

**CALIFORNIA COASTAL COMMISSION**

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# F11e

Filed:	10/5/2018
180th Day:	04/03/2019
270 <sup>th</sup> Day:	07/02/2019
Staff:	LR-LB
Staff Report:	05/31/2019
Hearing Date:	06/14/2019

## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 5-18-0880

**Applicant:** Paul and Sarah Voigt

**Agent:** Jon Corn Law Firm

**Location:** 507 West Avenida de los Lobos Marinos, San Clemente  
Orange County (APN 692-304-13)

**Project Description:** Demolition of unpermitted development located within the coastal canyon consisting of a 7-ft. tall concrete retaining wall, concrete steps, lower concrete retaining wall, and a triangular shaped concrete patio; grading for restoration of the natural coastal canyon slope; and landscaping of the coastal canyon utilizing native plants suitable to southern Orange County coastal canyons.

**Staff Recommendation:** Approval with Conditions

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### SUMMARY OF STAFF RECOMMENDATION:

The subject development is located in the Los Lobos Marinos Coastal Canyon, one of nine coastal canyons in San Clemente identified as containing potential sensitive habitat and an ephemeral stream. The applicant is proposing removal of unpermitted development on the face/slope of the coastal canyon consisting of demolition of a concrete retaining wall beyond the edge of a coastal canyon, concrete steps and a concrete patio within the coastal canyon. The improvements were constructed without the benefit of City building permits or a Coastal Development Permit. Additionally, the applicant proposes to regrade and restore the natural contours of the canyon slope and revegetate the canyon slope with native plants appropriate to the habitat type. However, the applicant proposes to replace an unpermitted 6-ft. tall wood retaining wall located immediately canyonward of the coastal canyon edge. Staff is recommending approval with **Special Condition 1**

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requiring the applicant revise the project plans in order to remove all unpermitted development on the site, including the wood retaining wall and not to reconstruct the unpermitted wood retaining wall in its present location.

Staff is recommending **approval** of the proposed coastal development permit with **seven (7)** special conditions regarding: **1) Submittal of Final Revised Grading Plan; 2) Landscaping Plan; 3) Construction Phase BMPs; 4) Construction and Pollution Prevention Plan; 5) Future Improvements; 6) Assumption of Risk; and 7) Condition Compliance.**

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## APPENDICES

[Appendix A](#) - Substantive File Documents

## EXHIBITS

- Exhibit 1 – Vicinity Map/Aerial Photos
- Exhibit 2 – Topographic Survey of the Site
- Exhibit 3 – Site Plan Depicting Existing Conditions – Unpermitted Development
- Exhibit 4 – Detail of 7-ft. tall CMU Wall in front of 6-ft. tall Wood Retaining Wall
- Exhibit 5 – Site Historical Photographs
- Exhibit 6 – 2004 Site Photographs – Depicting New Unpermitted Wood Retaining Wall
- Exhibit 7 – Preliminary Grading Plan
- Exhibit 8 – Geologic Plate and Cross-Sections
- Exhibit 9 – Nearest Coastal Access Point
- Exhibit 10 – LUP Figure 4-2-B - Potential Sensitive Habitat

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 5-18-0880 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 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 of 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. **Submittal of Revised Final Grading Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for the review and approval of the Executive Director, two (2) full size sets of revised site plan, demolition plan, and final grading plans prepared by an appropriately licensed professional that conforms with the plans submitted to the Commission titled Preliminary Grading Plan dated May 13, 2019 prepared by TerraCosta Consulting Group, except that they shall be modified as required below:
  - (1) The revised plans shall demonstrate:
    - (a) Removal/demolition of an unpermitted wood retaining wall buried behind the 7-ft. tall concrete retaining wall proposed to be removed;
    - (b) Removal/demolition of an unpermitted wood fence at approximately the 82-ft. contour line of the canyon slope;
    - (c) Repair/reconstruction of the coastal canyon edge;
    - (d) Accessory development (i.e., concrete patio, garden walls, retaining walls) at the canyon top shall be setback a minimum of 5-feet from the coastal canyon edge.
    - (e) The revised final plans shall be certified by a licensed professional or professionals as applicable (e.g., surveyor, geotechnical engineer), based on current information and professional standards to ensure that they are consistent with the Commission's approval and with the recommendations of any required technical reports.

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

2. **Landscaping Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for review and approval by the Executive Director, two (2) full size sets of final landscaping plans prepared by an appropriately licensed landscape architect or a qualified resource specialist. The consulting landscape architect or qualified landscape professional shall certify in writing that the final Landscape plans are in conformance with the following requirements:
  - (1) It shall include a planting schedule that indicates that the planting plan shall be implemented within thirty (30) days of completion of permitted

