation systems using potable water are included in the landscape plan, they shall use water conserving emitters (e.g., microspray) and drip irrigation only. Use of reclaimed water (“gray water” systems) and rainwater catchment systems is encouraged. Other water conservation measures shall be considered, including use of weather based irrigation controllers.
  - vi. The use of rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) is prohibited.
  - vii. A written commitment by the applicant that all landscaped areas on the project site shall be maintained in a litter-free, weed-free, and healthy growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements.
- (b) The permittee shall undertake development in conformance with the approved plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

3. **Open Space and Conservation Deed Restriction.**

- (a) No development, as defined in Section 30106 of the Coastal Act, shall occur in the open space area depicted in [Exhibit 9](#), except for Diegan coastal sage scrub vegetation restoration, including planting, maintenance, and temporary irrigation.
- (b) **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on development in the designated open space area. The recorded document(s) shall include a legal description and corresponding graphic depiction of the legal parcel(s) subject to this permit and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the designated open space area prepared by a licensed surveyor based on an on-site inspection of the open space area.
- (c) The deed restriction shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed.
- (d) The deed restriction shall run with the land in favor of the People of the State of California, binding successors and assigns of the landowner in perpetuity.

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

5. **Condition Compliance.**

WITHIN 180 DAYS OF COMMISSION ACTION ON THIS COASTAL DEVELOPMENT PERMIT, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all conditions of this permit that are prerequisite to the issuance of this permit.

## **IV. FINDINGS AND DECLARATIONS**

### **A. PROJECT DESCRIPTION/ HISTORY**

#### Project Description

The proposed project consists of an after-the-fact permit for an approximately 4,000 sq. ft., 1-story, single-family residence including an attached garage and pool, and 400 cubic yards of grading. The 1.13 acre subject lot is located on the south side of Rancho Viejo Drive in unincorporated San Diego County; it is approximately ¼ mile north of Via de la Valle, a major east-west roadway, and less than ¼ mile west of El Camino Real, which is the Coastal Zone Boundary ([Exhibit 1](#)).

The rectangle-shaped lot consists of a flat graded area adjacent to the street, an undeveloped but graded area south of the formal pad, and a slope which drops sharply southward into a canyon. The flat portion of the site adjacent to the street is developed with the residence, pool, and ornamental landscaping. The first approximately 165 feet of area beyond the developed pad contains bare, graded soil, with some patchy vegetation consisting of annual grasses. The remainder of the canyon area both on and adjacent to the site is heavily vegetated with native Diegan coastal sage scrub brush ([Exhibit 3](#)). The 400 cubic yards of grading occurred approximately 40 ft. south of the existing pool.

#### History

In 1977, the Commission approved the subdivision of a 27.5 acre parcel into 22 lots and grading and construction of building pads including the subject site (CDP #F5164/Sun Valley Bluffs). Since that time, nine CDPs have been issued for the construction of individual single-family residences. Two of the original 22 parcels are still vacant. However, there are eleven existing homes for which Commission staff has been unable to locate any coastal development permits. According to information provided by the applicant, the County issued a building permit for the subject residence in 1985. Staff has researched the subject site and the other eleven properties on Rancho Viejo Drive, and as best as staff has been able to determine, during the 1980s, the County of San Diego issued building permits for construction of residences in the subject subdivision without requiring evidence that the development had received approval from the Coastal Commission. The status of these residences will be addressed through separate enforcement actions.

The applicants bought the property in 2015. In November 2015 San Diego County Planning and Development Services opened an enforcement complaint and in December 2015 an enforcement action was opened for unpermitted grading and clearing. The applicant reached out to Commission in January 2016 to confirm if the unpermitted grading had occurred in an area that was subject to an open space easement or within a deed restricted area. However, the applicant has been unable to provide evidence of Coastal Commission approval of construction of the residence and associated features. As an erosion control measure, the County required the applicant to plant on the area that had been graded, and the applicant has installed a suite of native plant species.

In addition to the 400 cubic yards of grading which were conducted by the applicant, staff has also determined that grading in that same area occurred sometime between January 2003 and March 2003, also without the benefit of a coastal development permit.

The County has a certified Land Use Plan, but does not have an effectively certified Implementation Plan. Therefore, Chapter 3 of the Coastal Act is the standard of review. The County's certified LUP may be used as guidance.

