CALIFORNIA COASTAL COMMISSION
South Coast Area Office
301 E. Ocean Blvd., Suite 300
Long Beach, CA 90802
(562) 590-5071

W26c

Filed:	2/2/19
180th Day:	7/2/19
270th Day:	9/30/19
Staff:	L. Roman-LB
Staff Report:	8/28/19

STAFF REPORT: REGULAR CALENDAR

Application No.:	**5-18-0327**
Applicants:	**William and Geralynn Fetterly**
Agent:	**Sherwood McMillion, AIA**
Project Location:	2006 Calle de los Alamos, San Clemente (Orange County)
Project Description:	Re-construction of a 765 sq. ft. wood deck raised on piers consisting of abandonment of old concrete footings, installation of seven (7) 24-in. diameter caisson footings, new support posts atop caissons, new girders; new deck joists and additional sister deck joists; replacement of 225 sq. ft. of decking material; and complete replacement of deck railing system on an existing legally non-conforming wood deck on a bluff-top lot.
Staff Recommendation:	Staff recommends **denial** of the proposed development.

SUMMARY OF STAFF RECOMMENDATION

The subject development is located along the coastal bluffs of San Clemente. The applicants are requesting replacement/re-construction of an existing legally non-conforming raised wood deck associated with a single-family residence on a bluff-top lot. The proposed development consists of the re-construction of a of a 765 sq. ft. wood deck raised on piers and deck railing consisting of abandonment of old footings, installation of seven (7) new 24-in. diameter caisson footings, new support posts atop caissons, new girders; new deck joists and additional sister deck joists; replacement of 225 sq. ft. decking material; and complete replacement of deck railing system.

Commission staff has found no record of a Coastal Development Permit for the residence which received a City Occupancy Permit issued in 1977. However, a wood deck was approved by the Commission in 1979 as CDP A-79-4678 in accordance with a deck stringline setback. The 1979 Commission-approved deck connected to a narrow, 4-ft. wide deck at the northerly half of the residence. The house and the wood deck are located seaward of the edge of the coastal bluff. A portion of the deck was damaged during the 2016-17 winter storms when the supporting pier footing at the northwest corner of the deck collapsed. The applicants propose replacement of 30% of decking material damaged in 2016-17, an all-new deck railing, seven new 24-in. diameter caissons imbedded 5 -10 ft. into the bluff face, seven new support posts atop proposed new caissons to sustain an augmented deck foundation with new "sister" deck joists and girders to supplement existing deck joists and girders. The amount of work proposed to the structural members of the existing legally non-conforming deck goes well beyond the typical 'repair and maintenance' of a structure and would render it a new structure requiring compliance with the current policies and standards of the LCP.

Staff recommends denial, as opposed to approval with conditions to address the bluff setback because compliance necessitates substantial redesign of the project. At the time of this staff report, the applicants were not in agreement with the staff recommendation.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of San Clemente only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

TABLE OF CONTENTS

APPENDICES

EXHIBITS

I. MOTION AND RESOLUTION

Staff Recommendation of Denial:

Staff recommends that the Commission **DENY** the coastal development permit application by voting **NO** on the following motion and adopting the following resolution.

Motion:

*I move that the Commission **approve** Coastal Development Permit No. 5-18-0327 for the development proposed by the applicants.*

Staff recommends a **NO** vote. Failure of this motion will result in denial 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 to Deny the Permit:

*The Commission hereby **DENIES** a coastal development permit for the proposed development on the ground that the development will not conform with the policies of Chapter 3 of the Coastal Act and will 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 would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.*

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

The proposed development is located at 2006 Calle de los Alamos in the City of San Clemente, Orange County (**Exhibit 1**). The subject site is designated RL (Residential Low Density) in the San Clemente certified Land Use Plan (LUP) and the location is on a coastal bluff. Surrounding development consists of single-family residences. The coastal bluff is not currently subject to marine erosion as the San Clemente Coastal Trail and the OCTA railroad tracks (protected in places by a rock revetment) both of which run parallel to the public beach below are located between the toe of the bluff and the ocean. The site consists of a generally flat pad facing Calle de los Alamos and descends 90 ft. down a steep coastal bluff. The nearest public access to the Coastal Trail and public beach is at the Lost Winds Access Point (**Exhibit 6**), a ten-ft. wide public easement between two private residences consisting of a dirt path that leads from the street down the steep bluff slope located immediately north (upcoast) of the subject site. Access to the beach is via a protected pedestrian at-grade railroad crossing **(Exhibit 5)**.

