

CALIFORNIA COASTAL COMMISSION

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W12c

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-20-0006

Co-applicants: Marquita LLC
City of San Clemente

Location: 257, 259, and 261 W. Marquita, San Clemente,
Orange County

Project Description: Coastal bluff repair/stabilization (across 3 lots at 257, 259, and 261 W. Marquita) consisting of 13,475 cu. yds. of cut and 8,714 cu. yds. of fill for complete bluff reconstruction by benching the bluff for placement of compacted fill, bluff drainage improvements, and restoration of native vegetation; demolition of a 3,197 sq. ft. 2-story duplex; construction of a 25-ft. tall, 3-story (including basement) 9,145 sq. ft. duplex, including 4-car garage, 1,906 sq. ft. patio/deck area, pool/spa, and bluff top drainage improvements at 259 W. Marquita; and request for after-the-fact removal of unpermitted development at the toe of bluff consisting of a wood retaining wall and incorporation of grading of landslide material at toe of bluff into the proposed bluff stabilization project.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed Coastal Development Permit (CDP) application is from two co-applicants, Marquita LLC, the property owner of 259 W. Marquita Commission on a bluff top and bluff slope lot and the City of San Clemente, the property owner of the parcel at the toe of the bluff containing the City's Sewer Beach Trunk Pipeline and sewer infrastructure. The applicants propose a comprehensive plan for a coastal bluff repair/stabilization projects across 3 private bluff lots at 257, 259, and 261 W. Marquita and the City lot running the length of the bluff toe. The owners at 257 and 261 W. Marquita, though not co-applicants have provided consent to the proposed work on the portions of their property in order to stabilize the coastal bluff slope. The project consists of a coastal bluff stabilization project in response to a 2015 landslide. The landslide continues to be active and is threatening existing development (i.e., the City's sewer line infrastructure) at the toe of bluff.

Thus, the applicants have joined together for a comprehensive plan to repair and stabilize the coastal bluff by proposing 13,475 cu. yds. of cut and 8,714 cu. yds. of fill for complete bluff reconstruction by benching the bluff for placement of compacted fill and geogrid, bluff drainage improvements, and restoration of native vegetation. In order to achieve the proposed method of bluff repair, the applicants find it necessary to demolish the existing 3,197sq. ft. 2-story duplex at 259 W. Marquita in order to lower the flat/level building pad area by 10-14 ft. from the existing elevation of about 115 ft. to a proposed new elevation of 101.4 ft. By lowering the pad 14 ft., the proposed cut will greatly reduce the driving forces contributing to the instability of the bluff, and together with the proposed slope reconstruction and geogrid would stabilize the bluff. This amount of grading at 259 W. Marquita will match elevations at the adjacent properties; the property to the west has an elevation of 101.5 ft. and the property to the east has a 104 ft. elevation. The owner of 259 W. Marquita then proposes the construction of a 25-ft. tall, 3-story (including basement) 9,145 sq. ft. duplex, including 4-car garage, 1,906 sq. ft. patio/deck area, pool/spa, and hardscape improvements.

However, the proposed new residential development at 259 W. Marquita would incidentally benefit from the bluff reconstruction project required to protect existing pre-Coastal Act City infrastructure at the toe of the bluff for its own stability and structural integrity. As described in the staff report, there is no feasible alternative to the proposed bluff protective device method of bluff restoration (i.e., demolish existing residential development at the bluff top in order to remove soil from the bluff top and regrade the bluff slope by the conventional earthwork construction of a buttress shear key along the toe portion of the slope/bluff and benching into competent materials of the slope with geogrid reinforcement) that could both protect the existing sewer infrastructure at the coastal bluff toe and remain consistent with the Coastal Act Section 30253 requirement that new development in any way require the construction of protective devices that would substantially alter natural landforms along bluffs. The Commission finds that the new residential development portion of the proposed project in this case, may be authorized using the "override" provisions of 30235 of the Coastal Act permitting construction that alters natural shoreline processes when required to

5-20-0006 (Marquita LLC and City of San Clemente)

protect existing structures because it could not be found consistent with all other applicable provisions of the Coastal Act, so the proposed new residential development is tied to its compliance with the provisions of 30235.

The applicants also request after-the-fact removal of unpermitted development at the toe of bluff consisting of a wood retaining wall and incorporation of grading of landslide material at toe of bluff into the proposed bluff stabilization project. The work was conducted by the City in response to threats to the municipal sewer infrastructure by the landslide material.

Staff recommends that the Commission **APPROVE** coastal development permit application 5-20-0006, as conditioned. Part A of the Special Conditions pertain to the coastal bluff repair portion of the proposed development and Part B of the Special Conditions pertain to the proposed new residential development at 259 W. Marquita portion of the proposed development. The motion is on page 5. The standard of review is Chapter 3 of the Coastal Act and the City's certified Land Use Plan used for guidance.

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[Exhibit 1 – Vicinity Map/Aerial Photos](#)

[Exhibit 2 – Topographic Survey \(Pre-Bluff Slide\)](#)

[Exhibit 3 – Figure Depicting Bluff Slide](#)

[Exhibit 4 – Bluff Slide Site Photographs](#)

[Exhibit 5 – Unpermitted Development at the Bluff Toe Photographs](#)

[Exhibit 6 – Rough Grading Plan/Geologic Cross-Sections](#)

[Exhibit 7 – Proposed Bluff Repair Plan \(Reinforced Fill and Geogrid\)](#)

[Exhibit 8 – Erosion Control Plan and Construction Staging Plan](#)

[Exhibit 9 – Proposed Bluff Revegetation/Habitat Restoration Plan](#)

[Exhibit 10 – Residential Development Plans](#)

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[Exhibit 12 – Revised Bluff Setback for Residential Development](#)

MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 5-20-0006 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. 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 Commissioners present.

Resolution:

The Commission hereby approves the Coastal Development Permit for the proposed project 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.

I. 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 applicant 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 applicant to bind all future owners and possessors of the subject property to the terms and conditions.

II. SPECIAL CONDITIONS

A. Special Conditions Applicable to the Proposed Bluff Repair

This permit is granted subject to the following special conditions:

1. Revised Final Grading Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the co-applicants shall submit, for the review and written approval of the Executive Director, two copies of a final revised Grading Plan. The revised final Grading Plan shall conform with the Rough Grading Plan submitted to the Commission, titled "Rough Grading Plan for Proposed Bluff Stabilization and Lowering Pad at 259 West Marquita" prepared by Peter and Associates dated 3/10/16, except that it shall be modified as required below.

- a) The plan shall comply with the revised grading and revised bluff edge as demonstrated in Exhibit #12 of this staff report.
- b) The plan shall be prepared and certified by a licensed professional or professionals as applicable (e.g., certified engineering geologist and/or geotechnical engineer), based on current information and professional standards, and shall be certified to ensure that they are consistent with the Commission's approval and with the recommendations of any required technical reports.

The co-applicants 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. Assumption of Risk, Waiver of Liability and Indemnity. By acceptance of this permit, the co-applicants acknowledge and agree (i) that the site may be subject to hazards from bluff and slope instability, erosion, landslides and wave uprush, storm conditions, and sea level rise; (ii) that no additional future shoreline protective devices shall be constructed on the subject parcels; (iii) to accept responsibility for the removal of any structural debris resulting from landslides, slope failures or erosion on the subject parcels (iv) to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (v) 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 (vi) 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.

3. Staging and Storage of Construction Materials and Equipment. Construction material and equipment shall not be staged or stored on the beach or sensitive habitat areas. Any accidental spills of construction equipment fluids shall be immediately contained on site and disposed of in an environmentally safe manner as soon as possible. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the co-applicants shall submit a plan for the review and approval of the Executive Director which indicates that the construction staging area(s) and construction corridor(s) will avoid impacts to public access, to beach areas or to sensitive habitat areas.

1. The plan shall demonstrate that:
 - (a) Construction equipment or activity shall not occur outside the staging area
 - (b) Public parking areas shall not be used for staging or storage of equipment
 - (c) Beach and trail areas shall not be used as staging or storage areas
 - (d) The staging area for construction of the project shall not obstruct vertical or lateral access to the beach or coastal trail
 - (e) No wetland and/or upland areas vegetated with native plants shall be used for staging or storage areas.

