

CALIFORNIA COASTAL COMMISSION

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Filed: 1/3/20
180th Day: 9/9/20
270th Day: 12/8/20
Staff: LR-LB
Staff Report: 10/22/20
Hearing Date: 11/5/20

STAFF REPORT: MATERIAL PERMIT AMENDMENT

Amendment

Application No.: 5-01-097-A2

Applicants: John and Cheryl Moe

Project Location: 229 Avenida Alessandro, San Clemente,
Orange County (APN 060-210-35)

**Description of Project Previously
Approved by CDP No. 5-01-097:**

Construction of a new 1,912 square foot, three level, 25' average maximum height, single-family residence with an attached 448 square foot two-car garage on a vacant coastal canyon lot. The project also involves approximately 40 cubic yards of cut and 4 cubic yards of fill for basement excavation and site preparation. Excess material will be disposed of outside the coastal zone.

Description of Pending Amendment: After-the-fact (ATF) approval of improvements including 34 cu. yds. cut/fill, 3-ft. wide sloped dirt path, decomposed granite path with wood border, dirt access steps, garden planter walls, backfilled 2-ft. tall keystone wall, landscaping behind planter and keystone walls, fencing, and grading of a 480 sq. ft. area. Proposed new development includes new wood deck/flagstone patio/artificial turf in 480 sq. ft. graded area, new native plantings, wood stair, a request for a minor modification of development area setback, and installation of new signage along a trail through the property providing access

through the coastal canyon to the nearby beach.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The subject application requests after-the-fact (ATF) approval of hardscape and landscape improvements associated with a single-family residence along the Riviera Coastal Canyon, one of seven coastal canyons in the City of San Clemente identified as an area of potential sensitive habitat. It also seeks authorization for new development in the form of additional hardscape and landscaping, fencing, a wood stair, and signage, and it requests a minor modification of development area setback. The primary issue associated with this development is assurance that it is consistent with the Special Conditions of the underlying Coastal Development Permits for the site and concern of the project's potential to adversely affect coastal access, biological resources and water quality. Commission staff recommends after-the-fact approval of the development already undertaken by the applicant, approval of the proposed modification to the 'line of native vegetation' in order to provide the minimum required accessory development setback, and approval of proposed new development in this amendment request.

Violations of the Coastal Act have occurred on the subject site, including but not limited to, unpermitted grading and landform alteration of the natural coastal canyon slope; unpermitted construction and installation of retaining walls, steps, and landscaping; and unpermitted placement of "private property" signs that act to deter the public from entering accessway to the beach. In order to resolve the above described violations of the Coastal Act, the applicant is seeking after-the-fact approval for improvements including 34 cu. yds. cut/fill, 3-ft. wide sloped dirt path, decomposed granite path with wood border, dirt access steps, garden planter walls, backfilled 2-ft. tall keystone wall, landscaping, fencing, and grading of a 480 sq. ft. area. Additionally, to resolve the public access violation associated with the unpermitted placement of "private property" signs, the applicant has worked with Commission staff to develop a new public access signage program, as described in more detail below. In this case, the owners undertook the development for which they are seeking an after-the-fact permit and additional staff review time was required. Thus, the fee for the unpermitted portion of the proposed development is not reduced by the Executive Director.

Staff is recommending approval of the proposed coastal development permit amendment with a modification of the underlying CDP Special Condition 5 regarding Assumption of Risk; modification of the underlying CDP Special Condition 6 regarding Future Development Deed Restriction and the addition of the following new Special Conditions regarding: 7) Compliance with Landscaping Plan; 8) Open Space/Habitat Restrictions; 9) Lighting Prohibition; 10) Construction Phase BMPs; 11) Application Fee, and 12) Deed Restriction.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 5-01-097-A2, as conditioned. The motion is on page 4. The standard of review is Chapter 3 of the Coastal Act.

PROCEDURAL NOTES: On April 16, 2020, the Governor of the State of California issued Executive Order N-52-20 tolling the time-frame for action in the Permit Streamlining Act for 60 days. Under the Permit Streamlining Act and pursuant to the Executive Order, the deadline for Commission action on this application is December 8, 2020.