- development. Within ninety (90) days of completion of permitted development, the Permittee shall submit for the review and written approval of the Executive Director a landscaping implementation report, prepared by a licensed Landscape Architect or qualified resource specialist that certifies whether the on-site landscaping is in conformance with the landscape plan approved pursuant to this special condition. The implantation report shall include photographic documentation of plant species and plant coverage.
- (2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils.
  - (3) Landscaped areas within the coastal canyon shall be planted and maintained for slope stability, erosion control, and habitat enhancement consistent with fire safety requirements. To minimize the need for irrigation and minimize encroachment of non-native plant species into adjacent or nearby native plant areas, all landscaping shall only consist of drought tolerant and non-invasive plants native to coastal Orange County and appropriate to the habitat type. All native plant species shall be of local genetic stock as listed by the California Native Plant Society. (See <http://www.cnps.org/cnps/grownative/lists.php>.) 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.
  - (4) 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.
  - (5) No permanent irrigation system shall be allowed within the canyon portion of the project site. Any existing in-ground irrigation systems shall be disconnected and capped. Temporary above ground irrigation to allow the establishment of the plantings is allowed. If using potable water for irrigation, the project shall use water-conserving emitters (e.g. microspray) and drip irrigation. Use of weather-based irrigation controllers and reclaimed water for irrigation is encouraged. The landscaping plan shall show all the existing vegetation and any existing irrigation system along with notations regarding all changes necessary thereto to comply with the requirements of this special condition.
  - (6) The use of rodenticides containing any anticoagulant compounds is prohibited.

The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan 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 required.

3. **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 water, wind, rain, or 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. BMPs 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 (BMPs) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the on-set of such activity. Selected BMPs 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.

4. **Construction and Pollution Prevention Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT the applicant shall submit, for the review and approval of the Executive Director, a final Construction and Pollution Prevention Plan. The final Plan shall demonstrate that all construction, including, but not limited to, clearing, grading, staging, storage of equipment and materials, or other activities that involve demolishing structures and ground disturbance, minimizes erosion and the discharge of sediment off-site or to coastal waters through the use of appropriate Best Management Practices (BMPs), including:

1. Land disturbance during construction (e.g., clearing, grading, and cut-and-fill) shall be minimized, and grading activities shall be phased, to avoid increased erosion and sedimentation.
2. Erosion control BMPs (such as mulch, soil binders, geotextile blankets or mats, or temporary seeding) shall be installed as needed to prevent soil from being transported by water or wind. Temporary BMPs shall be implemented to stabilize soil on graded or disturbed areas as soon as feasible during construction, where there is a potential for soil erosion to lead to discharge of sediment off-site or to coastal waters.
3. Sediment control BMPs (such as silt fences, fiber rolls, sediment basins, inlet protection, sand bag barriers, or straw bale barriers) shall be installed as needed to trap and remove eroded sediment from runoff, to prevent sedimentation of coastal waters.
4. Tracking control BMPs (such as a stabilized construction entrance/exit, and street sweeping) shall be installed or implemented as needed to prevent tracking sediment off-site by vehicles leaving the construction area.
5. Runoff control BMPs (such as a concrete washout facility, dewatering tank, or dedicated vehicle wash area) that will be implemented during construction to retain, infiltrate, or treat stormwater and non-stormwater runoff.
6. Grading shall be avoided during the rainy season, from October 1 to April 30.

5. **Future Improvements.** This permit is only for the development described in Coastal Development Permit No. **5-18-0880**. Except as provided in Public Resources Code section 30610 and applicable regulations, any future development as defined in PRC section 30106, including, but not limited to, a change in the density or intensity of use land, shall require an amendment to Permit No. **5-18-0880** from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the applicable certified local government.

6. **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 bluff and slope instability, erosion, landslides, fires, or other natural hazards; (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.

7. **Condition Compliance.** WITHIN 60 DAYS OF COMMISSION ACTION ON THIS CDP 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 & DESCRIPTION

The proposed development is located at 507 West Avenida de los Lobos Marinos in the City of San Clemente, Orange County (**Exhibit 1**). The subject site is a 7,200 sq. ft. lot designated RL (Residential Low Density) in the San Clemente certified Land Use Plan (LUP). Surrounding development consists of single-family residences. The site consists of a generally flat pad facing Avenida de los Lobos Marinos and descends 60 feet down a coastal canyon slope. The nearest public beach access and access to the Coastal Trail and public beach is available at the Lost Winds Access Point, a ten-foot wide public easement between two private residences consisting of a dirt path that leads from the street down the steep bluff slope located approximately 400 yards southwest of the subject site. Access to the beach is via a protected pedestrian at-grade railroad crossing (**Exhibit 9**).

Circa 2014, the property owner (current applicant) constructed rear yard improvements that extended beyond the canyon edge into the canyon slope without the benefit of City building permits or a Coastal Development Permit. The applicant constructed an approximately 7-ft. high concrete masonry unit (CMU) retaining wall in front of a 6-ft. high wood retaining wall that supported the rear yard area, thus further encroaching into the canyon and furthermore, constructed other accessory development in the canyon without coastal development permits, including concrete stairs down the canyon, a series of short retaining walls along the canyon slope, and a flat paved triangular shaped concrete patio area further down the canyon slope (**Exhibit 3**). **Exhibit 4** provides a detail of the 7-ft. tall CMU wall constructed in front (canyonward) of the 6-ft. wood retaining wall. The City issued a stop work notice in August 2014 and required the property owner to apply for the appropriate permits. According to information provided by the applicant, a wood retaining wall at the canyon edge was in place pre-Coastal Act, as early as the 1950s when the original residence was constructed. However, the original pre-Coastal wood retaining wall has

since been completely replaced (redeveloped), and the wood retaining wall currently present onsite when the applicants acquired the property was replaced with a new wood retaining wall, also without a coastal development permit, in 2004 by a previous property owner.