2. The plan shall include, at a minimum, the following components:
 - (a) A site plan that depicts:
 - (1) Limits of the staging area(s)
 - (2) Construction corridor(s)
 - (3) Construction site
 - (4) Location of construction fencing and temporary job trailers, if any

The co-applicants shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Habitat Mitigation and Monitoring Plan. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the co-applicants shall submit to the

Executive Director for review and written approval, a final detailed mitigation and monitoring plan for all impacts to sensitive biological resources associated with the proposed development. Said plan shall be in substantial conformance with the plan prepared by LSA Associates, Inc. and dated July 2016 and shall include the following:

- A. Preparation of detailed site plans clearly delineating all impacted upland habitat areas and their exact acreage. Both temporary and permanent impacts shall be included in this delineation.
- B. All impacts to upland habitat (temporary and permanent) shall be mitigated through restoration/enhancement at not less than a 1:1 mitigation ratio. If feasible, all mitigation shall be located within the project site. In addition, a detailed site plan of the mitigation areas shall be included and shall include any proposed temporary irrigation, including its proposed duration and timing.
- C. A Restoration and Monitoring Plan shall be prepared by a qualified restoration ecologist and shall at a minimum include the following:
 - i. A baseline assessment, including photographs, of the current physical and ecological condition of the proposed restoration site, including, a description and map showing the area and distribution of vegetation types, and a map showing the distribution and abundance of sensitive species. Existing vegetation and sensitive species shall be depicted on a map that includes the footprint of the proposed restoration.
 - ii. A description of the goals of the restoration plan, including, as appropriate, any changes to site topography, hydrology, vegetation types, presence or abundance of sensitive species, and wildlife usage. Final Success Criteria for the habitat restoration. Any anticipated measures for adaptive management in response to climatic changes are to be included.
 - iii. A restoration plan including the planting palette (seed mix and container plants), planting design, source of plant material, plant installation methods and timing, erosion control measures, duration and use of irrigation, and measures for remediation if success criteria (performance standards) and not met. The planting palette shall be made up exclusively of native plants that are appropriate to the habitat and region and that are grown from seeds or vegetative materials obtained from local natural habitats so as to protect the genetic makeup of natural populations. Horticultural varieties shall not be used.
 - iv. A plan for documenting and reporting the physical and biological "as built" condition of the restoration or mitigation site within 30 days of completion of the initial restoration activities. This is a simple report describing the field implementation of the approved restoration or mitigation plan in narrative and photographs, and

reporting any problems in the implementation and their resolution, and any recommendations for future adaptive measures. The “as built” assessment and report shall be completed by a qualified biologist or restoration ecologist, who is independent of the installation contractor.

- v. A monitoring and maintenance plan of the restoration/mitigation site including:
 - a. A schedule
 - b. Interim performance standards
 - c. The monitoring period (Not less than 5 years).
 - d. Provision for submission of annual reports of monitoring results to the Executive Director for review and written approval for the duration of the required monitoring period, beginning the first year after submission of the “as-built” report. Each report shall be cumulative and shall summarize all previous results. Each report shall document the condition of the restoration with photographs taken from the same fixed points in the same directions. Each report shall also include a “Performance Evaluation” section where information and results from the monitoring program are used to evaluate the status of the restoration project in relation to the interim performance standards and final success criteria.
 - e. Provisions for the submittal of a revised or supplemental restoration plan to be submitted if an annual monitoring report shows that the restoration effort is falling below the interim performance standards. Triggers shall be included in the plan to define the level of nonperformance at which the submittal of a revised or supplemental restoration plan will be required. The applicant shall submit a revised or supplemental restoration program within 90 days to address those portions of the original program which did not meet the approved success criteria.
- vi. Provision for submission of a final monitoring report to the Executive Director for review and written approval at the end of the final monitoring period. The final report must be prepared by a qualified restoration ecologist. The report must evaluate whether the restoration site conforms to the goals and success criteria set forth in the approved final restoration program. If the final report indicates that the restoration project has been unsuccessful, in part or in whole, based on the approved success criteria, the applicant shall submit within 90 days a revised or supplemental restoration plan to compensate for those portions of the original plan which did not meet the approved success criteria. The permittee shall undertake mitigation and monitoring in accordance with the approved final, revised upland restoration or mitigation plan following all procedures and reporting

requirements as outlined for the initial plan until all performance standards (success criteria) are met. The revised restoration plan shall be processed as an amendment to this coastal development permit unless the Executive Director provides a written determination that no permit amendment is legally required.

The co-applicants shall undertake mitigation and monitoring in accordance with the approved final, revised upland mitigation plan. Any proposed changes to the approved final, revised plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director provides a written determination that no amendment is legally required.

B. SPECIAL CONDITIONS APPLICABLE TO THE PROPOSED RESIDENTIAL DEVELOPMENT AT 259 W. MARQUITA

1. Revised Final Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the co-applicant Marquita LLC shall submit, for the review and approval of the Executive Director, two (2) full-size sets of the following revised final plans that have been reviewed and approved by the City of San Clemente, modified as required below.

a) **Architectural Plan** that conforms with the plans submitted to the Commission titled "Project X, 259 W. Marquita, San Clemente, CA" prepared by Horst Architects dated 6/18/2018, except that they shall be modified as required below.

(1) Provide a 25-foot structural setback for the proposed residential structure from the reconstructed bluff edge as depicted on **Exhibit #12** of this staff report.

(2) Provide a 25-foot bluff edge setback for any proposed pool and/or spa.

(3) Provide a 10-foot bluff edge setback for any proposed accessory structures such as decks, patios, and walkways which are at grade and do not require foundations.

b) **Bird Strike Prevention.** Revised final plans shall depict the location, design, height and materials of deck railings, fences, screen walls and gates.

(1) Coastal bluff top deck railing systems, fences, screen walls and gates subject to this permit shall use materials designed to minimize bird-strikes with the deck railing, fence, or gate. Such materials may consist, all or in part, of wood; wrought iron; frosted or partially-frosted glass, or other visually

permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas shall not be installed. All materials shall be maintained throughout the life of the development to ensure continued effectiveness at addressing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications.

- c) **Grading/Drainage Plan** that conforms with the plan submitted to the Commission titled “Grading/Drainage Plan” prepared by Peter and Associates dated 3/10/16, except it shall be modified as required below.

(1) Provide a 25-foot structural setback for the proposed residential structure from the reconstructed bluff edge as depicted on **Exhibit #12** of this staff report.

(2) Provide a 25-foot bluff edge setback for any proposed pool and/or spa.

(3) Provide a 10-foot bluff edge setback for any proposed accessory structures such as decks, patios, and walkways which are at grade and do not require foundations.

All revised plans shall be prepared and certified by a licensed professional or professionals as applicable (e.g., architect, surveyor, geotechnical engineer), based on current information and professional standards, and shall be certified to ensure that they are consistent with the Commission’s approval and with the recommendations of any required technical reports.

The co-applicant Marquita LLC 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. Conformance with Geotechnical Recommendations.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, co-applicant Marquita LLC shall submit, for the Executive Director’s review and approval, along with a copy of each plan, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans including foundation and grading/drainage plans and certified that each of those final plans is consistent with all the recommendations contained in the geologic engineering investigations.
- 3. Landscaping – Drought Tolerant, Non-Invasive Plants.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, co-applicant Marquita LLC shall submit, for the review and written approval of the Executive Director, two (2) sets of landscaping plans, prepared by an appropriately licensed professional which shall include and be consistent with the following:

- a) All blufftop areas disturbed/affected by grading and construction activities not occupied by structural development (including the structure and decks) shall be re-vegetated for habitat enhancement and erosion control purposes;
- b) Any areas disturbed/affected by construction activities in the rear yard (coastal bluff-facing) shall be planted and maintained for erosion control and native habitat enhancement purposes. To minimize the need for irrigation and minimize encroachment of non-native plant species into adjacent existing native plant areas, all landscaping adjacent to the coastal bluff shall consist of drought tolerant plants native to coastal Orange County and appropriate to the habitat type. Native plants shall be from local stock wherever possible. Landscaped areas in the front yard (street-facing) area shall consist of native or non-invasive, non-native drought tolerant plant species;
- c) 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 utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>).
- d) No permanent in-ground irrigation systems shall be installed on the coastal bluff-facing portion of the site. Temporary above ground irrigation is allowed to establish plantings. Use of reclaimed water for irrigation is encouraged. If using potable water for irrigation, only drip or microspray irrigation systems may be used. Other water conservation measures shall be considered, such as weather based irrigation controllers.
- e) All planting shall be completed within 60 days after completion of construction;
- f) All vegetation shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscaping plan.

The co-applicant Marquita LLC 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 provides a written determination that no amendment is required.

4. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris. The co-applicant Marquita LLC shall comply with the following construction-related requirements:

- (a) No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
- (b) No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas.
- (c) Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
- (d) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- (e) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- (f) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- (g) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- (h) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- (i) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.