The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change, or
- 2) Objection is made to the Executive Director's determination of immateriality, and at least three Commissioners object to the executive directors' designation of immateriality at the next Commission meeting, or the Executive Director determines that the objection raises an issue of conformity with the Coastal Act or certified Local Coastal Program.

The Executive Director has determined that the proposed amendment is a material change that affects conditions required for the purpose of protecting coastal access.

Section 13166(a) of the Commission's Regulations also calls for the Executive Director to reject a permit amendment request if it would lessen or avoid the intended effect of the previously approved permit.

The proposed amendment would not lessen the intended effect of Coastal Development Permit No. 5-01-097 envisioned in the Commission's June 14, 2001 action approving the project with conditions. Therefore, the Executive Director accepted the amendment request.

PLEASE NOTE THAT THIS WILL BE A VIRTUAL MEETING. As a result of the COVID-19 emergency and the Governor's Executive Orders N-29-20 and N-33-20, this Coastal Commission meeting will occur virtually through video and teleconference. Please see the Coastal Commission's Virtual Hearing Procedures posted on the Coastal Commission's webpage at www.coastal.ca.gov for details on the procedures of this hearing. If you would like to receive a paper copy of the Coastal Commission's Virtual Hearing Procedures, please call 415-904-5202.

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- [Exhibit 3 – Coastal Access Point](#)
- [Exhibit 4 – LUP Figure 4-2-B, Potential Sensitive Habitat](#)
- [Exhibit 5 – Project Plans](#)
- [Exhibit 6 – Landscape Plans](#)
- [Exhibit 7 – Plan Detail of Proposed Modification to ‘Line of Vegetation’](#)
- [Exhibit 8 - Signage Plan for Unimproved Path/Trail](#)
- [Exhibit 9 – CDP 5-97-122 \(Sawall\)](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission **approve** the proposed amendment to Coastal Development Permit 5-01-097 pursuant to the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit amendment 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 amendment for the proposed project and adopts the findings set forth below on grounds that the development as amended and conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. SPECIAL CONDITIONS

NOTE: Appendix B, attached, includes all standard and special conditions that apply to this permit, as approved by the Commission in its original action and modified and/or supplemented by all subsequent amendments, including this amendment number A2. All of the Commission's adopted special conditions, and any changes in the project description proposed by the applicant and approved by the Commission in this action, continue to apply in their most recently approved form unless explicitly changed in this action. This will result in one set of adopted standard and special conditions. New conditions and modifications to existing conditions imposed in this action on Amendment 2 are shown in the following section.

Unless specifically altered by this amendment, all standard and special conditions attached to Coastal Development Permit 5-01-097, as amended through amendment number A2 and reflected in Appendix B, remain in effect.

5. Modification of Special Condition No. 5 of Original Permit

Special Condition No. 5 of the original permit, CDP 5-01-097, shall be modified as indicated below. Language to be deleted is shown in ~~strikeout~~ and new language is shown **underlined and bold**.

Assumption-of-Risk, Waiver of Liability, and Indemnity Deed Restriction.

- A. By acceptance of this permit, as amended by amendment 5-01-097-A2, the applicant acknowledges and agrees (i) that the site may be subject to hazards

from geologic instability, **slope instability, erosion, landslides, earth movement, and fire**; (ii) to assume the risks to the applicant and the property, that is the subject of this permit, of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards, (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from injury or damage due to such hazards.

~~B. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant and landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of subsection A of this condition. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. The deed restriction and lease restriction shall not be removed or changed without a Commission amendment to this coastal development permit.~~

6. Modification of Special Condition No. 6 of Underlying Permit

Special Condition No. 6 of the original permit, CDP 5-01-097, shall be modified as indicated below. Language to be deleted is shown in ~~strikeout~~ and new language is shown **underlined and bold**.

Future Development Deed Restriction.

A. This permit is only for the development described in Coastal Development Permit No. 5-01-097-**A2**. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610 (a) shall not apply to the entire parcel. Accordingly, any future improvements to the development authorized by this permit, including but not limited to repair and maintenance activities identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-01-097-**A2** from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

~~B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on development within the parcel. The deed restriction shall include legal descriptions of the applicant's entire parcel(s). The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the~~

~~restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.~~

The following Special Conditions No. 7-12 are added to CDP 5-01-097-A2 as follows:

7. Compliance with Landscaping Plan.

The applicant shall comply with the Landscape Plan submitted on January 3, 2020 and included as Exhibit #6 of this staff report. Final landscape planting necessary to achieve compliance with the approved landscape plan shall be implemented no later than sixty (60) days after issuance of the Coastal Development Permit.