The applicants propose re-construction of an existing legally non-conforming wood deck and deck railing associated with a single-family residence on a bluff-top lot. The proposed development consists of:

- installation of seven (7) new 24-in. diameter caisson footings and abandonment of the existing seven (7) deck support footings,
- seven (7) new support posts atop proposed new caissons,
- new girders;
- new deck joists and additional sister deck joists;
- replacement of 225 sq. ft. decking material; and
- complete replacement of deck railing system.

Project plans can be found in **Exhibit 2** and include a precise grading plan and an erosion control plan depicting water runoff from the rear deck and side yards to be directed away from the bluff face toward the frontage road, via new drainage inlets that will collect water runoff and direct it to existing City storm drains, per City requirements.

Commission staff has found no record of a Coastal Development Permit for the residence which received a City Occupancy Permit issued in 1977. However, a wood deck was approved by the Commission in 1979 as CDP A-79-4678 in accordance with a deck stringline setback (**Exhibit 4**). The 1979 Commission-approved deck connected to a narrow, 4-ft. wide deck at the northerly half of the residence. Both the house and the wood deck are located seaward of the edge of the coastal bluff.

B. COASTAL HAZARDS

Section 30251 of the Coastal Act states, in pertinent 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.

Section 30253 of the Coastal Act states:

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-8 ***Geotechnical Review.*** *A geotechnical review is required for all shoreline/coastal bluff or canyon parcels where new development or major remodel is proposed. If, as a result of geotechnical review, a greater setback is recommended than is required in the policies herein, the greater of the setbacks shall apply. For shoreline/coastal bluff or canyon parcels, geotechnical review shall identify the bluff or canyon edge, provide a slope stability analysis, and a bluff/slope retreat rate analysis. Consideration of the expected long-term average coastal bluff retreat rates over the expected life of the structure (minimum of 75 years unless otherwise specified in the LCP), shall include retreat rates due to expected sea level rise and a scenario that assumes that any existing shoreline or bluff protective device is not in place. The anticipated retreat over the expected life of the structure shall be added to the setback necessary to assure that the development will maintain a minimum factor of safety against land sliding of 1.5 (static) and 1.1 (pseudo static) for the life of the structure. The analysis for shoreline/coastal bluff parcels shall use the best available science on sea level rise and consider a range of scenarios including the high scenario of sea level rise expected to occur over the life of the structure and its effect on long term bluff retreat rates. The City may issue building permits for structures that maintain a different minimum factor of safety against landslides under certain circumstances and conditions, pursuant to the Geotechnical Review specifications in the IP and where alternative stability requirements are approved by the City Engineer.*

HAZ-10 ***Applicant's Assumption of Risk.*** *A Coastal Development Permit (CDP) for development in a hazardous area shall be conditioned when consistent with Policy GEN-8 to require the property owner to record a document (i.e., deed restriction) that waives and indemnifies the approving entity from liability for any personal or property damage caused by geologic, coastal or other hazards on such properties in relation to any development approved by the CDP and acknowledging that future shoreline protective devices to protect structures authorized by such a CDP are prohibited as outlined in HAZ-18.*

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-41 ***Blufftop Setback.*** *Proposed development, redevelopment, and accessory structures, if such accessory structures require a foundation on blufftop lots shall be set back by the greater of the following distances: the setback distance recommended as a result of the geotechnical study required by policy HAZ-8 or HAZ-9, at least 25 feet from the bluff edge, or in accordance with a stringline drawn between the nearest corners of adjacent structures on either side of the development. No deepened foundations, such as caissons, shall be located within 25 feet of a bluff edge. Cantilevering into the bluff top setback or geologic setback may be allowed up to a 10-foot seaward projection when necessary to avoid a taking pursuant to Policy GEN-8. In addition, construction within 5-feet of the public right-of-way front yard setback for all stories shall be allowed as long as adequate architectural relief (e.g., recessed windows or doorways or building articulation) is maintained as determined by the City. No variance or other additional permit shall be required for a reduction in the street side*

setback to a minimum of 5-feet when this policy is applied, provided the development is consistent with all other applicable LUP policies.