- (j) The discharge of any hazardous materials into any receiving waters shall be prohibited.
- (k) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures 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. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- (l) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity
- (m) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

5. Assumption of Risk, Waiver of Liability and Indemnity. By acceptance of this permit, the co-applicant Marquita LLC acknowledges and agrees (i) that the site may be subject to hazards from bluff and slope instability, erosion, landslides and wave uprush, storm conditions, and sea level rise; (ii) that no additional future shoreline protective devices shall be constructed on the parcel; (iii) to accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures or erosion on this site (iv) to assume the risks to the co-applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (v) 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 (vi) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

6. No Future Additional Bluff or Shoreline Protective Device(s) to Protect the Proposed Development. By acceptance of this permit, Marquita LLC agrees, on behalf of itself and all other successors and assigns, that the bluff slope reconstruction on the subject site shall not be augmented or maintained for purposes of protecting the residential development approved by this coastal development permit and that no new shoreline or bluff protective device(s) shall ever be constructed to protect the residential development approved pursuant to Coastal Development Permit 5-20-0006 including, but not limited to, residential structures, foundations, patios, decks, and any future improvements, in the event

that the development is threatened with damage or destruction from erosion, landslides, waves, storm conditions, flooding, sea level rise or other natural coastal hazards in the future. By acceptance of this permit, the applicant agrees on behalf of itself and all other successors and assigns, to apply for a coastal development permit for removal of the existing buried caissons if the caissons should ever become exposed, or at such time as development on the site is proposed to be demolished and the site redeveloped in a manner not relying on the existing caissons. By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct any devices to support the bluff that may exist under Public Resources Code Section 30235.

By acceptance of this Permit, the co-applicant Marquita LLC further agrees, on behalf of itself and all successors and assigns, that the landowner is required to remove the development authorized by this permit if the City or any other government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to natural hazards and that there are no measures that could make the structures suitable for habitation or use without the use of bluff protective devices. The permittee shall obtain a coastal development permit for removal of approved development unless the Executive Director provides a written determination that no coastal development permit is legally required. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

7. **Future Improvements.** This permit is only for the development described in Coastal Development Permit 5-20-0006. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to this development governed by the Coastal Development Permit 5-20-0006. Accordingly, any future improvements to the structures authorized by this permit, including but not limited to, repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit 5-20-0006 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
8. **Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the co-applicant Marquita LLC shall submit to the Executive Director for review and approval documentation demonstrating that it has executed and recorded against the parcel at Lot 23, Block 17, Tract No. 793 (APN 692-095-07) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject

to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the parcel at Lot 23, Block 17, Tract No. 793 (APN 692-095-07) governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

III. FINDINGS AND DECLARATIONS

A. Project Location and Description

The project site is located primarily at 259 W. Marquita in the City of San Clemente, Orange County (**Exhibit 1**). Additionally, the City's Linda Lane sewer pump station is located on City property at the toe of the bluff at 259 W. Marquita. Work will occur at 259 W. Marquita, along the bluff face seaward of 259 W. Marquita, and along the bluff face seaward of the residences, but still on the private lots located at 257 and 261 W. Marquita and on public property owned by the City at the of the bluff. The property owner at 259 W. Marquita and the City of San Clemente are co-applicants in this CDP application. The property owners at 261 and 257 W. Marquita declined to be co-applicants but have provided permission for work onsite and are in support of the proposed project.

The site at 259 W. Marquita is designated Residential Medium Density (RM) in the San Clemente certified Land Use Plan (LUP). That site includes a relatively flat pad developed with a two-story, 3,197 sq. ft. duplex atop a coastal bluff approximately 115 ft. above sea level, and the bluff face, with the bottom of the slope approximately 20 ft. above sea level. Surrounding development consists of multi-family structures. 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 nearest public beach access and access to the Coastal Trail and public beach is available at the Linda Lane Access Point located approximately 325 ft. downcoast of the subject site. Access to the beach is via a protected pedestrian at-grade railroad crossing.

The project site is in the Commission's permit jurisdiction as the City does not currently have a certified LCP. Chapter 3 policies of the Coastal Act are the standard of review with the City's certified Land Use Plan (LUP) serving as guidance.

In 2015, a deep bluff failure occurred mostly along the coastal bluff at 259 W. Marquita, with smaller sections of bluff failure seaward of the adjacent lots at 261 and 257 W. Marquita. The slide extended from the top to the toe of the bluff with a width of about 30 ft. at the top and 15 ft. at the toe portion. The landslide involved terrace deposits and the underlying bedrock materials.

The applicants are proposing an integrated coastal bluff repair/stabilization project across the entirety of the lot at 259 and smaller portions of the adjacent lots at 261 and 257 W. Marquita consisting of four components: (a) bluff stabilization consisting of 13,475 cu. yds. of cut and 8,714 cu. yds. of fill for complete bluff reconstruction by benching the bluff for placement of compacted fill and geogrid; (b) demolition of the existing 3,197 sq. ft. 2-unit duplex at 259 W. Marquita, required in order to grade/cut the bluff top 10-14ft. to accommodate the proposed bluff stabilization/reconstruction method; (c) construction of a new three-story including a basement level 9,145 sq. ft. two-unit duplex, pool/spa and hardscape improvements; and (d) a request for after-the-fact removal of unpermitted development at the toe of bluff consisting of a wood retaining wall and incorporation of grading of landslide material at toe of bluff into the proposed bluff stabilization project. The project components are described in greater detail below.

The bluff stabilization project would occur primarily on the bluff located below the residential structures at 259 W. Marquita (60%), with 23% below 261 W. Marquita and 17% below 257 W. Marquita (**Exhibit 3**). The failed bluff portion is proposed to be removed and reconstructed by the conventional earthwork method of construction of a buttress shear key along the toe portion of the slope/bluff and benching into competent materials of the slope (i.e., removal of all failed/unsuitable materials). The bluff slope would be reconstructed with geogrid reinforcement and a 2:1 gradient (horizontal to vertical) for the lower 40-ft. portion and about 1:1 gradient for the upper 35- to 40-ft. portion of the slope of the bluff. No export of soils is proposed; all soils will be used to rebuild the bluff. Drainage improvements along the bluff face and restoration of native vegetation is proposed. Proposed bluff stabilization plans are included as **Exhibit 6**.

Additional bluff earth movement continues to occur at the subject site and adjacent properties since the original 2015 failure. Additional movements of the slide have continued as water infiltrates into landslide materials and lubricates the existing slide plane, and slide debris has slid down and in the past few years reached the City's Linda Lane municipal sewer pump station located at the toe of the bluff below 259 W. Marquita. In 2018, in response to what the City considered an immediate threat to public infrastructure, the City constructed a 6-ft. tall shoring system consisting of wood lagging and steel piles to act as debris barrier. In February 2019, due to landslide materials beginning to overburden the wood lagging, the City expanded the wood lagging to 8 ft. tall, graded the toe of bluff, and placed hydro augers to remove moisture from the bluff soils. The City undertook the development without a coastal development permit. The City has joined as co-applicant in this coastal development permit application and is requesting after-the-fact approval of the unpermitted work undertaken in response to what they considered an emergency situation. The unpermitted wood

lagging wall is proposed to be removed after the bluff reconstruction is completed, and the unpermitted grading on the City's property would be incorporated into the overall bluff reconstruction.

In addition, demolition is proposed of the existing (built in 1959) residential structure at 259 W. Marquita. To assist the proposed bluff stabilization method, the co-applicants propose to lower the flat/level building pad area by 10-14 ft. maximum, from the existing elevation of about 115 ft. to a proposed new elevation of 101.4 ft. By lowering the pad 14 ft., the proposed cut will greatly reduce the driving forces contributing to the instability of the bluff, and together with the proposed slope reconstruction and geogrid would stabilize the bluff. By lowering the existing pad elevation, the site will match elevations at the adjacent properties; the property to the west has an elevation of 101.5 ft. and the property to the east has a 104 ft. elevation. The applicant proposes construction of a new two-unit, 25-ft. tall, three-story (including a basement), approximately 8,179 sq. ft. duplex with a 966 sq. ft. four-car garage, and 1,906 sq. ft. in decks, pool/spa, and bluff top drainage improvements are proposed at the bluff top at 259 W. Marquita. Project plans for the proposed two-unit, three-story duplex are included as **Exhibit 9**.

B. Coastal Hazards

Section 30235 of the Coastal Act states, in pertinent part:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

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

GEN-7 Setback Requirements. Setback requirements from bluff and canyon edges and biological resources shall have priority over street and rights-of-way setback requirements, while maintaining a minimum five feet setback from the property line.

GEN 8 Taking of Private Property. The City does not have the power to grant or deny a permit in a manner which will cause a physical or regulatory taking of private property, without the payment of just compensation. This policy is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States (Coastal Act Section 30010).

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-18 Limits on Bluff or Shoreline Protective Devices. Limit the use of protective devices to the minimum required to protect coastal-dependent uses, or existing structures or public beaches in danger of erosion, unless such devices are otherwise consistent with the public access and recreational policies of the Coastal Act and all relevant policies of the LCP. Protective devices shall be permitted when required to serve coastal dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Any approved protective devices shall also be designed to avoid, or mitigate where unavoidable, impacts on public access and recreation, habitat, scenic views, beach width and other coastal resources, and they shall not substantially impair public trust resources.