The applicant proposes to resolve most of the aforementioned unpermitted development by removing the unpermitted development that was undertaken in 2014 located within the coastal canyon consisting of the 7-ft. concrete retaining wall, concrete steps, lower concrete retaining wall, and a concrete patio; grading to restore the natural coastal canyon slope; and landscaping the coastal canyon utilizing native plants. The proposed preliminary grading plan created by TerraCosta Consulting Group dated May 13, 2019 proposes to re-grade and re-contour the canyon slope at a 2:1 gradient (horizontal to vertical) per City/County grading ordinances to achieve geologic safety of the slope (**Exhibit 7**). However, as depicted on Sheet-4 of the preliminary grading plan, the applicant is proposing “rehabilitation” of the 2004 wood wall (which does not constitute a Pre-Coastal structure) located immediately inland of the upper most 7-ft. concrete retaining wall at the canyon edge. The wood retaining wall would be exposed after demolition of the unpermitted concrete retaining wall. The applicant proposes to replace the 4x4 wood posts supporting the wood retaining wall with soldier piles (supporting steel I-beams) imbedded a minimum of 10-feet into the soil and to replace the wood lagging with 4x12 pressure-treated douglas fir wood. Per the proposed preliminary plan, “rehabilitation” of the wood wall would result in a completely new wood retaining wall with a deeper caisson footings/foundation and thus, is considered new development.

## **B. STANDARD OF REVIEW**

The Commission certified the Land Use Plan (LUP) 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 (IP) 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. Most recently in 2018, the City certified an LUP amendment for a comprehensive update of the LUP. The City is currently also working on resubmittal of an IP, however, at this time the City has no certified LCP.

Therefore, Chapter Three policies of the Coastal Act is the standard of review. The City’s certified LUP is used for guidance.

## **C. COASTAL HAZARDS**

Section 30253 of the Coastal Act states, in pertinent part:

*New development shall:*

*(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*

*(2) 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 bluffs and cliffs.*

### **City of San Clemente LUP Policies**

- HAZ-1 Hazards Review.** *Review applications for new development, to determine the presence of geologic, coastal or fire hazards. Geologic hazards include but are not limited to faults, earthquakes, slope instability, landslides, liquefaction, and erosion; coastal hazards include but are not limited to inundation, tidal flooding, storm flooding, wave impacts, elevated groundwater and saltwater intrusion, erosion and changes to these hazards due to sea level rise. If present, ensure hazards are avoided and/or mitigated, as required by the policies in this Section.*
- HAZ-2 Development Near Hazards.** *New development that is in proximity to a geologic, coastal or fire hazard area shall be sited and designed in ways that avoid and/or mitigate risks to life and property, provide for or maintain existing public access and recreation, protect and enhance scenic resources, avoid and/or mitigate adverse impacts to the quality or quantity of the natural supply of sediment to the coastline, control runoff, and account for sea level rise and coastal storm surge projections.*
- HAZ-3 Development Exposure to Hazards.** *Minimize the exposure of new development to geologic, coastal (including inundation from sea level rise, wave up-rush, storm surge, and stream flooding), and fire hazards. Ensure that new bluff, canyon, or shoreline development will be safe from, and will not contribute to, geologic instability, erosion or other hazards over the life of the development, taking into account the effects of sea level rise on all relevant hazards. Ensure that new development does not contribute to the destruction of the site or the surrounding area.*
- HAZ-21 Restrict Bluff/Canyon/Shoreline Retention Devices.** *When consistent with Policy GEN-8, the construction, reconstruction, expansion, and/or replacement of a bluff/canyon/shoreline protective device, (i.e. revetments, breakwaters, groins, seawalls, bluff protective devices, deep piers/caissons, or other artificial structures as defined in Chapter 7 that alter natural landforms or alter bluff/canyon/shoreline processes), for coastal erosion control and hazards protection, are prohibited, except pursuant to a CDP where it can be shown that either the device fully complies with all relevant LCP policies and the coastal access and recreation policies of the Coastal Act, or all of the following are met:*

- a. *The bluff, canyon or shoreline protective device is required for the protection of coastal-dependent uses, existing structure(s) (including a principal structures or residence or public beaches in danger from erosion,*
- b. *Where there is no less environmentally damaging alternative to the bluff, canyon or shoreline protective device,*
- c. *The device is sited to avoid sensitive resources,*
- d. *The device is designed to eliminate or mitigate adverse impacts on local shoreline sand supply and public access and to avoid or, where avoidance is infeasible, to minimize and mitigate the encroachment on the public beach, and*
- e. *The device is designed to minimize adverse visual impacts to the maximum extent feasible.*

**HAZ-32** ***New Development in Hazard Areas.** New development shall only be permitted where an adequate factor of safety can be provided including on sites with ancient landslides, unstable slopes, or other geologic hazards.*