8. Open Space/Habitat Use Restrictions.

No development, as defined in Section 30106 of the Coastal Act, shall occur within the open space habitat area within the subject property defined beyond the 'line of vegetation', as shown in Exhibit #5, page 3 of this staff report. The lands identified in this restriction shall be maintained as open space by the landowner(s) in perpetuity.

9. Lighting Prohibition.

No lighting plan for the proposed new deck/patio area is proposed or authorized by this coastal development permit. No lighting around the perimeter of the site and no lighting for aesthetic purposes is proposed or permitted. Lighting shall be prohibited to protect adjacent biological resources within the canyon open space from potential lighting impacts.

10. Construction Best Management Practices.

By acceptance of this permit, permittee shall comply with the following construction-related requirements and shall do so in a manner that complies with all relevant local, state and federal laws applicable to each requirement:

- (1) No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, rain, or tidal erosion and dispersion;
- (2) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
- (3) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;
- (4) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal

waters during construction. BMP's shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and

- (5) All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

Best Management Practices (BMP's) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the onset of such activity. Selected BMP's shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:

- (1) The applicant shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. It shall be located as far away from the receiving waters and storm drain inlets as possible;
- (2) The applicant shall develop and implement spill prevention and control measures;
- (3) The applicant shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50 feet away from a storm drain, open ditch or surface water; and
- (4) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

11. Application Fee.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall pay the balance of the application fee for the after-the-fact (ATF) permit application, which is \$17,801.

12. Deed Restriction.

PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT (5-01-098-A2), the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit amendment a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, as amended, 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 amended, as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit amendment. 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, as amended, 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. This deed restriction shall supersede and replace the deed restriction recorded pursuant to Special Condition No. 6 of Coastal Development Permit Amendment 5-01-097, approved on June 14, 2001.

III. FINDINGS AND DECLARATIONS

A. Project Location/Description and Background

PROJECT LOCATION/DESCRIPTION

The proposed project site is located at 229 W. Avenida Alessandro in the City of San Clemente, Orange County ([Exhibit #1](#)). The subject site is a 36,040 square foot irregularly shaped lot consisting entirely of coastal canyon slope sloping south and southeast towards the bottom of Riviera Canyon. The applicants' property extends to the canyon bottom. The site is developed with a single-family residence. Surrounding development consists of similar single-family residences. The site is designated as Residential Low (RL) Density in the certified Land Use Plan, and the proposed project is consistent with this land use designation.

The project site is located just over one-half mile from the beach. Due to the curvilinear configuration of the streets in the subject area, the site is considered to be located between the first public road and the sea. The nearest public access to the beach is available at the Riviera Access Point identified in the City of San Clemente certified Land Use Plan ([Exhibit #3](#)).

The applicant seeks approval for after-the-fact (ATF) improvements including 34 cubic yards cut and fill, construction of a 3-ft. wide sloped dirt path, a decomposed granite path with wood border, dirt access steps, garden planter walls, backfilled 2-ft. tall keystone wall, landscaping of areas behind planter walls and keystone wall, fencing along the top of canyon, and a flattened/graded approximately 480 sq. ft. area near the canyon bottom. Site photos from 2013 soon after construction of these unpermitted elements are depicted on [Exhibit #2](#).

New development is proposed including: a new wood deck/flagstone patio/artificial turf in 480 sq. ft. graded area, new native plantings near the canyon bottom, fencing, wood stair, and a request for a modification of the development area setback from the line of native vegetation. Additionally, in response to a Commission Notice of Violation (NOV), the applicant proposes installation of new signage along a trail through the property

providing access through the coastal canyon to the nearby beach. Project plans for the proposed development are included as [Exhibit #5](#), proposed landscaping plans are included as **Exhibit #6**. Plans for the proposed signage are included as [Exhibit #7](#).