HAZ-19 No Right to Future Bluff or Shoreline Protective Device for New Development. New development, including Major Remodels, shall be sited and designed to avoid the need for shoreline protective devices over the life of the structure(s), except when such development is coastal-dependent and there is no feasible alternative that avoids the need for a shoreline protective device (and in such cases such devices shall be limited to the maximum feasible degree). When consistent with GEN-8, a condition of any CDP issued for new development, including Major Remodels, but excluding coastal-dependent development, in areas subject to coastal hazards, including but not limited to tidal and storm flooding, wave runup, and erosion, as influenced by sea level rise over time, shall require the property owner(s) to record deed restriction(s) on all properties on which proposed development is sited that acknowledges that, pursuant to Section 30235 of the Coastal Act and HAZ-18, the owner has no right to construct shoreline protection to protect the new development approved pursuant to the permit and that expressly waives any right to apply to construct such protection pursuant to Section 30235 of the Coastal Act and 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 Hillside, 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-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-42 New Development and Accessory Structures in Bluff Setbacks. All new development, except for public access facilities, including additions to existing structures, on blufftop lots shall be landward of the setback line required by Policy HAZ-41. This requirement shall apply to the principal structure, additions and accessory or ancillary structures such as guesthouses, pools, and septic systems, etc. with a foundation. Accessory structures such as decks, patios, and walkways, which are at grade and do not require foundations may extend into the setback area and shall be sited in accordance with a stringline, but no closer than 10 feet to the bluff edge, provided such accessory structures:

- a. are consistent with all other applicable LCP policies;
- b. are sited and designed to be easily relocated landward or removed without significant damage to the bluff area;
- c. will be relocated and/or removed and the affected area restored to natural conditions when threatened by erosion, geologic instability, or other coastal hazards

d. Are removed by the landowner in the event that portions of the development fall to the bluffs, beach or ocean before they are removed/relocated, along with all recoverable debris, and the material lawfully disposed of in an approved disposal site;

e. Do not require any bluff or shoreline protective device.

HAZ-43 Blufftop Swimming Pool Setback. The minimum setback for swimming pools is the greater of the following distances: 25 feet from the bluff edge or the setback distance recommended as a result of the geotechnical review required by policy HAZ-8 or HAZ-9. All new or substantially reconstructed swimming pools shall incorporate a leak prevention/detection system.

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-46 Bluff, Canyon and Shoreline Landscaping. All landscaping for new bluff, canyon or shoreline development or redevelopment shall consist of native, non-invasive, drought-tolerant, and fire-resistant species. Any permanent irrigation system shall be low volume (drip, micro jet, etc.) and shall only be permitted on the street facing portion of the lot. Irrigation systems along the bluff, canyon or shoreline portion of a lot shall only be allowed on a temporary basis for initial plant establishment and shall be removed after vegetation has established. Excessive irrigation on bluff and canyon lots is prohibited.

HAZ-56 Stabilization of Landslides. In the event that remediation or stabilization of landslides that affect existing structures or that threaten public health or safety is required, multiple remediation or stabilization techniques shall be analyzed to determine the least environmentally damaging alternative. Maximum feasible mitigation shall be incorporated into the project in order to minimize adverse impacts to coastal resources and to preclude the need for future mitigation.

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.

City of San Clemente LUP Definitions

“BLUFF EDGE” The upper termination of a bluff, cliff, or seacliff: In cases where the top edge of the bluff is rounded away from the face of the bluff as a result of erosional processes related to the presence of the steep bluff face, the bluff line or edge shall be defined as that point nearest the bluff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the bluff. In a case where there is a step like feature at the top of the bluff face, the landward edge of the topmost riser shall be taken to be the bluff edge. Bluff edges typically retreat landward due to coastal erosion, landslides, development of gullies, or by grading (cut). In areas where the bluff top or bluff face has been cut or notched by grading, the bluff edge shall be the most landward position of either the current or historic bluff edge. In areas where fill has been placed near or over the historic bluff edge, the original natural bluff edge, even if buried beneath fill, shall be taken to be the bluff edge.

“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.

As described above, the proposed project is an integrated coastal bluff repair/stabilization project across the entirety of the lot at 259 and smaller portions of the adjacent lots at 261 and 257 W. Marquita consisting of four components: (a) bluff stabilization consisting of 13,475 cu. yds. of cut and 8,714 cu. yds. of fill for complete bluff reconstruction by benching the bluff for placement of compacted fill reinforced with geogrid; (b) demolition of the existing two-unit duplex at 259 W. Marquita, required in order to grade/cut the bluff top 10-14 ft. for the proposed bluff stabilization/reconstruction method; (c) construction of a new three-story including a basement level two-unit duplex at 259 W. Marquita and (d) request for ATF approval of unpermitted development.

Coastal Act Section 30253 prohibits development that would “in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.” Coastal Act Section 30251 requires that development minimize alteration of natural landforms (such as coastal bluffs), and also requires that scenic and visual qualities be protected. The Coastal Act limits construction of bluff protective

devices because they tend to have a variety of negative impacts on coastal resources including adverse effects on shoreline sand supply, public access, scenic views, natural landforms. The City's certified LUP also includes similar policies that require landform alteration be minimized, and that scenic qualities be protected. For all these reasons, the Commission would typically have to deny applications for such devices, were it not for Section 30235.

The proposed bluff stabilization project would be consistent with the portions of Section 30253 that require that development minimize risk 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. However, the project must also be consistent with other portions of Section 30253 that prohibit new development that would in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The proposed development would alter the natural landform of the subject coastal bluff, but would not require future additional bluff stabilization. Section 30235 requires that such bluff stabilization be permitted, even if it alters natural landforms and shoreline processes, when required to protect existing structures and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

Here, the bluff stabilization project alternative that would result in a reconstructed bluff slope mimicking the pre-slide bluff conditions would require the demolition and removal of the existing pre-Coastal residential structure located at the bluff top of 259 W. Marquita and grading the bluff top down 10-14 ft. The applicants propose to replace it with new residential development after the bluff stabilization is complete; the proposed the new residential structure at the bluff top would then rely on the newly cut, graded bluff slope reinforced with geogrid. The various parts of this project are interdependent, and ultimately rely on Section 30235's override function for Commission approval. Because this bluff stabilization project is required to protect existing sewer infrastructure, and requires the demolition of the existing residential structure, construction of a new replacement residence will inherently rely on the bluff stabilization work.

Proposed Bluff Stabilization/Reconstruction of Site and Adjacent Properties

As previously stated, a bluff failure occurred in June 2015 at the top of the slope, approximately 115 ft. above sea level. The elevation of the bottom of the slope is approximately 20 ft. above sea level. The majority (60%) of the bluff failure is located below 259 W. Marquita, 23% is located below 261 W. Marquita, and 17% is below 257 W. Marquita. The failure on the bluff portion of 259 W. Marquita is a deep-seated failure that extends from the top of bluff to the bluff toe and has a width of about 30-ft. at the top of bluff and 15-ft. width at the toe portion. No evidence of shallow groundwater was found in exploratory borings according to the applicant's geological reports. A high natural coastal bluff slope descends 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.

The applicant proposes a complete bluff reconstruction by benching the bluff for placement of compacted fill. The failed bluff portion would be removed and reconstructed by the conventional earthwork method of construction of a buttress shear key along the toe portion of the slope/bluff and benching into competent materials of the slope (i.e., removal of all failed/unsuitable materials). The bluff slope would be reconstructed with geogrid reinforcement in order to obtain the required 1.5 (static) and 1.1 (seismic) factors of safety. In order to keep the reconstructed face of the bluff relatively similar to the natural/pre-existing (prior to failure) slope face configuration, the reconstructed bluff face will have a 2:1 gradient (horizontal to vertical) for the lower 40-foot portion and about 1:1 gradient for the upper 35- to 40-ft. portion of the bluff slope. Additionally, the applicant's geotechnical consultant also recommends lowering the building pad by 14 ft. in order to reduce the bluff lateral driving force and increase the bluff's stability. By lowering the existing pad elevation, the site will match elevations at the adjacent properties; the property to the west has an elevation of 101.5 ft. and the property to the east has a 104 ft. elevation.

The primary goal of the proposed slope regrading with geogrid reinforcement bluff stabilization is to protect existing development at the toe of the bluff consisting of the pre-Coastal Act sewer system infrastructure and the Linda Lane municipal sewer pump station. The secondary goal is to have the buttress fill recreate the slope in approximately the same landform that previously existed prior to the landslide. Additionally, the landslide/bluff failure currently threatens the stability of existing residential development located at the bluff top, in particular, the existing structure at 259 W. Marquita. According to information provided by the applicant's geotechnical consultant, the main deep seated bluff failure at 259 W. Marquita triggered small failures on the upper portion of the bluff on the adjacent sites, 261 W. Marquita bluff (to the north) and 257 W. Marquita (to the south). Without stabilization of the existing 259 W. Marquita landslide, additional surficial failure of existing fill and terrace deposits will continue at the adjacent sites. At 261 W. Marquita, additional surficial failure could reach the area of existing caissons supporting the rear deck, exposing the caissons.