**HAZ-33** ***Development on Hillsides, Canyons and Bluffs.** New development shall be designed and sited to maintain the natural topographic characteristics of the City's natural landforms by minimizing the area and height of cut and fill, minimizing pad sizes, siting and designing structures to reflect natural contours, clustering development on lesser slopes, restricting development within setbacks consistent with HAZ-41 and HAZ-47, and/or other techniques. Any landform alteration proposed shall be minimized to the maximum extent feasible. Development partially or wholly located in a coastal canyon or bluff or along the shoreline shall minimize the disturbance to the natural topographic characteristics of the natural landforms.*

**HAZ-36** ***Improvements to Non-Conforming Structures.** Principal and accessory structures lawfully built along a coastal canyon, bluff or shoreline area pursuant to a Coastal Commission-issued Coastal Development Permit or subject to a Categorical Exclusion prior to the effective date of the LCP that do not conform to the LCP shall be considered legal non-conforming structures. Such structures may be maintained and repaired, as long as the maintenance or repairs do not increase the size or degree of non-conformity. Additions and improvements to such structures that are not considered a Major Remodel, as defined herein, or development authorized under a Categorical Exclusion Order, may be permitted provided that such additions or improvements do not increase the size or the degree of the nonconformity, comply with the current policies and standards of the LCP, and the remaining portion of the structure complies with the laws and regulations in effect when the structure was established. Complete demolition and reconstruction or Major Remodel is not permitted unless the entire structure is brought into conformance with the policies and standards of the LCP, including any requirement for a CDP.*

**HAZ-38 Accessory Legal Nonconforming Structures.** *For CDPs authorizing repair and maintenance of existing legal, non-conforming accessory structures on a shoreline, bluff or canyon lot that do not meet the shoreline, bluff or canyon setback, a condition shall be applied that requires the permittee (and all successors in interest) to apply for a CDP to remove the accessory structure(s), if it is determined by a licensed Geotechnical Engineer and/or the City, that the accessory structure is in danger from erosion, landslide, or other form of bluff or slope collapse.*

**HAZ-45 Blufftop/Coastal Canyon Lot Drainage and Erosion.** *New development and redevelopment on a blufftop or coastal canyon lot shall provide adequate drainage and erosion control facilities that convey site drainage in a non-erosive manner away from the bluff/canyon edge to minimize hazards, site instability, and erosion. Drainage devices extending over or down the bluff face will not be permitted if the property can be drained away from the bluff face. Drainpipes will be allowed only where no other less environmentally damaging drain system is feasible, and the drainpipes are designed and placed to minimize impacts to the bluff face, toe, and beach.*

**HAZ-47 Canyon Setbacks.** *New development or redevelopment, including principal structures and accessory structures with foundations, such as guest houses, pools, and detached garages etc., shall not encroach into coastal canyons. When there are two or more setbacks available in the standards below, the City Planner shall determine which of the setbacks shall be applied to a development based on the criteria below. Coastal Canyon Setbacks shall be set back the greater of either:*

- c. In accordance with house and deck/patio stringlines drawn between the nearest corners of the adjacent structures (rear corner/side of structure closest to coastal canyon). A legally permitted structure developed prior to the Coastal Act may be considered in the stringline setback when it is in character with development along the coastal canyon that has been approved under the Coastal Act with the benefit of Coastal Development Permits.*
- d. Ancillary improvements such as decks and patios, which are at-grade and do not require structural foundations may extend into the setback area no closer than five (5) feet to the canyon edge (as defined in Chapter 7, Definitions), provided no additional fuel modification is required that may impact native vegetation. No new or redeveloped walkways, stairs or retaining walls shall extend into the canyon beyond the required coastal canyon setback.*

*When selecting the appropriate setback from the above-referenced options, the City Planner shall consider the following factors: geology, soil, topography, existing vegetation, public views, adjacent development, safety, minimization of potential impacts to visual resources, community character, protection of native vegetation and equity.*

*These additional factors may require increased setbacks depending on the conditions of the site and adjacent coastal resources. The development setback shall be established depending on site characteristics and determined after a site visit by a City Planner. If a greater setback is required as a result of the geotechnical review prepared pursuant to policy HAZ-8 or HAZ-9, the greater setback shall apply.*

The proposed project is the removal of unpermitted development consisting of a 7-ft. tall concrete masonry unit (CMU) retaining wall to support the easterly side of the upper rear yard area, concrete stairs down the canyon, a series of short retaining walls, and a paved triangular shaped concrete patio area constructed in 2014 within a coastal canyon and the restoration of the canyon by reconstructing the canyon slope by conventional earthwork method to natural contours and replanting with native vegetation suitable to coastal canyon habitat. Removal of the uppermost 7-ft. tall CMU retaining wall would expose the 2004 wood retaining wall at the canyon edge. The applicant proposes to reconstruct the canyon slope (beyond the wood retaining wall) at a 2:1 gradient (horizontal to vertical) per City/County grading ordinances to achieve geologic safety of the slope (**Exhibit 7**). The applicant originally proposed to maintain all of the unpermitted development; however, after ongoing discussions with staff that in staff's evaluation the unpermitted development did not comply with the policies of the Coastal Act or the City's certified Land Use Plan and therefore could not be permitted, the applicant later revised the project description to remove all the unpermitted development they had undertaken in 2014, but to replace the existing and also unpermitted wood retaining wall with a new wood retaining wall at the canyon edge.