HAZ-44 ***Bluff Face Development.*** *New permanent structures shall not be permitted on a bluff face, except that public access facilities, including walkways, overlooks, stairways, and/or ramps, may be allowed to be located on the bluff face where no feasible alternative means of public access exists, provided they meet the following criteria:*

a. Must be designed and constructed to minimize landform alteration of the oceanfront bluff face;
b. Does not contribute to further erosion or cause, expand, or accelerate instability of the bluff;
c. Must be visually compatible with the surrounding areas;
d. Avoids the need for bluff or shoreline protection to the extent feasible; and
e. Must be sited and designed to be easily relocated or removed without significant damage to the bluff or shoreline.

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.*

"STRINGLINE" *means in a developed area where new construction is generally infill and is otherwise consistent with the policies of the Land Use Plan of the City of San Clemente Local Coastal Program, no part of a proposed new structure, including decks, shall be built closer to a bluff edge, canyon edge or beach-front than a line drawn between the nearest adjacent corners of the adjacent structures for a structural stringline and to the nearest corner of an accessory structure for an accessory stringline.*

The applicants provided a geotechnical report titled *"Limited Geotechnical Investigation for the Rear Yard Deck Support Repair, Located at 2006 Calle de los Alamos, San Clemente, California"* by David H. Lee & Associates, Inc. dated October 17, 2017. The purpose of the report was to determine the character of the soil, terrace and bedrock materials that would support the proposed repairs (new caisson pile foundation system), which would support the existing deck and to provide design and construction criteria to facilitate the design and construction of the proposed deck repairs. It identifies the earth materials along the bluff face location of the deck as consisting of thin layer (about three ft.) of man-made fill, a localized layer of weathered terrace deposits, atop actual terrace deposits and Capistrano Formation siltstone bedrock at a depth of 14-ft. No evidence of shallow groundwater was found in exploratory

borings. A high natural coastal bluff slope descends down approximately 90 ft. to the toe of the bluff with the City's Coastal Trail, the Orange County Transit Authority (OCTA) railroad tracks and public beach beyond.

A large ancient landslide described as approximately 25 ft. deep extending for several hundred feet northwest/southeast is present in the bluff west of the existing residence and proposed deck repair area. According to a review of published reports by the applicants' geotechnical engineer consultant, the landslide appears to be grossly stable. However, no studies beyond surface observation and review of existing published reports were performed relative to the existing landslide. A geotechnical map and cross section are included as **Exhibit 3** of this staff report.

The geotechnical report provides a detailed description of the 1979 existing wood deck as follows:

> *Sketches included with the February 6, 1979 deck permit show that the present deck connected to a narrow four-foot-wide existing deck connected to the northerly half (+/-) of the residence. The "new" deck was to be built on two levels, with the upper portion about 20' by 24' in area behind the northerly half of the residence, stepping down behind the southerly half to a deck of about 8' in width by 18' long. The deck surface is 2" by 6" planking, and is supported on a system of 2" by 8" joists set on 4" by 12" girders. The girders span to 4" by 4" posts that are supported on 18-inch diameter, Sonotube-formed, concrete piers. The inside edges of the new deck joists appear to have been supported on 2" by 6" ledgers bolted into the residence rear wall. The concrete piers are shown to have been embedded to a depth to provide a minimum 5-foot horizontal distance to the descending slope face measured from the outside bottom edge of the piers, but no less than 2-feet.*

The report further concludes that the supporting pier footing at the northwest corner of the deck collapsed resulting in damage to that portion of the deck as a result of erosion from the 2016-17 winter storms (**Exhibit 5**).