PROJECT BACKGROUND – PRIOR PERMIT HISTORY

1997 – CDP 5-97-122 (Sawall) Subdivision of a single 1.47 acre parcel into two parcels of 28,060 sq. ft. (Parcel 1) and 36,040 sq. ft. (Parcel 2). No structures or other development, except for the subdivision proposed.

The subject site is Parcel 2 created by CDP 5-97-122 (Sawall). The Commission approved the subdivision subject to three (3) Special Conditions including a limitation on the location of future structures and accessory structures on each newly created lot based on a setback from the line of native vegetation and a deed restriction special condition (see [Exhibit #9](#)).

CDP 5-97-122's Special Condition 1 limits the location of future residences on each newly created lot to the building site area depicted in Exhibits 5 of the CDP 5-97-122 staff report. This special condition specifically states, "For purposes of this condition, 'future residence' refers to enclosed living area. Patios, decks, landscaping, and other accessory structures are not limited to the building site area but cannot encroach to within five feet of the line of native vegetation." This same Exhibit 5 of CDP 5-97-122(Sawall) is referenced and also included as an exhibit in CDP 5-01-097(Moe) to depict the maximum buildable area on the canyon lot.

2001 – CDP 5-01-097 (Moe) Construction of a new 1,912 sq. ft., three-level, 25' average maximum height, single-family residence with an attached 448 sq. ft. two-car garage on a vacant coastal lot; approximately 40 cu. yds. cut and 4 cu. yds. fill for basement excavation and site preparation. Excess material was to be disposed of outside of the Coastal Zone.

This same Exhibit 5 of CDP 5-97-122(Sawall) which depicts the established maximum building site area is referenced and also included as an Exhibit #8 in CDP 5-01-097(Moe) to depict the maximum buildable area on the canyon lot, it also depicts the 'line of vegetation' from which a minimum 5-foot setback is required.

CDP 5-01-097(Moe) approved construction of the existing single-family residence with attached garage and attached wood decks on support piles. The approved plans included a Landscape Plan identifying Zone 1: Enclosed Children's and Front Yard area and Zone 2: Existing Vegetation. It did not include approval of grading associated with landscape/hardscape, retaining walls, walkways, or fencing. The current applicants, John and Cheryl Moe, are the original owners of the lot created and approved under CDP 5-97-122, and are also the original permit holders of CDP 5-01-097 (Moe) approving construction of the existing single-family residence on the site. CDP 5-01-097 (Moe) CDP 5-01-097 (Moe) included six (6) special conditions, including a special condition requiring a future development deed restriction to ensure the current and future property owners are aware that any future improvements to the development require an amendment to the CDP. Nevertheless, the applicant undertook development on the site without the benefit of a CDP.

COASTAL ACT VIOLATIONS

The applicants seek approval for after-the-fact (ATF) unpermitted improvements undertaken in 2013, including 34 cubic yards of cut and fill, construction of a 3-ft. wide sloped dirt path, a decomposed granite path with wood border, dirt access steps, garden planter walls, backfilled 2-ft. tall keystone wall, landscaping, fencing, and a flattened/graded approximately 480 sq. ft. area. The unpermitted development constitutes at issue constitute violations of the Coastal Act because they were not approved under any coastal development permit. A Notice of Violation (NOV) was issued to the applicants in 2016 for unpermitted development including, but not limited to, grading/landform alteration, unpermitted construction of retaining walls and steps, landscaping, and placement of "Private Property" signs that denied access to the coast by deterring the public from entering the public accessway to the beach.

STANDARD OF REVIEW

The Commission's standard of review for the proposed amendment is the Coastal Act and the San Clemente Land Use Plan is used as guidance.

B. 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.

City of San Clemente LUP Policy

PUB-45 New Development Restrictions on Limiting Public Access. New development shall not incorporate gates, fences, walls, guardhouses, barriers or other structures designed to regulate or restrict access where they would inhibit, interfere and/or discourage the public's right of access to the sea where such right was acquired through use, legislative authorization, or other operation of law, including, but not limited to, the public's right of access to and along the shoreline and to beaches, coastal parks, trails or coastal bluffs.