The applicant's geologist provided research information stating that since the property was developed and the home constructed circa 1952-53, a wood retaining wall has consistently been in place at the top of the canyon slope to create a flat pad for the rear yard area and direct drainage in a controlled fashion to the street from the house pad (**Exhibit 5**). Thus, the applicant argues, "*As we understand, there is major concern over urban encroachment into the coastal canyon areas where the improvements substantially alter the natural drainage, increasing erosion and visually disruption the natural habitat. We also understand that improvements constructed prior to the 1972 California Coastal Act are commonly grandfathered and allowed to remain in place, provided that they do not pose a detriment to the canyon habitat or surrounding properties.*" This statement is correct in its affirmation that for development constructed prior to the Coastal Act is the Commission has allowed such pre-Coastal Act development to remain in place without a coastal development permit so long as it is not expanded or intensified to the point of constituting redevelopment or new development. Furthermore, LUP Policy HAZ-36 also allows accessory structures lawfully built along a coastal canyon that do not conform to the LCP shall be considered legal non-conforming structures and may be maintained and repaired, as long as the maintenance or repairs do not increase the size or degree of non-conformity; however, complete demolition and reconstruction (*i.e.*, new development, or redevelopment) is not permitted unless the entire structure is brought into conformance with the policies and standards of the LCP, including any requirement for a CDP (the Commission has applied this same principle for redevelopment of an existing structure when it retains permitting jurisdiction for a given project). In any case, the wood wall that is currently in place does not constitute a pre-Coastal Act structure anyway, as it was completely replaced in 2004 (thus constituting a new structure), and thus it is not existing development entitled to repair and maintenance activities.

Based on staff's own research, the non-conforming (due to canyon edge setback) pre-Coastal wood retaining wall at the edge of the coastal canyon was demolished and replaced in-kind circa 2004 by the previous property owner, without a Coastal Development Permit. **Exhibit 6** is a 2004 photograph obtained from the Commission's South Coast Office Enforcement Division, taken during their investigation of alleged unpermitted development in the coastal canyon at the subject site, 507 W. Avenida de los Lobos Marinos. The unpermitted development was confirmed by the site visit. However, due to staffing constraints at the time, there was no follow-up and a notice of violation was not issued. Thus, the existing wood retaining wall currently in place is not pre-Coastal development but is unpermitted new development that does not comply with Coastal Act policies regarding geologic hazards or the canyon edge setbacks policy in the certified LUP.

Furthermore, Section 30235 of the Coastal Act which compels approval of retaining walls when required to protect existing structures (among other things) along the shoreline does not apply in this particular case, as the site is on a coastal canyon and not along the shoreline. The wood retaining wall simply serves to provide a flat pad for a rear yard area and according to the geologic slope stability studies provided by the applicant, a retaining wall is not necessary to protect the existing residence. In fact, a retaining wall at the canyon edge detracts from the slope stability, thus removing the retaining wall and the backfill restrained by the wall would result in higher slope factors of safety. Thus, a wood retaining wall at the proposed location is not required under Section 30235. Therefore, **Special Condition 1** requires the applicant to revise the preliminary grading plan to also remove the unpermitted and currently non-structurally sound wood retaining wall buried behind the 7-ft. tall concrete retaining wall (already proposed to be removed); repair/reconstruct the coastal canyon edge; and provide a minimum of 5-foot canyon edge setback for any future proposed new accessory development (i.e., concrete patio, garden walls, crib walls).

Section 30253 of the Coastal Act requires permitted development to be sited and designed to minimize the alteration of natural landforms along bluffs and cliffs. The unpermitted development undertaken by the current property owner/applicant in 2014 resulted in the complete alteration of the natural coastal canyon slope through the construction of concrete retaining walls, concrete stairs and a large concrete patio near the canyon bottom all without a required coastal development permit and thus, is non-compliant with Section 30251. The purpose of this CDP application is to remove the unpermitted development and restore the natural canyon slope. The applicant provided a geotechnical report titled "*Limited Geotechnical Study and Establishment of natural Top of Canyon Slope, 507 West Avenida de los Lobos Marinos, San Clemente, California*" by TerraCosta Consulting Group dated July 3, 2018. The purpose of the report was to establish the natural top of canyon slope and evaluate the stability of the slope and improvements on the property. Geologic Cross-Sections 1-3 of the geotechnical report, included as **Exhibit 8** in this staff report, identify the concrete retaining wall canyonward of the canyon edge on Cross Section 1 and right at the canyon edge on Cross Sections 2 and 3. **Exhibit 4** is a detail of the concrete retaining wall depicting its location encroaching canyonward of the 2004 wood retaining wall previously built at the edge of the canyon. The proposed removal of the unpermitted development encroaching into the canyon, reconstruction of the canyon slope and revegetation with native plants suitable to a coastal canyon habitat would indeed bring the development and canyon slope site area into compliance with Coastal Act Section 30253 and the canyon protection policies of the certified LUP.