Bluff Stability and Sea Level Rise Considerations

The coastal bluffs in San Clemente are not subject to direct wave attack because the base of the bluffs are separated from the surf zone by either a sandy beach, roadway or the Orange County Transit Authority (OCTA) railroad tracks and railroad right-of-way. However, the San Clemente coastal bluffs are subject to natural erosion, other than direct wave attack, which is caused by factors such as wind and rain, adverse bedding orientations, soils conducive to erosion, seismic activity and rodent burrowing. Bluffs are also subject to erosion from human activities, such as irrigation, improper site drainage and grading. Bluff failure can be episodic, and bluffs that are seemingly stable may not be so in the future. Even when a thorough professional geotechnical analysis of a site concludes that a proposed development is expected to be safe from bluff retreat hazards for the life of the project, it has been the experience of the Commission that in some instances, unexpected bluff retreat episodes that threaten development during the life of a structure sometimes do occur (e.g. coastal development permit 5-06-325[Walker] at 1203 Buena Vista and the 2016-17 winter storms at the subject site). In the Commission's experience, geologists cannot predict with absolute certainty if or when bluff failure on a particular site may take place, and cannot predict if or when a primary residential structure or accessory structure may become threatened by natural coastal processes. There is, however, no indication in the

information provided by the applicants that the ancient landslide identified along the bluff slope would remain grossly stable and we know that the existing deck foundation has already been undermined and caused failure of the deck foundation due to erosion damage by recent winter rains. The applicants provided a proposed precise grading plan and an erosion control plan (**Exhibit 2**) depicting water runoff from the rear deck and side yards to be directed away from the bluff face toward the frontage road. New deck drainage inlets would collect water runoff and direct it to existing City storm drains, per City requirements in a manner that would avoid surface run off from the deck to sheet flow toward the bluff. Therefore, the proposed new deck would not contribute to ongoing erosion caused by runoff from the proposed deck.

In this case, the applicants did not provide a slope stability analysis or information related to bluff erosion/bluff retreat at the subject site. Their geotechnical analysis considered only the character of the soil and other materials below the proposed deck. According to published reports, the shoreline along San Clemente is eroding at a rate of about 0.33 ft/yr. The base of the slope is located landward from a currently narrow beach, the OCTA railroad tracks and the San Clemente Coastal Trail. Although projected sea level rise will result in higher wave runup elevations along the coast which may lead to increased coastal erosion, the worst-case scenario sea level rise amount would not change the overall conclusion that it is very unlikely that this bluff-top site will be at risk from flooding or wave impacts.

Bluff Development Setbacks

Coastal bluff development is inherently hazardous and poses potential adverse impacts to the geologic stability of coastal bluffs, shoreline processes, and to the stability of residential structures. Bluff stability has been an issue of historic concern throughout the City of San Clemente. The Commission has traditionally followed a set of coastal bluff edge setback and stringline policies as a means of limiting the encroachment of development seaward toward the bluff edges of coastal bluffs and preventing the need for construction of revetments, caissons and other engineered structures in order to protect new development on coastal bluffs.

Under the California Coastal Act, the bluff edge is defined as:

> *… the upper termination of a bluff, cliff, or seacliff. In cases where the top edge of the cliff is rounded away from the face of the cliff as a result of erosional processes related to the presence of the steep cliff face, the bluff line or edge shall be defined as that point nearest the cliff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff. In a case where there is a steplike feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the cliff edge…" (California Code of Regulations, Title 14, §13577 (h) (2).*

Based on the geologic mapping cross section (**Exhibit 3**) provided by David H. Lee & Associates, Inc., the bluff edge appears to be located underneath the existing residence.

In the project vicinity, the Commission typically imposes either a minimum bluff edge setback of 25 ft. from the edge of the bluff for primary structures (e.g. the enclosed living area of residential structures) and minimum 10-ft. setback for secondary structures (at grade patios, decks, garden walls) or requires conformance with the stringline setbacks. Consistently applying an appropriate bluff edge setback provides equity for developments within the same general area.