The proposed bluff repair must be carried out in a manner which meets the minimum factor of safety of 1.5, which is required by the City's LUP Policy HAZ-8. The co-applicants' geotechnical consultant has determined that the proposed bluff repair project is feasible and can achieve a minimum factor of safety of 1.5. The proposed bluff repair project is beneficial since it stabilizes the bluff slope and greatly reduces future slide potential, thus protecting the existing development (the public works facility) at the toe of the bluff.

Bluff Stabilization Project Alternatives

The applicant considered alternatives to the proposed chosen method of slope repair, including:

- conventional shotcrete walls,
- tie-backs on the escarpment face,

- a row of 12 six-ft. diameter caisson/soldier piles connected with grade beams and tie backs,
- buttress fills without lowering the existing building pad area at the top of bluff,
- creating an elevated flat/level area about 10-15 ft. high along the toe portion of bluff thus flattening the gradient of the bluff, and
- a large retaining wall/debris wall at the toe of the slope.

Additionally, the project alternative of moving the pump station was considered by the City of San Clemente, which ultimately determined that it would be infeasible, as the entire sewer system would have to be moved. The proposed bluff re-construction by the conventional earthwork method (benching and placement of compacted fill with geogrid) alternative was selected as this would result in the reconstructed face of the bluff relatively similar to the pre-existing slope face configuration (prior to the bluff failure).

While the other alternatives may provide site stability, they would result in hardening of the coastal bluff and would not provide for the proper drainage of the site. Thus, the alternatives which did not address drainage on the bluff slope were rejected as were alternatives which would not achieve an acceptable level of safety without similar excavation and recompaction (landform alteration) to what is being proposed here. The proposed project is a technically acceptable method to achieve long term stability of the site and adjacent properties. Drainage would be collected on site to minimize off site adverse impacts from erosion, and would be discharged in a manner that minimizes bluff erosion. The repaired bluff would mimic the original bluff profile and tie into the slope profile of the adjacent properties in a manner that does not result in significant elevational differences at the interface between the subject site and adjacent properties. The geotechnical consultant has indicated that the proposed project would not result in adverse impacts to adjacent off-site properties. The minimum factor of safety for new development of 1.5 would be met.

Based on the applicants' submitted geotechnical reports, the proposed project would minimize further occurrences of landslides on the site as the proposed project: would restore slope stability by reducing driving forces, reconstructing the bluff face and eliminating the current, oversteepened condition, and increasing lateral stability through the use of geogrid, 2) would remove the major identified slide plane by excavating below the identified failure plane, 3) provides drainage controls to address issues contributing to landslides, 4) includes installation of inclinometers to monitor movement of the land during construction, and 5) would revegetate the bluff face. The Commission's staff geologist concurs.

Additionally, unpermitted development at the toe of the bluff would be removed, or incorporated as part of the overall work to repair the bluff slope at the project site. Temporary shoring, hydro-augers, grading/removal of soil/slough, and relocation of felled utility poles have all occurred on City property at the toe of the bluff/toe by the City (co-applicant).

Construction Altering Natural Shoreline Processes (Section 30235)

Section 30235 of the Coastal Act states, in relevant part:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

The subject site is on a coastal bluff. One of the project's primary components involves the regrading and reconstruction of a coastal bluff slope with a buried geogrid structure that would reduce or limit bluff erosion and bluff retreat, thus reducing the amount of bluff material for natural beach replenishment. Bluff retreat and erosion are natural shoreline processes. Therefore, the proposed bluff repair component of the project involves construction that alters natural shoreline processes. Nevertheless, for section 30235 to mandate approval, the Commission must also find that the project: 1) is required to serve coastal-dependent uses or to protect existing structures, and 2) is designed to mitigate adverse impacts on local shoreline sand supply.

The Coastal Act provides these limitations because shoreline and bluff structures can have a variety of negative impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, adjacent properties, and overall shoreline dynamics. The Commission must always consider the specifics of each individual project, but per its precedent on Section 30235, prefers alternatives that avoid construction that alters natural shoreline processes. The Commission has generally interpreted Section 30235 to require the Commission to approve protective devices for existing principal structures in danger from erosion.

The City's sewage pipeline system infrastructure including the Beach Trunk Sewer Line and the Linda Lane Sewer Lift Station is located at the toe of the bluff below 259 W. Marquita. The City's Beach Trunk Sewer pipeline was constructed in the 1930s and thus is existing, pre-Coastal Act development. The existing system extends about three miles from Calafia State Beach in the south to North Beach in the north and runs adjacent to the OCTA railroad corridor. Linda Lane Sewer Pump Lift Station is a significant facility that conveys half of the City's sewer flows (approximately 2 million gallons per day) along the City's Beach Trunk Sewer Line to the Main Sewer Lift Station at North Beach (north of the subject site). In 2001, the Commission approved CDP No. 5-00-333 (City of San Clemente) for improvements and upgrades to the City's Beach Trunk Sewer Line, including replacement of the Linda Lane and La Rambla sewer pump stations.

The walls of the pump station were not designed for lateral load bearing pressure from a possible landslide of the inland coastal bluff. Due to the above average rainfall from December 2018 through March 2019, the active landslide began to move and expand to the south at an increased rate, threatening the City's sewer line system infrastructure

which was specifically sited due to the site's topography and would be infeasible to relocate. In response to risks to the City's sewer system infrastructure caused by the landslide debris, the City constructed an unpermitted vertical protection/wood lagging wall at the bluff toe to temporarily protect the sewer line system infrastructure. Re-grading/ reconstruction of the bluff would remove the risk posed by the active landslide to existing City public works infrastructure. The applicants are seeking after-the-fact approval of development undertaken without a Coastal Development Permit in an attempt to protect public infrastructure and propose to remove the unpermitted wood shoring wall after reconstruction of the bluff slope. The proposed project would resolve the unpermitted development at the site. No additional toe protection wall is currently foreseeable.

Section 30235 requires approval of bluff stabilization that alters natural shoreline processes only when the construction is designed to minimize adverse impacts to shoreline sand supply. The proposed project is designed to mitigate adverse impacts on local shoreline sand supply. At present, coastal bluffs in San Clemente do not significantly contribute to or nourish beach sand supplies due to the location of existing development between the base of the coastal bluffs and the ocean. Citywide, the San Clemente Coastal Trail and the Orange County Transit Authority (OCTA) railroad tracks are located between the base of the bluffs and the ocean. OCTA railroad tracks are protected from erosion by an existing rock revetment. There is a sandy beach between railroad tracks and the ocean, and there is no direct wave attack eroding the toe of the bluff to provide sand nourishment to the beach. Beach sediment here is mostly supplied by onshore transport of offshore sand.

The geotechnical assessment titled Coastal Bluff Retreat Evaluation for 259 W. Marquita estimated bluff top retreat from 1994 to 2015 (21 years) to be 3 inches or an average of 0.14 inch/year. Long-term bluff retreat rates from 1938 to 2015 (77 years) was estimated at 10 inches (+/-), a relatively low rate. Bluff retreat in this area does not contribute a large amount of material to the beach below. Bluff erosion in the area is episodic and occurs sporadically as evident by the 2015 landslide and surficial bluff failure reported to have occurred at the adjacent 261 W. Marquita site in 1997. However, since the construction in the 1880s of the "Surf Line" railroad at the toe of the San Clemente coastal bluffs, these coastal bluffs do not contribute large amounts of sand to the local beaches or contribute to the larger subregional sand supply. The shoreline processes of the subject beach are dominated by cross shore sand exchanges. The sand moves offshore and then back onshore in response to sea conditions which change with the seasons, rather than moving upcoast or downcoast to a new location, never to return. Thus, permanent loss of sand from the subject beach to the offshore littoral drift which would contribute to subregional sand supply is minimal. The sand supply of the subject beach is relatively stable. Since the subject beach and sand supply are somewhat static and isolated from the larger subregional system, the limitation on bluff retreat would not have a significant impact on the sand supply of either the local beach nor on the larger subregional system. Therefore, the specific nature of the subject beach and the local and subregional shoreline processes are such that the any increased reduction in on site bluff material for natural sand replenishment

that would result from the proposed bluff stabilization project, does not constitute an adverse impact on local shoreline sand supply. As mentioned, development along the majority of the coastline of San Clemente relies upon the rock revetment protecting the railroad from erosion and other coastal processes. If the railroad were removed, the “existing structure” the revetment protects would no longer exist, and thus there may be cause for removal of all or parts of the revetment. As long as the railroad and the rock revetment protecting the railroad are in place, the impact to sand supply by the proposed bluff protective device (i.e., geogrid to retain bluff soil) is not a factor in this case.

The proposed bluff repair component of the project involves construction that would alter natural shoreline process. However, the Commission finds that: 1) the proposed project is necessary to protect municipal sewer infrastructure; and 2) the proposed project will not result in adverse impacts to natural shoreline sand supply. Thus, the Commission finds that the proposed project, as conditioned, is subject to the requirement in Section 30235 of the Coastal Act that it “shall be permitted.”