As depicted on **Exhibit #8**, there is an existing path/trail down the coastal canyon slope used by the public to access the coast. The public is able to access this path/trail from the neighboring property. The trail meanders down the coastal canyon slope of the subject site and continues adjacent to a 20' wide drainage easement through the property containing an ephemeral stream channel. The trail exits the property at the southern property line and continues to the beach.

In order to resolve the public access violations associated with the unpermitted placement of “Private Property” signs that denied access to the coast by deterring the public from entering the public accessway to the beach the applicant proposes to install nine (9) 18”x24” signs at three (3) different points along the trail informing the public utilizing the trail to “Please Stay on Unimproved Coastal Access Trail Only”. The signs seek to strike a balance between the public access policies of the Coastal Act and the applicant’s private property rights by requesting that the public not trespass beyond the trail as people traverse across the private property parcel. The signs warn the public of the danger of utilizing the unimproved and possibly unstable canyon slope trail.

BACKGROUND

In the original Commission action on CDP 5-01-097, the Commission identified the existing trail traversing the vacant lot. The Commission considered requiring a public access dedication at the time it approved the CDP for construction of the home on the vacant lot, however, no potential accepting agency was identified and no public access dedication was required as the owners (Mr. and Mrs. Moe) indicated that they will not restrict public use of the path. No fencing was proposed as part of the original approval. As such, the development was found not to create adverse impacts on public access nor block public access from the first public road to the shore. Additionally, Special Condition #5 of CDP 5-01-097 informed the owners that future development, including fencing, requires an amendment to this permit or a new coastal development permit.

PROPOSED DEVELOPMENT

In response to the applicants’ concerns with potential liability for unrestricted use of the path, they are requesting ATF approval for fencing along the canyon top property line adjacent to the public sidewalk right-of-way and for the placement of nine (9) new informational signs with four different messages of “Please Stay on Unimproved Coastal Access Trail Only,” “No Trespassing Behind This Sign or Fence,” “Warning, Danger Unstable Cliff Edge,” and “Private Property, No Trespassing.” [Exhibit #8](#) depicts the existing unimproved trail, the trail entrance, proposed sign locations, and proposed signs. Regarding the fencing, the fence is 4-ft. tall wood post-and-cable mesh ([Exhibit #2, page 2](#)) property line fence along the frontage road. As the actual entry point to the unimproved coastal access trail is on the adjacent property, the proposed fence would not impede access to the trail. The adjacent property also has a matching wood post-and-cable mesh fence. The fence does not go all the way to the 229 Avenida Alessandro property line, thus providing an approximately 3-ft. opening providing public access to the trail traversing the 229 Avenida Alessandro property leading to the beach. Regarding the proposed new signage, Commission Enforcement Division staff informed the applicants that there are several immunities that the State has adopted to protect landowners that allow public recreational use of their land, as placement of “No Trespassing” signage is known to restrict public access to the coast. However, as the applicants continue to have potential liability concerns, Enforcement staff worked closely with the applicants on the proposed wording and placement of the signage to ensure the signs do not deter the public from entering the access way to the beach, thus maintaining access to the coast.

C. Biological Resources

Section 30240(b) of the Coastal Act states:

Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

City of San Clemente LUP Policies

RES-67 Natural Areas. In natural areas that are undeveloped, or partially developed, the City shall require that development:

- a. avoid significant impacts, including retention of sufficient natural space where appropriate;
- b. retain watercourses, riparian habitat, and wetlands in their natural condition;
- c. maintain habitat linkages (wildlife corridors) between adjacent open spaces, water sources and other habitat areas and incorporate these into transportation projects and other development projects to maintain habitat connectivity;
- d. incorporate visually open fences, or vegetative cover to preserve views, ensure continued access and to buffer habitat areas, open space linkages or wildlife corridors from development, as appropriate;
- e. locate and design roads such that conflicts with biological resources, habitat areas, linkages or corridors are minimized;
- f. utilize open space or conservation easements when necessary to protect sensitive species or their habitats; and
- g. avoid the removal of native vegetation and the introduction of non-native vegetation and encourage the use of native plant species.

The City shall maintain an inventory of open space direct dedications, conservation easements, and offers-to-dedicate (OTDs) to ensure that habitat areas are known to the public and are protected through the coastal development permit process.