The intent of the setback is to substantially reduce the likelihood of proposed development becoming threatened given the inherent uncertainty in predicting geologic processes in the future, and to allow for potential changes in bluff erosion rates as a result of rising sea level.

The applicants propose to replace a legally nonconforming raised wood deck structure built in 1979 per a deck stringline setback. The Commission approved the deck addition under CDP A-79-4678 (**Exhibit 4**). There is no record of a Coastal Development Permit for the residence which received a City Occupancy Permit issued in 1977. The 1979 Commission-approved deck addition connected to a narrow, 4-ft. wide deck along the northerly half of the residence apparently constructed at the time the residence was constructed. Both the residence and wood deck are constructed seaward of the edge of the coastal bluff. In 1982 the City of San Clemente Coastal Land Use Plan (LUP) was certified by the Commission establishing coastal bluff setback policies. The LUP was updated in 1995 and again in 2018.

LUP Policy HAZ-36 provides for the maintenance and repair of principal and accessory structures lawfully built along a coastal bluff as long as the maintenance or repairs do not increase the size or degree of non-conformity. LUP Policy HAZ-41 requires bluff edge setbacks for new development and accessory structures requiring a foundation to be setback by the greater of the following distances: the setback distance recommended as a result of the geotechnical study, at least 25 ft. from the bluff edge, or in accordance with a stringline drawn between the nearest corners of adjacent structures on either side of the development; and does not permit deepened foundations such as caissons for proposed development including accessory structures to be located within 25 ft. of a bluff edge. Thus, a stringline setback would not be applicable to a structure proposed on a caisson foundation.

As proposed, 42% of overall deck components will be demolished/rebuilt (less than 50% of the deck). However, based on the total scope and extent of work to the remaining deck components including the installation of seven new 24-in. diameter caisson footings, seven new support posts atop proposed new caissons, new "sister" girders to supplement existing; new deck joists and additional "sister" deck joists; and complete replacement of deck railing system, it is clear to staff that the project would result in a complete reconstruction of the deck, exceeding the repair and maintenance threshold for a non-conforming structure. And as stated above, LUP Policy HAZ-41 does not permit caissons to be located within 25 ft. of a coastal bluff edge. As proposed, the project includes seven (7) 24-in. diameter caissons on the bluff face and therefore, is not consistent with the City's certified LUP bluff setback policies.

According to the applicants' geotechnical report, the existing deck built in 1979 is supported on 18-in. diameter, Sonotube-formed, concrete piers shown to have been embedded to a depth to provide a minimum 5-ft. horizontal distance to the descending slope face measured from the outside bottom edge of the piers, but no less than two ft. The geotechnical report recommends the existing concrete piers to be abandoned in place and the most feasible method of foundation support for the repaired deck is seven 24-in. diameter caissons imbedded through existing fill and colluvium and founded a minimum of five ft. into the terrace deposits and/or bedrock, or a minimum of eight ft. below the surface, whichever is deeper. No other foundation alternatives were explored in the report. As proposed in this hazardous location, the new deck would need to rely on the proposed caisson foundation without which, the proposed deck may not be feasibly developed in this location.

However, Coastal Act Section 30253 requires that new development assure stability and structural integrity and in no way contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in no way require construction of protective devices that would substantially alter natural landforms along coastal bluffs. Moreover, Coastal Act Section 30251 protects the scenic and visual qualities of coastal areas as a resource of public importance, protects public views to and along the ocean by requiring development be sited and designed to protect such views by minimizing the alteration of natural land forms such as coastal bluffs. As proposed, the project includes a deepened caisson foundation; the construction of caissons involves landform alteration. Additionally, caissons in this proposed location on the face of a coastal bluff can become exposed over time as bluffs erode and as soils/sands migrate away from foundations. The subject site is located along an area of San Clemente coastal bluffs known to erode and have episodic failures. The deck has already had damage due to erosion caused by recent winter rains. The proposed new deck relies on caissons to assure its structural stability in a hazardous area, and should the caissons become exposed in the future due to erosion, wood lagging and other structures will need to be constructed on the bluff face to hold back soil in place, thus requiring construction of protective devices that would substantially alter natural coastal bluff landform. Additionally, in order to avoid the need for shoreline armoring in the future, plans and specific triggers for removal or retreat of the proposed development may be necessary. Caissons on a coastal bluff are difficult to remove in the future when the end of the development life is reached and alternative siting is required for new development projects. Rather, new development should be sited as far back as necessary to be safe while not altering natural landforms along coastal bluffs and in no way contribute significantly to erosion per the requirements of Coastal Act Section 30253.