Section 30253 of the Coastal Act requires that new development minimize risks to life and property in areas of high geologic hazard. To minimize risks to life and property, the project must achieve a minimum factor of safety of 1.5, per LUP Policy HAZ-8. The Commission imposes **Special Condition #A1**, requiring the applicant to submit final revised grading plans which include signed statements of the applicant’s geotechnical consultants and which incorporate the recommendations of all geotechnical reports certifying that the final revised plans incorporate the geotechnical recommendations. Geotechnical evaluations do not guarantee that future bluff retreat or further landslides will not affect the stability of the proposed stabilization project. In addition, although the applicant understands that the site has the potential for future geologic hazard, no one can predict when or if there might be bluff failure that might affect the proposed development since such failure appears to be episodic in nature. The Commission thus requires **Special Condition #A2**, requiring the landowners to assume the risks of extraordinary erosion and geologic hazards of the property and waive any claim of liability on the part of the Commission or its officers, agents, and employees for any damage due to these natural hazards; in addition, the co-applicants accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion on the site.

To ensure structural integrity and geologic stability of the proposed bluff reconstruction project component, the Commission finds that the applicant shall, as required by **Special Condition #A1**: 1) install inclinometers along the perimeter of the subject site to monitor ground movement so that imminent movements can be better identified and appropriate remedial measures prepared, 2) notify the neighbors and Executive Director of landslides, and 3) submit a coastal development permit application for any future required remedial measures.

Therefore, the Commission finds that the proposed bluff failure repair/slope reconstruction portion of the project, as conditioned, is consistent with Sections 30235

and 30253 of the Coastal Act. The relevant conditions include: 1) final revised grading plans conforming to geotechnical recommendations; 2) assumption of risk; 3) construction staging plan; 4) disposal of landslide material; 5) revegetation of the slope for erosion and habitat purposes; and 6) deed restriction.

Protection of Visual Resources

The proposed development is located on the bluff top and face immediately adjacent to the public beach. The site is highly visible from the shoreline along the public beach below and from the Coastal Trail located immediately at the bluff toe. The bluffs along this stretch of shoreline in San Clemente extend about 90 feet above beach level. From the beach, residential development along the blufftop are visible. Prior to the coastal bluff slide in 2015, the bluff slope was vegetated and largely undisturbed. In the years since, the bluff scarp is near vertical and bare of vegetation, causing an interruption in the visual consistency of the natural bluff landform.

Section 30251 of the Coastal Act protects the scenic and visual qualities of coastal areas as a resource of public importance. Development is required to 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 bluff re-stabilization/protective device must be sited and designed to be visually compatible with the relatively undisturbed character of the surrounding natural coastal bluffs, protect views to and along the beach area, and minimize the alteration of existing landforms. It is also necessary to ensure that proposed new residential development at the top of the bluff complies with these same requirements.

The coastal bluffs of the surrounding properties are not developed with structural stabilization features. The proposed method of bluff repair; bluff slope grading with geogrid and revegetation/habitat restoration is designed to protect scenic and visual qualities of the coastal bluff, an area of public importance. The proposed bluff habitat restoration plan provides California native plantings appropriate to Orange County bluff habitat and would blend in with the natural coastal bluff surroundings. The plantings once established would simulate the pre-2015 slope appearance.

As discussed previously, **Special Condition #B.7** ensures that any future development on the site, which may affect the stability or appearance of the bluff, requires a coastal development permit. The “future development” condition will ensure that improvements are not made at the site that could affect the visual appearance of the coastal bluff or affect the stability of the bluff. The proposed bluff slope habitat restoration plan sufficiently mitigates for visual impacts so that the alteration of the bluff from construction of the regrading and placement of geogrid would not result in an adverse visual effect when viewed from public vantage points along the beach. Therefore, the Commission finds that, as proposed, the project is consistent with the visual resource protection policies of Section 30251 of the Coastal Act.

Proposed New Residential Development

The second component of the proposed project involves the demolition of an existing duplex and the construction of a new duplex at 259 W. Marquita. The residential structure at 259 W. Marquita was originally constructed in 1959, prior to passage of the Coastal Act. As previously stated, the co-applicants are pursuing a method of bluff repair which would require demolition of the 3,197 sq. ft. duplex at 259 W. Marquita in order to lower the flat/level building pad area by 10-14 ft. by grading. This would reduce the weight of soil pushing on the bluff slope and reduce bluff lateral driving forces. With the reduced lateral driving forces on the bluff slope, the bluff slope's natural contours could be restored using the geogrid and slope revegetation. This proposed new elevation would also more closely match elevations at the adjacent properties.

After demolition of the existing 3,197 sq. ft. duplex, grading, and lowering of the building pad, the applicant proposes to construct a new 25-ft. tall, 9,145 sq. ft. duplex structure including four-car garage, 1,906 sq. ft. patio/deck area, pool/spa, and drainage improvements at the bluff top at 259 West Marquita. Architectural plans for the proposed new residential development are included as **Exhibit 10** of this report.

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 string-line policies as a means of limiting the encroachment of development seaward toward the bluff edges on coastal bluffs and preventing the need for construction of revetments and other engineered structures to protect new development on coastal bluffs.

The Coastal Act defines bluff edge 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)).

San Clemente's Land Use Plan defines bluff edge as:

The upper termination of a bluff, cliff, or seacliff: In cases where the top edge of the bluff is rounded away from the face of the bluff as a result of erosional processes related to the presence of the steep bluff face, the bluff line or edge shall be defined as that point nearest the bluff beyond which the downward gradient of the surface increases more or less continuously until it reaches the

general gradient of the bluff. In a case where there is a step like feature at the top of the bluff face, the landward edge of the topmost riser shall be taken to be the bluff edge. Bluff edges typically retreat landward due to coastal erosion, landslides, development of gullies, or by grading (cut). In areas where the bluff top or bluff face has been cut or notched by grading, the bluff edge shall be the most landward position of either the current or historic bluff edge. In areas where fill has been placed near or over the historic bluff edge, the original natural bluff edge, even if buried beneath fill, shall be taken to be the bluff edge.

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 equitability 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. However, in this case, the proposed grading down by 10-14 ft. of the bluff top would alter the existing bluff edge (i.e., the bluff edge at the time of the bluff failure) and effectively create a new bluff edge.

As depicted in the applicants' rough grading plan dated March 10, 2016 and shown as **Exhibit #6**, as originally proposed, the new top of bluff would be located at the 102-ft. contour line after slope regrading/reconstruction. This would result in the bluff edge being significantly further seaward than the existing bluff edge, and would be inconsistent with the City's LUP definition of bluff edge. Therefore, the applicants revised the amount of grading and establishment of the proposed re-graded bluff edge as depicted on **Exhibit #12**.

Exhibit #12, depicting the revised bluff edge and subsequent 25-ft. bluff setback for the proposed new residential structure, however, failed to take into consideration the 10-ft. setback required for accessory structures such as patios/decks and the 25-ft. setback for bluff top for the proposed pool and spa as required by LUP Policy HAZ-42 and HAZ-43, respectively. Therefore, **Special Condition B.1** requires submittal of final revised plans to ensure the revised project siting continues to comply with the City's coastal bluff setback policies.

Furthermore, Coastal Act Section 30253 requires that new development minimize risks to life and property in areas of high geologic hazard, 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. However, in this case, the proposed new residential development at 259 W. Marquita would incidentally benefit from the bluff reconstruction project required to protect

existing pre-Coastal Act city infrastructure at the toe of the bluff for its own stability and structural integrity. Currently, there is no feasible alternative to the proposed bluff protective device method of bluff restoration (i.e., demolish the existing residential development at the bluff top in order to remove soil from the bluff top and regrade the bluff slope by the conventional earthwork construction of a buttress shear key along the toe portion of the slope/bluff and benching into competent materials of the slope with geogrid reinforcement) that could both protect the existing sewer infrastructure at the coastal bluff toe and remain consistent with Coastal Act Section 30253's requirement that new development (in this case, the proposed new residential development at the bluff top) not require the construction of protective devices that would substantially alter natural landforms along bluffs. The new residential development doesn't require construction of a bluff stabilization device because bluff stabilization is already being performed. The residential development will not extend the life of that bluff stabilization device because it is conditioned to require removal if and when that bluff stabilization device is removed. Additionally, it will comply with the 25-ft. bluff edge setback.

Bluff Stability and Sea Level Rise Considerations

The coastal bluffs in San Clemente are not subject to direct wave attack due to either a roadway or the OCTA railroad tracks and a rock revetment protecting the railroad separating the surf zone from the base of the bluffs. At the subject site, the City's sewer infrastructure and the Linda Lane sewer pump station is located immediately at the toe of the bluff, the City's Coastal Trail is located seaward of the pump station, then the OCTA railroad tracks and rock revetment protecting the railroad are all located between 259 W. Marquita and the beach. However, 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 caused by other factors such as wind and rain, adverse bedding orientations, soils conducive to erosion and rodent burrowing. Bluffs are also subject to erosion from human activities, such as irrigation, improper site drainage and grading. Bluff failure can be episodic, and bluffs that seem stable now may not be so in the future. Even with a thorough professional geotechnical analysis of a site concluding that a proposed development is expected to be safe from bluff retreat hazards for the life of the project, in some instances, unexpected bluff retreat episodes threaten development during the expected life of a structure (e.g. coastal development permit 5-06-325[Walker] at 1203 Buena Vista, San Clemente). 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.