Additionally, Section 30253 of the Coastal Act also requires new development to minimize risks to life and property in areas of high geologic hazard and assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area. The certified LUP identifies coastal canyons as geologic hazard areas. The applicant proposes to regrade and reconstruct the canyon slope at a 2:1 gradient (horizontal to vertical) per City/County grading ordinances to achieve geologic safety of the slope. As previously discussed, the Commission is recommending removal of the existing unpermitted, nonconforming wood retaining wall at the canyon edge for compliance with Coastal Act Section 30253. Such removal would require additional grading of the canyon slope, thus reducing the flat rear yard area and most likely require the removal of two large canary palms located at the canyon edge and supported by the uppermost retaining wall. However, ultimately, removal of the retaining wall will improve slope stability, as discussed above. **Special Condition 1** requires the revised final plan to be certified by a licensed professional or professionals as applicable (e.g. geotechnical engineer), based on current information and professional standards to ensure that the plan is consistent with the Commission's approval and with the recommendations of any required technical reports. Furthermore, the applicant proposes, and **Special Condition 2** requires submittal of a landscaping plan that ensures landscaped areas within the coastal canyon shall be planted and maintained for slope stability, erosion control, and habitat enhancement using accepted planting procedures, consistent with fire safety requirements.

To minimize risks to life and property the development has been conditioned to: require submittal of a final revised grading plan signed off in conformance with geotechnical recommendations by an appropriately licensed professional, for a landscaping plan that ensures the coastal canyon shall be planted and maintained for slope stability and erosion control, 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 Section 30253 of the Coastal Act regarding the siting of development in hazardous areas.

## **D. BIOLOGICAL RESOURCES**

Section 30240(b) of the Coastal Act states:

*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.*

### **City of San Clemente LUP Policies**

**RES-68 Coastal Canyons.** *Development on coastal canyon lots shall maintain or improve the biological value, integrity and corridor function of the coastal canyons through native vegetation restoration, control of non-native species, and landscape buffering of urban uses and development.*



- RES-69 Coastal Canyon Areas Protection.** *Preserve coastal canyons as undeveloped areas intended to be open space through implementation of appropriate development setbacks.*
- RES-70 Coastal Canyon Resources.** *Protect and enhance coastal canyon resources by restricting the encroachment of development, incompatible land uses and sensitive habitat disturbance in designated coastal canyon areas. Prohibit development and grading that adversely alters the biological integrity of coastal canyons, the removal of native vegetation and the introduction of non-native vegetation.*
- RES-71 Drainage Devices.** *Drainage devices on coastal bluffs and canyon lots shall be directed to frontage roads away from the bluff or canyon slopes. Exceptions shall only be made when 100 percent site drainage to the street is not practical, to be determined by the City, based on the design of the structure and the ability to drain all water to the street. In this case, the amount of site drainage to the street shall still be maximized. Drainpipes are to be designed and placed to minimize impacts, including landform alteration and visual impacts. When extensions are made to existing drainpipes, the entire length of pipe shall be analyzed to ensure the drain system minimizes impacts to the bluff or canyon. Adequate visual impact mitigation may include coloration of the original pipe, painting of the pipe to blend with natural surroundings, screening of the pipe using vegetation and other natural land features, or any other method deemed appropriate.*
- RES-72 Native Landscaping.** *Drought-tolerant native landscaping specific to the habitat type/vegetation community is required in coastal canyon and bluff areas, to reduce erosion and maintain natural open space areas. Invasive plant species are prohibited in all landscaping.*
- RES-87 Native Trees.** *Encourage the planting of Native California trees where their use is aesthetically, horticulturally and ecologically appropriate. Examples of potentially appropriate species include Coast Live Oak, California Sycamore and White Alder.*

Existing unpermitted development extends beyond the coastal canyon edge where the protection and enhancement of habitat values is sought. Development at the top of canyon along the Los Lobos Marinos coastal canyon consists entirely of residential development. The configurations of these residential lots extend down the canyon slope, in many cases all the way down to the canyon bottom. In this particular coastal canyon, there is a natural stream at the canyon bottom. The subject property extends midway down the canyon slope, but does not include the stream. The City of San Clemente Certified LUP includes the coastal canyon at the subject site and adjacent vicinity as Potential Sensitive Habitat in Figure 4-2-B of the certified Land Use Plan (**Exhibit 10**).