Therefore, the Commission finds that the proposed development does not conform to the requirements of Section 30251 to minimize the alteration of natural land forms, and Section 30253 of the Coastal Act regarding the siting of development in a hazardous location and the policies of the San Clemente LUP. Therefore, the Commission finds the permit application must be denied.

C. 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-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-75 ***Site-Specific Biological Surveys.*** *Require a detailed site-specific biological survey prepared by a qualified biologist as a filing requirement for Coastal Development Permit applications for development on sites identified with a vegetation community on Figure 3-1 and Figure 3-2 of the Biological Inventory Report in Appendix A, beach areas, San Clemente State Beach inland bluffs, or where there is probable cause to believe that potential ESHA may exist. The biological resources study shall include, but not be limited to:*

f. Analysis of available literature and biological databases, to determine if any sensitive biological resources have been reported as historically occurring in the proposed development project vicinity. At a minimum, the California Department of Fish and Wildlife's Natural Diversity Database (CNDDB) must be used to determine if the site of the proposed project is known to support or has the potential to support sensitive habitat, vegetation communities, plants, and/or animals.

g. Review of current land use and land ownership within the proposed development project vicinity.

h. Assessment and mapping of vegetation communities present within the proposed development project vicinity.

i. General assessment of potential federal and state jurisdictional areas, including wetlands and riparian habitats

j. A base map that delineates topographic lines, parcel boundaries, and adjacent roads.

k. A vegetation map.

l. A description of the vegetation, including an estimate of the ground cover of the major species and a species inventory

m. A soils map that delineates hydric and non-hydric soils, if applicable.

n. An inventory of plant and animal species that indicates the potential existence of sensitive species.

o. A detailed map that shows the conclusions regarding the boundary, precise location and extent, or current status of ESHA based on substantial evidence

San Clemente's certified LUP advocates the preservation of native vegetation and discourages the introduction of non-native vegetation in coastal canyons and along coastal bluffs. Furthermore, The City of San Clemente Certified LUP includes the coastal bluff at the subject site and adjacent vicinity as Potential Sensitive Habitat in Figure 4-2-B (**Exhibit #7**). 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.

While no rare or endangered species have previously been reported to exist within this section of coastal bluff, the applicants did not provide site specific biological survey of the bluff. The proposed development extends beyond the coastal bluff edge where the protection and enhancement of habitat values is sought, no bluff edge setback is provided and thus no buffer from bluff vegetation. Decreases in the amount of native vegetation along the coastal bluffs due to displacement by development or introduction of non-native vegetation have resulted in cumulative adverse impacts upon the habitat value of the coastal bluffs. Therefore, the Commission finds that the development, as proposed, is not sited and designed to prevent impacts which would significantly degrade those areas of native vegetation along the coastal bluffs and therefore inconsistent with Section 30240(b) of the Coastal Act.

D. WATER QUALITY

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

The proposed development would be located at the top of the bluff overlooking the Pacific Ocean. As such, drainage and run-off from the proposed deck could potentially affect water quality of coastal waters as well as adversely affect the stability of the bluffs. In order to protect coastal waters from the adverse effects of polluted runoff, the Commission has typically required that all runoff from impervious surfaces be directed through landscaping as a filter mechanism prior to its discharge into the street. In this case, however, directing runoff into blufftop landscape areas could have an adverse effect on bluff stability by increasing the amount of

groundwater within the bluff material, which can lead to bluff failures. Therefore, in this case, reducing the potential for water to be retained on the site and directing the runoff toward the street would be more protective of coastal resources. Therefore, the Commission finds that the project's proposal to direct runoff from the deck to the frontage road could be found consistent with the Sections 30230 and 30231 of the Coastal Act. However, given the remaining concerns associated with geologic safety, the project as a whole cannot be found consistent with the Coastal Act and certified LUP, and must be denied.