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. Based on the 2018 State of California Sea-Level Rise Guidance (OPC 2018) and associated science update (Griggs et al. 2017), sea level rise in the project area could exceed six feet by 2095 under a high SLR scenario. As SLR progresses, the beach seaward of the site is likely to narrow, erode, and eventually disappear completely, and with six feet of SLR, the shoreline is projected by the USGS CoSMoS model to be located near the base of

the railroad berm and revetment. So long as the existing berm and revetment remain in place, the pump station and toe of the slope at the project site are unlikely to be exposed to regular wave action. However, projected sea level rise will result in higher wave runup elevations along the San Clemente coast, particularly during large storm events, which will increase the frequency of overtopping of the railroad berm and may lead to increased erosion of the coastal bluff. Future erosion protection at the toe of the bluff continues to depend on existing conditions with the existing railroad berm and rock revetment. Therefore, **Special Condition #A.2** requires the applicants by acceptance of this permit, acknowledge and agree that the site may be subject to hazards from bluff and slope instability, erosion, landslides and wave uprush, storm conditions, and sea level rise; and that the applicants agree that no additional future shoreline protective devices shall be constructed on the subject parcels; and to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development.

Adequate drainage and erosion control measures are also necessary for bluff top development. The applicant provided a proposed Grading/Drainage Plan for the proposed new two-unit structure at 259 W. Marquita (**Exhibit #11**) depicting water runoff from the rear concrete patio areas and side yards are directed away from the bluff face toward the frontage road, via a sump pump on the bluff facing portion of the lot, new drainage inlets that collect water runoff and directs 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 potentially causing damaging erosion to the bluff.

The applicant did not provide a preliminary foundation plan for the proposed two-unit structure. **Exhibit #11**, the proposed Grading/Drainage Plan for the new bluff top residential portion of the proposed development depicts retaining/shoring walls to retain/support the proposed cuts for lowering the building pad area and allowing for a 3-level structure. Therefore, the Commission finds that it is necessary for the applicant to submit final plans depicting the final foundation and architectural design plans which incorporate the recommendations contained in the geotechnical reports to further assure structural integrity with minimal reliance on the bluff protection necessary to protect existing development at the toe of the bluff, per **Special Condition #B.1**.

The Commission also finds that, for the residential bluff top project to ensure stability and avoid contributing significantly to erosion, landscaping on the bluff top should be primarily with native plants to avoid overwatering and possible slope destabilization. City of San Clemente LUP Policy HAZ-46 also requires new development on oceanfront bluff top lots to incorporate drainage improvements, removal of and/or revisions to irrigation systems, and/or use of native or drought-tolerant vegetation into the design to minimize threats to oceanfront bluff recession. Therefore, the Commission imposes **Special Condition #B.12** requiring landscaping with native, non-invasive and drought-tolerant vegetation.

Although the conditions described above render the project sufficiently stable to satisfy the requirements of Section 30253, no project is wholly without risks. As a bluff failure

has occurred at the subject site, and this CDP also approves a bluff protective device to protect existing development at the toe of the bluff, the Commission finds that, as a condition of approval, the applicant/landowner of 259 W. Marquita must record an assumption of risk deed restriction to inform the applicant and all current and future owners of the subject site that the site is subject to hazards from landslides. **Special Condition #B.9** requires recordation of a deed restriction and **Special Condition #B.4** requires Marquita LLC to agree on behalf of itself and future owners that the bluff slope reconstruction on the subject site shall not be augmented or maintained for purposes of protecting the new residential development approved by this Coastal Development Permit and that no new shoreline or bluff protective device(s) shall ever be constructed to protect the proposed residential development.

To minimize risks to life and property and to minimize the adverse effects of development on areas of high geologic, flood, and fire hazard, the proposed residential development has also been conditioned to require adherence to the geotechnical recommendations and erosion/drainage control. Therefore, as conditioned, the Commission finds that the development conforms to the requirements of Sections 30251 and 30253 of the Coastal Act regarding the siting of development in areas that minimize landform alteration and addresses hazards.

C. Public Access and Recreation

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 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[.]

As shown in **Exhibit #1**, the proposed bluff repair is located between the first public road and the sea directly inland of the OCTA railroad tracks, Coastal Trail, and Linda Lane Sewer Pump Station.

Construction impacts, such as the obstruction of nearby beach access ways (i.e., Linda Lane Access Point), or the San Clemente Coastal Beach Trail can affect the public's ability to access the adjacent public beach area. Construction access to the bluff will not necessitate use of any public beach area but will require use of the San Clemente Coastal Trail parallel to the beach adjacent to the railroad. However, closure of the

Coastal Trail to the public is not anticipated during construction. As proposed, per the submitted Construction Staging Plan (**Exhibit 8**), areas on the bluff top and on the bluff slope will be created for construction staging and restored after construction to avoid obstructing the Coastal Trail. **Special Condition #A3** requires the applicant conform to the proposed project construction staging plan to ensure that the construction phase of the project does not adversely impact public access including on-street parking affecting beachgoers or in any other way affects coastal resources. As conditioned, the Commission finds the development consistent with the public access and recreation policies of Chapter 3 of the Coastal Act.

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-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:
- a. 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 (CNDDDB) 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.
 - b. Review of current land use and land ownership within the proposed development project vicinity.
 - c. Assessment and mapping of vegetation communities present within the proposed development project vicinity.
 - d. General assessment of potential federal and state jurisdictional areas, including wetlands and riparian habitats.
 - e. A base map that delineates topographic lines, parcel boundaries, and adjacent roads.
 - f. A vegetation map.

- g. A description of the vegetation, including an estimate of the ground cover of the major species and a species inventory.
- h. A soils map that delineates hydric and non-hydric soils, if applicable.
- i. An inventory of plant and animal species that indicates the potential existence of sensitive species.
- j. A detailed map that shows the conclusions regarding the boundary, precise location and extent, or current status of ESHA based on substantial evidence provided in the biological studies.

RES-51 ESHA Designation. Environmentally Sensitive Habitat Area (ESHA) means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could easily be disturbed or degraded by human activities and developments as defined in Section 30107.5 of the Coastal Act. Three main elements must be met for an area or habitat to be considered ESHA.

- a. The presence of individual rare plants or animals or the presence of a particular rare habitat. Plant and animal communities whose designation includes, but is not limited to rare, threatened or endangered by the State or federal governments such as those in the CDFW's California Natural Diversity Database (CNDDDB).
- b. Any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem.
- c. Areas that could be easily disturbed or degraded by human activities and developments.

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-84 Bird-Safe Buildings. All new buildings, and major renovations/remodels of existing buildings, shall be required to provide bird-safe building façade treatments in order to reduce potential for bird-strikes. Landscaping around buildings, including patios and courtyards, shall be designed and sited to avoid or minimize bird-strike hazards caused by reflective surfaces such as glass fencing/railing. Buildings shall be designed to use minimal exterior lighting and minimize light pollution from interior lighting to the maximum extent feasible to minimize nighttime bird-strike hazards.

RES-85 Minimization of Lighting Impacts. Eliminate or shield and direct exterior lighting away from biological resources to minimize adverse impacts to wildlife. There shall be no spillover of light into the identified biological resource. Buildings shall be designed to use minimal exterior lighting (limited to pedestrian safety needs) and to minimize direct upward light, spill light, glare and artificial night sky glow.

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 of the certified Land

Use Plan. 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.”

The proposed development extends beyond the coastal bluff edge (where the LUP policies requiring protection and enhancement of habitat values apply). Furthermore, San Clemente’s certified LUP advocates the preservation of native vegetation and discourages the introduction of nonnative vegetation in coastal canyons and along coastal bluffs. Coastal Act policies aim to prevent impacts which would significantly degrade those areas, and ensures that development shall be compatible with the continuance of those habitat areas. 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. The applicant provided a “Native Landscaping Plan and Specifications, 259 W. Marquita, San Clemente, California” by LSA Associates, Inc. dated July 2016 and a “Biological Resources Assessment for the Slope Repair at 259 W. Marquita, San Clemente, California” also by LSA Associates, Inc. dated October 9, 2018 containing a site specific biological survey of the coastal bluff in front of 259 W. Marquita.