The LUP reads,

*“Several natural communities designated rare by CDFW occur in the City of San Clemente. Potential areas supporting sensitive habitat are shown on Figures 4-2 (A thru D).*

*Development projects in or adjacent to these potential sensitive habitat areas will require site specific focused surveys to determine if ESHA exists, evaluate potential impacts, and determine appropriate setbacks. In the City, potentially sensitive habitat areas include, but are not limited to, the following:*

- a. Coastal scrub communities.*
- b. Coastal canyons and bluffs/coastal bluff scrub.*
- c. Native grasslands.*
- d. Creek/stream and associated riparian habitat.*
- e. Monarch butterfly aggregation sites, including autumnal and winter roost sites and related habitat areas.*
- f. Wetlands, including vernal pools and emergent wetlands.*

Furthermore, San Clemente's certified LUP policies advocate the preservation of native vegetation and discourages the introduction of non-native vegetation in coastal canyons and along coastal bluffs. While no rare or endangered species have previously been reported to exist within this section of coastal canyon on a site-specific review, the City's policies aim to preserve coastal canyons as undeveloped areas intended to be open space through implementation of appropriate development setbacks with the objective of protecting and enhancing coastal canyon resources by restricting the encroachment of development, incompatible land uses, and sensitive habitat disturbance. Similarly, Coastal Act policies aim to prevent impacts which would significantly degrade ESHA and areas adjacent to ESHA, and ensure that development shall be compatible with the continuance of those habitat areas. Decreases in the amount of native vegetation along the coastal canyons due to displacement by development and, in this case, unpermitted development in conflict with Coastal Act and local LUP policies, has resulted in cumulative adverse impacts upon the habitat value of the coastal canyons.

The applicant proposes to resolve the unpermitted development through this Coastal Development Permit Application to demolish the unpermitted development, restore the canyon slope, and restore the native vegetation of the canyon. Furthermore, the applicant proposes, and **Special Condition 2** requires submittal of a landscaping plan that ensures landscaped areas within the coastal canyon shall be planted and maintained for slope stability, erosion control, and habitat enhancement using accepted planting procedures, consistent with fire safety requirements. To minimize the need for irrigation and minimize encroachment of non-native plant species into adjacent or nearby native plant areas, all landscaping shall be required to consist only of drought tolerant and non-invasive plants native to coastal Orange County and appropriate to the coastal canyon vegetation communities.

As conditioned, the development will not result in significant degradation of adjacent canyon habitat and is compatible with the continuance of those habitat areas and is consistent with the policies of section 30240(b) of the Coastal Act and the certified LUP.

## 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.*

**RES-27** ***Xeriscape Planting to Conserve Water.** To conserve water, the City shall require new development to use drought-tolerant non-invasive landscaping with an average plant factor of 0.5 of Reference Evapotranspiration (ET<sub>o</sub>), and shall encourage the use of California Native plantings in new and existing development.*

**RES-32** ***Maintain or Enhance Natural Drainage Features.** Development shall be planned, sited, and designed to protect the absorption, purification, and retention functions of natural drainage features (e.g., stream corridors, drainage swales, topographical depressions, floodplains, and wetlands) that exist on the site. Where feasible, drainage plans shall be designed to complement and utilize existing drainage patterns and features, conveying drainage from the developed area of the site in a non-erosive manner with appropriate treatment. Disturbed or degraded natural hydrologic features shall be restored, where feasible.*

**RES-37** ***Timing of Grading.** In high erosion areas (such as development adjacent to canyon or bluff slopes), the City in approving development projects, shall minimize non-emergency earth-moving operations during the rainy season (extending from October 1 to April 30), whenever feasible. If the City approves grading during the rainy season appropriate BMPs shall be implemented.*

The proposed development, consisting of demolition of concrete structures within the canyon and grading of the canyon slope earth materials has a potential for a discharge of polluted runoff from the project site into coastal waters both during construction and post-construction. Due to these

risks, the Commission imposes **Special Conditions 3 and 4**, which requires the applicant to comply with construction-related requirements related to storage of construction materials, mechanized equipment and removal of construction debris and to avoid grading activities during the rainy season.

Other sources of polluted runoff could include runoff from impervious surface on the lot and/or 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.

The applicant proposes, and the Commission requires through **Special Condition 2** submittal of a landscaping plan that ensures landscaped areas within the coastal canyon shall be planted and maintained for slope stability, erosion control, and habitat enhancement using accepted planting procedures, consistent with fire safety requirements. To minimize the need for irrigation and minimize encroachment of non-native plant species into adjacent or nearby native plant areas, all landscaping shall only consist of drought tolerant and non-invasive plants native to coastal Orange County and appropriate to the habitat type. Furthermore, 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, thus continuing 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 pertains to visual resources. It 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 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.*

The proposed development is located on a private coastal canyon parcel on W. Avenida de los Lobos Marinos designated as Residential Low Density in the City's certified Land Use Plan (LUP).

Public views of the Los Lobos Marinos coastal canyon are available along W. Avenida San Antonio, a public street across the coastal canyon. The subject site is visible from this public street vantage point. Both of these streets are classified residential streets, as opposed to more heavily transited collector or arterial roads. Thus, neither is identified as a scenic corridor in the City's certified LUP. There are no public trails, public parks, or other such public vantage points with direct views of the coastal canyon through the subject site from W. Avenida del Los Lobos Marinos.

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 demolition of highly visible concrete structures encroaching down into the coastal canyon and reconstruction of the natural canyon slope, this new development will serve to restore and enhance visual quality in visually degraded areas and will result in a project that is visually compatible with the character of the neighborhood in this area. As further conditioned for removal of all unpermitted development in the canyon (including the 2004 wooden retaining wall) and restoration of the canyon slope, the Commission finds the proposed development consistent with Section 30251 of the Coastal Act.