E. SCENIC AND VISUAL RESOURCES

Section 30251 of the Coastal Act 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. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

San Clemente's certified LUP visual resource policies:

> ***VIS-1*** *Visual Character and Aesthetic Resources Preservation. New development shall be designed to preserve the visual character and aesthetic resources of the City's coastal zone including preservation of the physical features of coastal bluffs and canyons, and where feasible, enhance and restore scenic and visual qualities of the coastal zone, including to and along the ocean and coastal bluffs, visually significant ridgelines, and coastal canyons, open spaces, prominent, mature trees on public lands, and designated significant public views (as identified on Figure 6-1 Scenic Gateways and Corridors, Figure 6-2-A Public View Corridors and Figure 6-2-B Public View Corridors). Where protection of visual character and aesthetic resources is not feasible, impacts should be mitigated.*

Coastal Views

Section 30251 of the Coastal Act requires that the scenic and visual qualities of coastal areas be protected and, where feasible, restored and enhanced. One of the objectives of the bluff edge setbacks is to protect coastal views. In this case, the existing residence is constructed beyond the edge of the coastal bluff, and the proposed deck with raised piers would further extend beyond the edge of the coastal bluff. The applicants assert that the proposed deck is within the same footprint as the 1979-approved deck and thus, would not encroach further down the bluff face than the adjacent neighboring deck/patios, and therefore is in compliance with the current certified deck stringline setback. However, the applicants did not provide a current site plan depicting a deck stringline per the stringline definition in the certified LUP thereby substantiating their claim. In addition, the deck stringline policy is to be used in concert with other visual resource and hazard policies. Regardless of whether or not the new deck would be consistent with the deck stringline policies, and no evidence has been provided to support such a claim, the new deck must also be consistent with other Coastal Act and LUP policies, which, as described herein, it is not.

The applicants also propose the construction of a new caisson foundation system in order to support an existing damaged raised pier wood deck built on the face of a coastal bluff. The existing raised pier wood deck had previously been approved by the Commission in 1979 in accordance with a deck stringline analysis (**Exhibit 4**). At that time, the deck, an accessory structure, was approved with concrete pier foundations. The applicants are now proposing to abandon in place the concrete piers and install seven (7) new 24-in. diameter caissons imbedded 5 – 10 ft. into the bluff. As such, there would be an entirely new foundation system to support the remaining wood decking as well as the new 225 sq. ft. of new wood decking (out of 765 sq. ft. total) proposed to be replaced.

As previously discussed, it is the nature of bluffs to erode. Though currently not subject to direct wave attack, the San Clemente coastal bluffs are subject to natural erosion processes as described above. The submitted geotechnical analysis notes that the supporting pier footing at the northwest corner of the deck collapsed, resulting in damage to that portion of the deck as a result of the 2016-17 winter storms. The geotechnical analysis of the site did not include an analysis of bluff erosion/retreat hazards for the life of the project. Bluff failure can be episodic, and bluffs that seem stable now may not be so in the future.

The proposed structures are subsurface and would not immediately have a visual impact. However, future erosion and/or episodic failure could expose them. Under such circumstances, the proposed structures would have an adverse visual impact since they would be visible from the public trail and beach. New shoreline armoring may be necessary should the proposed caissons become exposed and become threatened or fail, and such armoring would also have associated visual impacts. In addition, the existing deck foundation is proposed to be abandoned in place rather than removed. If the bluffs at this site were to erode, as can be reasonably expected over time, there could be several exposed foundation features of the existing unreliable system. Thus, potential visual impacts already exist at the site and adding more bluff protective devices only increases the likelihood of future visual impacts at the site.

In conclusion, as proposed, the Commission finds the proposed development inconsistent with Section 30251 of the Coastal Act.