As required by the LUP policy quoted above, a site specific focused survey was conducted in this area. Per the information provided by the applicants, in September 2018, an LSA biologist conducted a site visit to survey the existing biological conditions on the site. No ESHA indicator species were found on the site. The survey results were compared against historical aerial photographs to determine the distribution of habitat types present prior to the 2015 slope failure. Vegetation on the bluff slope prior to the landslide was mapped as a mixture of saltbush scrub and ornamental vegetation (iceplant and acacia), the same vegetation communities were mapped in 2018 along with disturbed/barren areas lacking vegetation due to the landslide. The applicant proposes a “Native Landscape Plan” (**Exhibit 9**) that provides for the installation and maintenance of native plant revegetation following completion of the bluff grading/repair construction activities in order to restore coastal bluff scrub habitat on the reconstructed bluff slope. **Special Condition #A4** requires the applicant submit a detailed habitat

mitigation and monitoring plan in substantial conformance with the proposed Native Landscape Plan.

Additionally, hardscape improvements are proposed as part of the residential component at the bluff top. However, no landscaping plan was submitted for the residential component; therefore, the Commission imposes **Special Condition #B6** requiring landscaping to consist of drought tolerant, non-invasive plants.

[Where's the conclusion to this section? Is this ESHA or not, and if it is, is the project consistent with the ESHA protection policies?]

E. Marine Resources and 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 and 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.

Construction Impacts to Water Quality

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species' ability to see food in the water column.

In order to avoid adverse construction-related impacts upon marine resources, the Commission imposes **Special Condition #B.4**, which outlines construction-related best management practices (BMPs) to provide for the safe storage of construction materials and the safe disposal of construction debris. During construction, the applicant will be required to implement BMPs designed to minimize erosion, loss of soil materials, and prevent debris and soil from entering the storm drain system.

Post-Construction Impacts to Water Quality

The proposed project involves new development on an undeveloped, fully pervious coastal bluff slope and on a completely paved, impervious bluff top. The project has the potential for discharge of polluted runoff from the project site into coastal waters. Much of the pollutants entering the ocean come from land-based development. The Commission finds it necessary to minimize the cumulative adverse impacts on water quality resulting from incremental increases in impervious surface associated with new development. Sources of polluted runoff could include runoff from the large amount of impervious surface in the proposed project and over-watering, which sometimes occurs from installation of landscaping with a high water demand (i.e., sod lawn). 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 term “drought tolerant” is equivalent to the terms “low water use” and “ultra low water use” as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 and is available for review at <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>).

Invasive plants can invade an area and displace native plants, impeding restoration and preservation efforts. Seed dispersal can occur via water transport and drainage, wind, and via avian and mammalian species. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org>) and California Native Plant Society (www.CNPS.org) in their publications.

In order to address post construction water quality impacts, the applicant provided a Grading/Drainage Plan. To minimize adverse impacts to water quality the proposed residential project at the bluff top may have after construction, site runoff (**Exhibit 10**) is proposed to be directed to area drains and piped directly to the frontage road, away from the bluff edge. Drainage improvements are also proposed on the reconstructed bluff slope, these however, are primarily necessary for erosion control purposes (**Exhibit 7**). **Special Condition #B.1** requires submittal of final revised plans including submittal of a detailed Drainage and Runoff Control Plan for the proposed residential structures prior to permit issuance. The Commission also imposes **Special Condition**

#B.6 requiring the applicant to submit a landscaping plan using non-invasive drought tolerant plantings. The condition requires the landscape plan to include species native to the surrounding local coastal bluff (e.g., coastal sage scrub and chaparral communities) and non-invasive, drought tolerant vegetation on the impervious patios and walkways on the portions of the site facing away from the coastal bluff. Native, drought tolerant plants are used 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.

Combined with the use of non-invasive drought tolerant vegetation, and the restoration of native habitat on the remaining undeveloped coastal bluff slope, 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. As conditioned, the Commission finds that the proposed development conforms with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

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.

F. Coastal Act Violations

Violations of the Coastal Act have occurred at the site including, but not limited to, the unpermitted construction of a wood retaining wall and grading of landslide material at toe of bluff. The co-applicants are proposing to resolve the unpermitted development by removing the wood retaining wall and incorporating the grading of landslide material into the overall grading of the bluff slope proposed by the CDP application.

As previously described, the June 2015 landslide occurred along the bluff above the City of San Clemente's Linda Lane Pump Station (below 259 W. Marquita). In July 2015, the City constructed a temporary soldier pile wall to protect the public works infrastructure from possible damage caused by the landslide debris. The wall was constructed to a height eight feet above ground with I-beams embedded roughly 15 feet into the ground with wood lagging to retain the soil for a total length of 60 feet. Upon completion of the soldier pile wall, the toe of the landslide debris was close to the base of the wall. Due to continued movement from the active landslide, the debris measured approximately six feet high by October 2016, causing the wood lagging members on the northern section of the wall to bow and fail. By June of 2018, the I-beams in the northern portion of the wall began to fail. The soldier pile wall was intended as a temporary measure to hold back debris and was not designed to retain an active coastal bluff landslide. To keep the wall from failing and debris from impacting the sewer lift station building, the City installed steel bracing or rakers to support the I-beams.

Due to the above average rainfall from December 2018 through March 2019, the active landslide began to move and expand to the south at an increased rate. The SDG&E power pole for the lift station located just north of the station fell in February 2019 and was relocated north of the landslide. In addition, landslide debris crested well above the wall and required weekly maintenance to keep the material off the lift station wall. In addition, the southern portion of the landslide extended south of the wall and required the City to extend the wall eight feet with steel lagging for additional protection. In an effort to save the temporary wall protecting public infrastructure, grading was performed to remove the soil overburden and to install two hydro-augers to determine the location of the landslide plane. The vertical protection/wood shoring wall with steel lagging is proposed to be removed after regrading/reconstruction of the bluff slope.

Unpermitted development cannot be used as a basis to justify development in areas where, were it not for the unpermitted development, such development would not be allowed. Thus, an evaluation of a proposed project must consider site conditions as if the unpermitted development had not occurred. The staff recommendation for the proposed project is based on protection of all coastal resources present on the site and consideration of those that would be present on site if unpermitted development had not occurred.

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 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 violation/unpermitted development identified in this section.

Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations), nor does it constitute an implied statement of the Commission's position regarding the legality of the development undertaken on the subject site without a coastal permit, or of any other development, other than the development approved herein, undertaken on the subject site without a coastal permit. In fact, approval of this permit is possible only because of the conditions included herein, and the applicant's presumed subsequent compliance with said conditions, and failure to comply with these conditions in conjunction with the exercise of this permit would also constitute a violation of this permit and of the Coastal Act. Accordingly, the applicant remains subject to enforcement action just as it was prior to this permit approval for engaging in unpermitted development, unless and until the conditions of approval included in this permit are satisfied.

G. Local Coastal Planning

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. At this time, San Clemente does not have a 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).

H. California Environmental Quality Act

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The 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, has conditioned the proposed project in order to ensure its consistency with Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions applicable to the proposed bluff repair addressing: Special Condition A.1: Revised Grading Plan; Special Condition A.2: Assumption of Risk and Waiver of Liability; Special Condition A.3: Staging and Storage of Construction Materials and Equipment; Special Condition A.4: Habitat Mitigation and Monitoring Plan; and conditions applicable to the proposed residential development at 259 W. Marquita addressing: Special Condition B.1: Revised Final Plans; Special Condition B.3: Landscaping Plan; Special Condition B.4 Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris; Special Condition B.5: Assumption of Risk and Waiver of Liability; Special Condition B.6: No Future Additional Shoreline/Bluff Protection Device; Special Condition B.7: Future Improvements; Special Condition B.8: Deed Restriction will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse

impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project, 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) Limited Geotechnical Evaluation for Provision of Preliminary Recommendations Regarding Recent Failure of Portions of Rear Bluff, 259 and 261 W. Marquita, San Clemente, CA 92672 dated October 12, 2015;
- 2) Soil Report for Proposed Remedial Grading for Slope Stabilization and Construction of Proposed New Condominium Building to Replace Existing House to be Demolished, 259 W. Marquita, San Clemente, CA 92672 [Lot 23, Block 17, Tract 793, M.M.24/1-5] dated July 22, 2016; 3) Evaluation of Potential Impacts of Long-Term Potential Sea Level Rise (SLR), Proposed New Condominium Building to Replace Existing House Which Will be Demolished, 259 West Marquita, San Clemente, CA dated December 21, 2017;
- 4) Alternative Analysis of Each Alternative Method Considered for Slope Stabilization at 259 W. Marquita, San Clemente, CA 92672 dated May 24, 2018; and
- 5) Earth Quantities for Remedial Grading for Slope Stabilization and Construction of Proposed New Building to Replace Existing House Which Will be Demolished, 259 W. Marquita, San Clemente CA 92672 (Lot 23, Block 17, Tract 793, M.M.24/1-5) dated July 2, 2018;
- 6) Coastal Bluff Retreat Evaluation for 259 W. Marquita, San Clemente, CA 92672 dated April 9, 2019
- 7) Alternative Bluff Edge as Shown by Joe Street/State Geologist for 259 West Marquita, San Clemente, CA 92672, dated September 15, 2020; prepared by Peter and Associates
- 8) CDP 5-00-3333(City of San Clemente – Linda Lane Sewer Pump Station)