## **F. PUBLIC ACCESS AND RECREATION**

Section 30212(a)(2) of the Coastal Act states, in pertinent part:

*(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:*

*(2) adequate access exists nearby*

Section 30604(C) of the Coastal Act requires that permit applications between the first public road and the shoreline of any body of water within the coastal zone shall include a public access and recreation finding. The proposed development is located between the sea and the first public road (South Ola Vista). The nearest vertical coastal access and access to the Coastal Trail and public beach is available at the Lost Winds Access Point, a ten-foot wide public easement between two private residences consisting of a dirt path that leads from the street down the steep bluff slope located approximately 400 yards southwest of the subject site.

The proposed development is located between the sea and the first public road; however, it will not impact public access either directly or indirectly to the ocean. The project site is currently developed with a single-family residence and the proposed removal of unpermitted accessory development within a coastal canyon will not result in any intensification of use resulting in public access impacts. The development will not create adverse impacts, either individually or cumulatively, on public access and will not block public access from the first public road to the shore. Furthermore, adequate coastal access exists nearby. Therefore, the Commission finds that the proposed development is consistent with Section 30212 of the Coastal Act.

## **G. UNPERMITTED DEVELOPMENT**

Development has occurred on the subject site without benefit of the required coastal development permit, including construction of a 7-ft. tall concrete retaining wall, concrete steps, lower concrete retaining wall, triangular shaped concrete patio, wood retaining wall built circa 2004, and wood fence located toward the bottom of the canyon. All work occurred on a coastal canyon slope, beyond the edge of the coastal canyon and between the first public road and the sea. Consequently, even if it were considered to be the sort of improvement that is normally associated with a single-family residence, the work that was undertaken constitutes development that requires a coastal development permit application. (14 CCR § 13250(b)(4).)

On May 23<sup>rd</sup>, 2019, Commission enforcement staff sent the applicant a Notice of Violation letter that identified the unpermitted development described above and confirmed that the applicant had agreed, in communications with Commission staff, to undertake removal of all unpermitted development described above (except for the 2004 wooden retaining wall, which the Commission is herein requiring removal of as a condition of approval of this CDP) and restoration of the site to its pre-violation condition as part of the proposed project. Accordingly, **Special Condition 1** requires submittal of a final revised grading plan showing removal of all unpermitted development including a 7-ft. tall concrete retaining wall, concrete steps, lower concrete retaining wall, and a triangular shaped concrete patio, wood retaining wall built circa 2004, and a wood fence located toward the bottom of the canyon. Additionally, **Special Condition 2** requires submittal of a landscaping plan to ensure the restoration of the canyon's habitat value after removal of the unpermitted development.

Furthermore, 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 60 days of Commission action. The Executive Director may grant additional time for good cause.

Although development has taken place prior to submission of this permit application, consideration of the permit application by the Commission has been based solely on the consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. The certified San Clemente Land Use Plan was used as guidance by the Commission in reaching its decision. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit. Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent compliance with all terms and conditions of the permit will result in resolution of the above described violations going forward.

## **H. LOCAL COASTAL PROGRAM (LCP)**

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit for development in an area with no certified Local Coastal Program ("LCP") only if the project will not prejudice the ability of the local government having jurisdiction to prepare an LCP that conforms

with Chapter 3 policies of the Coastal Act. The Commission certified the Land Use Plan (LUP) 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 (IP) 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. Most recently in 2018, the City certified an LUP amendment for a comprehensive update of the LUP. The City is currently also working on resubmittal of an IP, however, at this time the City has no certified LCP.

As conditioned, the proposed development is consistent with the policies contained in the certified Land Use Plan regarding public access, recreation, and environmental protection and the policies in Chapter 3 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).

## **I. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 13096 of Title 14 of the California 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 City of San Clemente is the lead agency for purposes of CEQA compliance. As determined by the City, this project is statutorily exempt from CEQA. The Commission has conditioned the proposed project in order to ensure its consistency with Coastal Act requirements regarding public access and resource protection by lessening any potentially significant adverse impacts which the activity may have on the environment to a level of less than significance. These special conditions are: **1) Submittal of Final Revised Grading Plan; 2) Landscaping Plan; 3) Construction Phase BMPs; 4) Construction and Pollution Prevention Plan; 5) Future Improvements; 6) Assumption of Risk; and 7) Condition Compliance.**

There are no other feasible alternatives or mitigation measures available which will lessen any significant adverse impact the project 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 - Substantive File Documents**

- 1) City of San Clemente Certified Land Use Plan
- 2) City of San Clemente Approval in Concept, dated August 7, 2018
- 3) *“Limited Geotechnical Study and Establishment of natural Top of Canyon Slope, 507 West Avenida de los Lobos Marinos, San Clemente, California”* by TerraCosta Consulting Group dated July 3, 2018.
- 4) *“Response to California Coastal Commission Regarding Rear Yard Retaining Walls, 507 West Avenida de los Lobos Marinos, San Clemente, California”* by TerraCosta Consulting Group, dated March 12, 2019.