F. PUBLIC ACCESS/RECREATION

The proposed development is located between the sea and the first public road. Section 30604(c) of the Coastal Act requires that every coastal development permit issued for any development between the nearest public road and the sea include a specific finding that the development is in conformance with the public access and recreation policies of Chapter 3 of the Coastal Act.

Section 30210 of the Coastal Act states:

> *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30212 of the Coastal Act states, in relevant 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.*

The beach fronting this location is used by local residents and visitors for a variety of recreational activities. As proposed, the development at the top of the bluff will not affect existing public access to the shoreline in two respects. No public access across the property to the beach currently exists because of the hazardous nature of the approximately 90-ft. high coastal bluff. In addition, public access to the beach below this existing residence is currently available immediately adjacent (upcoast) to the subject site, at the Lost Winds Coastal Access Point, one of the principal beach access points in San Clemente (**Exhibit 6**). The proposed development will not create any new adverse impacts on coastal access and recreation. The Commission finds that the proposed development does not pose significant adverse impacts to existing public access and recreation; and most importantly, there is adequate, safe public access in the vicinity, therefore, the project is consistent with Sections 30210 and 30212 of the Coastal Act.

G. PROJECT ALTERNATIVES

Denial of the proposed project will neither eliminate all economically beneficial or productive use of the applicants' property, nor unreasonably limit the owner's reasonable investment-backed expectations of the subject property. The applicants continue to have reasonable use of the site because denial of the proposed deck does not impact the existing single family residence. There are also feasible alternatives to the proposed project, such as retaining the remaining deck without repairing the failed/damaged northwest portion of the deck, or removing portion of the deck approved in 1979 if the deck cannot be maintained without a caisson foundation and maintaining the original 4-ft. wide deck providing access along the northerly half of the residence, or a more minor repair and maintenance project that would not constitute new development.

H. LOCAL COASTAL PROGRAM

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 an IP 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, there is no certified LCP at this time.

As discussed in the above findings, the proposed residential development is inconsistent with the policies of the LUP. It is inconsistent with the LUP's coastal hazards and visual resource protection policies and as well as Chapter 3 policies of the Coastal Act previously discussed in this staff report, specifically, Sections 30253,30240(b) and 30251. Development on the coastal bluff would cause adverse impacts to the natural landform and to coastal scenic resources. Section 30251 of the Coastal Act states that permitted development should minimize landform alteration, visual impacts and the cumulative adverse impacts that would occur if other similar bluff top lots develop the bluff face in the manner now proposed at the subject site. When the Commission reviews a proposed project that is inconsistent with the certified LUP, there are several options available to the Commission. In most cases, the Commission will approve the project but impose reasonable terms and conditions to bring the project into conformance with the LUP. In other cases, the range of possible changes is so significant as to make conditioned approval infeasible. In this situation, the Commission must deny the proposed project because the proposed project is significantly out of conformance with the Coastal Act Sections 30251 and 30253 and due to the inadequate coastal blufftop setback, per LUP policies. Additionally, approval of the proposed development would 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). Therefore, the project is found inconsistent with the policies in the City's certified LUP and Chapter 3 policies of the Coastal Act and must be denied.

I. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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 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. As such, the project is exempt for CEQA's requirements regarding consideration of mitigation measures and alternatives. The Commission, however, determines that would have adverse environmental impacts. There are other feasible alternatives or mitigation measures available which would lessen significant adverse impacts the project would have on the environment such as limiting the size of the bluff deck to the minimum necessary to provide safe access along the bluff facing portion of the primary residence. Therefore, the Commission finds that the proposed project is not the least environmentally damaging feasible alternative and cannot be found consistent with the requirements of the Coastal Act to conform to CEQA and must be denied.

Appendix A - Substantive File Documents

- City of San Clement Land Use Plan

- Limited Geotechnical Investigation for the Rear Yard Deck Support Repair, Located at 2006 Calle de los Alamos, San Clemente, California by David H. Lee & Associates, Inc. dated October 17, 2017.

(G:\E Files for CDP Applications\2018 E Files for CDPs\5-18-0327 (Fetterly)\Hearing 01 (September 2019)\W26c-9-2019-report.docx)