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

RES-69 Coastal Canyon Areas Protection. Preserve coastal canyons as undeveloped areas intended to be open space through implementation of appropriate development setbacks.

RES-70 Coastal Canyon Resources. Protect and enhance coastal canyon resources by restricting the encroachment of development, incompatible land uses and sensitive habitat disturbance in designated coastal canyon areas. Prohibit development and grading that adversely alters the biological integrity of coastal

canyons, the removal of native vegetation and the introduction of non-native vegetation.

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

- a. A minimum of 30% of the depth of the lot, as measured from the property lines that abut the bottom of the coastal canyon, and not less than 15 feet from the canyon edge; or
- b. A minimum of 30% of the depth of the lot, as measured from the property lines that abut the bottom of the coastal canyon, and setback from the line of native vegetation (not less than 15 feet from coastal sage scrub vegetation or not less than 50 feet from riparian vegetation); or
- c. In accordance with house and deck/patio stringlines drawn between the nearest corners of the adjacent structures (rear corner/side of structure closest to coastal canyon). A legally permitted structure developed prior to the Coastal Act may be considered in the stringline setback when it is in character with development along the coastal canyon that has been approved under the Coastal Act with the benefit of Coastal Development Permits.
- d. Ancillary improvements such as decks and patios, which are at-grade and do not require structural foundations may extend into the setback area no closer than five (5) feet to the canyon edge (as defined in Chapter 7, Definitions), provided no additional fuel modification is required that may impact native vegetation. No new or redeveloped walkways, stairs or retaining walls shall extend into the canyon beyond the required coastal canyon setback.

When selecting the appropriate setback from the above-referenced options, the City Planner shall consider the following factors: geology, soil, topography, existing vegetation, public views, adjacent development, safety, minimization of potential impacts to visual resources, community character, protection of native vegetation and equity. These additional factors may require increased setbacks depending on the conditions of the site and adjacent coastal resources. The development setback shall be established depending on site characteristics and determined after a site visit by a City Planner. If a greater setback is required as a result of the geotechnical review prepared pursuant to policy HAZ-8 or HAZ-9, the greater setback shall apply.

The City of San Clemente Certified LUP includes Riviera Canyon and adjacent vicinity as Potential Sensitive Habitat in Figure 4-2-B of the certified Land Use Plan, included as [Exhibit #4](#) to this staff report.

Furthermore, the LUP states,

“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.*

A large majority of San Clemente’s coastal zone consists of urbanized lands with residential, commercial/industrial development with the exception of the San Clemente State Park Beach, small city parks, beaches and coastal canyons and bluffs. The coastal canyons of San Clemente have been disturbed by encroaching residential development over the years and as such, support varying degrees of disturbed and undisturbed native vegetation. Non-native, invasive species that have naturalized in the canyons from ornamental residential backyards continue to compromise the function and value of native habitat.

Preservation and enhancement of the City’s ESHA and biological resources within its coastal canyons and bluffs is a goal supported by both the environmental protection policies of the Coastal Act and the certified LUP. Encroachment into the canyon by structures and other appurtenances increases the potential for the introduction of non-native plant species, and predation of native species by domestic animals, and destabilization of the canyon from excess irrigation, and increases necessary fuel modification zones at the expense of native vegetation. Encroaching structures also threaten the visual quality of the canyons. The policies of the LUP were designed to protect and enhance habitat; minimize visual impacts and landform alteration; avoid cumulative adverse impacts of the encroachment of structures into the canyon; and as a means to limit brush management necessary for fire protection.

Furthermore, San Clemente’s certified LUP advocates the preservation of native vegetation and discourages the introduction of non-native vegetation in coastal canyons. Coastal Act policies aim to prevent impacts which would significantly degrade those areas, and ensure that development shall be compatible with the continuance of those habitat areas. Decreases in the amount of native vegetation along the coastal canyons due to displacement by development or introduction of non-native vegetation have resulted in cumulative adverse impacts upon the habitat value of the coastal canyons.