## **B. BIOLOGICAL RESOURCES**

Section 30240 of the Coastal Act is applicable to biological resource protection and 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.*

Policy 3.35 of the County of San Diego's Land Use Plan is applicable and states:

*Development adjacent to ESHAs shall minimize impacts to habitat values or sensitive species to the maximum extent feasible. Native vegetation buffer areas shall be provided around ESHAs to serve as transitional habitat (not fuel modification zones) and provide distance and physical barriers to human intrusion. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the ESHA they are designed to protect. All buffers around (non-wetland) ESHA shall be a minimum of 100 feet in width. All wetland buffers shall be a minimum of 100-feet in width or a minimum of 50 feet in width around riparian areas. A smaller width may be approved by Planning & Development Services and the Fire Marshal in consultation with the CDFW, USFWS, and CCC when conditions of the site as demonstrated in a site specific biological survey, the nature of the proposed development, etc. show that a smaller buffer would provide adequate protection. In such cases, the CDFW must be consulted and agree that a reduced buffer is appropriate and the County, or Coastal Commission, must find that the development could not be feasibly constructed without a reduced buffer. However, in no case shall the buffer be less than 50 feet, excluding fuel modification zones. Fuel modification zones shall occur outside, not within ESHA buffers.*

The 1977 subdivision permitted construction of the Rancho Viejo cul-de-sac access road and the creation of building pads. The application included an EIR, which indicated the presence of sage scrub habitat and chaparral on the canyons, but does not contain any

specific vegetation mapping. As noted above, there is no further permit history on the subject site after the subdivision. However, based on a review of aerial photos and other nearby permit actions, in particular, the permit issued for the structure adjacent to the subject site, it is possible to construct a rough approximation of the location if not the type of habitat that was on the site prior to the unpermitted grading that has occurred on the southern slope of the site.

Most of the permits for construction of individual homes in this subdivision have identified native vegetation on the slopes beyond the graded pad, which have been placed into open space to protect the habitat and limit grading on steep slopes. In July 1988, CDP #6-88-213 approved the construction of a single-family residence on the site next to the subject lot to the east. The approval of that permit required that the portion of the site downslope of the 89' contour line be placed under an open space deed restriction that prohibited any alteration of landforms, removal of vegetation, or the erection of structures of any type. This permit was later amended twice, first to revise the open space area to cover only the portion of the site downslope of 80' contour line, to reflect an updated slope analysis provided by that permittee, and second to allow the installation of a solar panel system downslope of the 80' contour line, within the area subject to the deed restriction, as it was determined that area where the solar panels occurred had not contained native vegetation for at least a decade prior, and thus, allowing the panels would not impact sensitive habitat.

The lot adjacent to the subject site to the west is vacant, and the only development that has occurred is construction of the graded pad. There is a substantial amount of native vegetation on the sloping portion of this site. Looking at these three adjacent sites and historic aerial photos, it is clear that some amount of grading and clearing of vegetation occurred on the subject site on the slopes south of the residence without a permit. The line of vegetation most likely existing somewhere along a line drawn between the native vegetation located on the lots to either side of the subject site ([Exhibit 4](#)). However, this is only an estimate, and is not possible to determine exactly where the line of vegetation was, how much of the vegetation cleared was native vegetation, or what type of plant community.

Therefore, given the uncertainty associated with the site history, the proposed project has been evaluated based on the existing vegetation on the site. The existing vegetation is located at approximately at the same contour line as the vegetation and open space deed restriction on the adjacent site, and thus using this line is consistent with past Commission action in the subdivision.

The existing vegetation on the site, as well as the vegetation adjacent to it on the surrounding lots, is part of a larger, contiguous swath of Diegan coastal sage scrub identified in the County of San Diego's certified Land Use Plan as Environmentally Sensitive Habitat Area (ESHA) ([Exhibit 4](#)). The Commission's staff ecologist has also determined that this vegetation community rises to the status of ESHA given the value of Diegan sage scrub and the size of the habitat.

Although there is an existing house on the site, because it never received a coastal development permit, it is necessary to determine the appropriate site for the residence as though reviewing a vacant lot, and provide the required setback from ESHA taking into account the brush management required around a residence. The Fire Department has indicated that a 100 foot brush management zone is required around a residential structure on this lot.

The recently certified San Diego County Land Use Plan (LUP) requires that ESHA buffers be at least 100 ft. in width, unless the California Department of Fish and Wildlife (CDFW) indicates that a reduced ESHA buffer of no less than 50 feet is appropriate for the site. For this project, CDFW has indicated that a biologically appropriate ESHA buffer should be at least 50 feet in width, contain no built or maintainable structures, no ornamental or non-native vegetation, and should contain native vegetation appropriate for the adjacent ESHA habitat. Both CDFW and the Commission staff biologist have indicated that any brush management zones must be located outside of the ESHA buffer to be biologically appropriate.

The existing development, including the residence and pool, is located approximately 165 feet from the ESHA on site. [Exhibit 8](#) shows the area 50 feet from the vegetation on the site. This area includes the unpermitted grading which took place both in 2003 and 2016. As noted, the applicant seeded this area with native grasses at the request of the County. A 50-foot wide ESHA buffer can be provided that would allow sufficient room to site the existing structure in its current location and provide a 100-foot brush management zone around the existing residence with no encroachment into the buffer. It is important to note that the Commission's ecologist has reviewed the native grass palette that the County of San Diego required be planted in the 400 sq. area graded by the applicant, and determined that it is not the ideal habitat for a buffer area; it would have been preferable to plant additional coastal sage scrub vegetation. However, the grass has served to limit erosion, is not invasive, and it is likely that if protected under the open space restriction, the area will gradually transition to a more appropriate coastal sage scrub habitat.

The applicant has indicated a desire to use the previously graded area as a play and recreation area. This graded pad area comprises approximately 540 sq. ft., is located approximately 40 ft. south of the existing pool, and a portion of this area is within 50 feet of the existing ESHA. However, this is an area that most likely contained some amount of native vegetation in the past, and is currently serving as a buffer area for the remaining ESHA. The habitat preservation policies of both the Coastal Act and the certified LUP call for protecting ESHA through provision of a buffer. Even with this area preserved as a buffer, the applicant will still have a development area adequate to locate the driveway, the 4,000 sq. ft. single-family residence, pool, lawn and landscaping, plus some additional undeveloped area upslope of the buffer. Providing the buffer area will ensure that no additional impacts occur to the ESHA and is necessary to comply with the resource protection policies of the Coastal Act.

Therefore, **Special Condition 1**, requires that the applicant incorporate a 50 ft. ESHA buffer in the area immediately adjacent to the existing line of ESHA ([Exhibit 9](#)) and prohibits any development, other than restoration of Diegan coastal sage scrub habitat,

within the ESHA buffer. **Special Condition 2** requires submittal of a final landscape plan that minimizes irrigation and indicates that the use of rodenticides is prohibited on the site. **Special Condition 3** requires that the ESHA and ESHA buffer on the subject site is placed into an open space restriction to prevent future development in the buffer area. The deed restriction allows future restoration activities to occur in the buffer if proposed in the future. **Special Condition 4** requires the permit to be recorded as a restriction against the deed of the site, which will ensure that future owners are aware of the permit conditions and restrictions.

In summary, as conditioned, the proposed house can be sited on the lot with an adequate setback that will protect the existing ESHA on the site by incorporating a 50 foot buffer. The area graded without benefit of permit has been stabilized with plantings, will be included in the ESHA buffer and no further grading or development will be permitted in the buffer. With these conditions, there are no anticipated impacts to ESHA or other biological resources.

### C. VISUAL RESOURCES

Section 30251 of the Coastal Act states in part:

*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...*

Policy 6.9 of the County of San Diego's Land Use Plan is applicable and states:

*Fences, walls, and landscaping shall not block major public views of scenic resources or views from other public viewing areas.*

Policy 6.10 of the County of San Diego's Land Use Plan is applicable and states:

*The impacts of proposed development on existing public views of scenic resources shall be assessed by the County prior to approval of proposed development or redevelopment to preserve the existing character of established neighborhoods. Existing public views of the ocean and scenic resources shall be protected.*

Policy 6.11 of the County of San Diego's Land Use Plan is applicable and states:

*Require development to conform to the natural topography to limit grading and to incorporate and not significantly alter the dominant physical characteristics of the site.*

The proposed residence is similar in size and scope to the neighboring residences and is surrounded by residential development on the north, east, and west. The subject site is located on the top of a hillside; however, the site is not visible from any major roadways, any public roads that provide views of scenic resources, any critical view shed areas, and

the site does not contain any public views as identified in the County of San Diego's Land Use Plan. Thus, approval of the proposed project will not impact public views, or community character, and as conditioned, the project is consistent with Section 30251 of the Coastal Act.

#### **D. UNPERMITTED DEVELOPMENT**

Violations of the Coastal Act exist on the subject property including, but not limited to, grading and removal of vegetation in 2003 and 2015. Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations, nor does it constitute an implied statement of the Commission's position regarding the legality of development, other than the development addressed herein, undertaken on the subject site without a coastal permit.

#### **E. LOCAL COASTAL PLANNING**

Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

The Commission previously certified the County of San Diego's Local Coastal Program (LCP); however, the County never assumed permit issuing authority and as such, the LCP was never effectively certified. The Commission certified a new LUP in May 2017, and the County is currently in the process of developing a revised and updated Implementation Plan for Commission certification, but at this time, Chapter 3 of the Coastal Act is the standard of review.

As conditioned herein, the proposed project conforms to all applicable Chapter 3 policies of the Coastal Act as well as to the County LCP. Therefore, as conditioned, the project should not prejudice preparation of a certifiable LCP by the County of San Diego.

#### **F. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, 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 County of San Diego found the project Categorically Exempt from CEQA requirements. (CEQA Guideline, § 15303 [small structures].)The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing biological resources will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

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APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- County of San Diego’s Certified Land Use Plan
- CDP #F5164
- CDP #6-88-231
- CDP #6-88-231-A1
- CDP #6-88-231-A2