However, in this case, Policy HAZ-47 (requiring a 15-foot setback from coastal sage scrub for accessory structures) does not apply due to underlying CDP 5-97-122's Special Condition 1 (see **Exhibit #9**). This condition limits the location of future residences on each newly created lot to the building site area depicted in Exhibits 5 of CDP 5-97-122(Sawall). This special condition specifically states, "For purposes of this condition, 'future residence' refers to enclosed living area. Patios, decks, landscaping, and other accessory structures are not limited to the building site area but cannot encroach to within five feet of the line of native vegetation." This same Exhibit 5 of CDP 5-97-122(Sawall) is referenced in the staff report for CDP 5-01-097(Moe) and also included as Exhibit 8 of CDP 5-01-097 (Moe) depicting the maximum buildable area on the canyon lot. [Exhibit #5, page 3](#) of this staff report depicts the same line of native vegetation and the required minimum five-foot setback for accessory structures/development.

PROPOSED DEVELOPMENT

The applicant seeks approval for after-the-fact (ATF) unpermitted improvements undertaken in 2013, including 34 cubic yards cut and fill, 3-ft. wide sloped dirt path, a decomposed granite path with wood border, dirt access steps, garden planter walls, backfilled 2-ft. tall keystone wall, landscaping, fencing, and a flattened/graded approximately 480 sq. ft. area. This development is considered "unpermitted development" as it was not part of development approved under any other coastal development permit.

Additionally, the applicants request a modification to the 'line of vegetation' identified by CDP 5-97-122 (Sawall) and carried over into CDP 5-01-097 (Moe). A minimum 5-ft. setback for patios, decks, landscaping and other accessory structures was required from this 'line of vegetation.' A corner area (88 sq. ft.) of the proposed 480 sq. ft. flattened/graded patio area encroaches within the required 5-ft. setback from the line of vegetation. The applicant rationalizes the proposed request to modify the 'line of vegetation' by pointing out that the intent of the 'line of vegetation' was to protect native vegetation, and the line was improperly drawn in this area as it included a large non-native jade plant. Thus, the proposed modification would exclude the existing jade plant from the line of native vegetation. This change would provide the minimum required 5 ft. setback from native vegetation for the proposed 480 sq. ft. patio/deck area. Although no native vegetation has been impacted, the applicants also offer a 1:1 mitigation in which they propose to plant native vegetation in an equivalent 88 sq. ft. canyon area currently covered in iceplant (the area is adjacent to, but not within the identified native vegetation). [Exhibit #7](#) provides a detailed depiction of the area where the 'line of vegetation' is proposed for modification and the proposed mitigation area. As ice plant is both non-native and invasive, its removal and eradication would be an overall benefit to the native vegetation and habitat of the canyon.

The applicant has submitted a landscape plan (see [Exhibit #6](#)) which identifies four landscape areas on the canyon slope within their 'buildable area' all areas propose utilizing a palette of low water use, drought tolerant, native plants within the garden planters, with plants closer to the native vegetation consisting of coyote brush, sagebrush, sage and buckwheat appropriate to mixed chaparral habitat type within the

canyon. **Special Condition 8** requires the applicant adhere to the proposed landscaping plan.

Regarding the unpermitted improvements (i.e., 34 cubic yards of cut and fill, construction of a 3-ft. wide sloped dirt path, a decomposed granite path with wood border, dirt access steps, garden planter walls, and backfilled 2-ft. tall keystone wall landscaping, fencing, flattened/graded approximately 480 sq. ft. area), all of these “accessory structures” are within the buildable area previously identified under CDP 5-97-122 and thus approvable per the setback requirements established under that same Commission action. Furthermore, new development proposed (i.e., construction of a new wood deck/flagstone patio/artificial turf in 480 sq. ft. graded area) is within the footprint of the unpermitted graded 480 sq. ft. area and with the proposed revision of the ‘line of vegetation’ would be in compliance with the required minimum 5-ft. setback from native vegetation. Additionally, **Special Condition 9** requires the applicants to maintain the area canyonward of ‘the line of vegetation’ as shown on [Exhibit #5, page 3](#) to be maintained as open space. Moreover, as approval of this deck area would allow human activity with a very minimal setback from sensitive habitat, **Special Condition 10** is imposed to ensure further protection of the biological integrity of the canyon habitat through a lighting prohibition. No lighting plan for the proposed new deck/patio area is proposed by the applicant, nor authorized by this coastal development permit. Thus, deck area lighting is prohibited to protect adjacent biological resources within the canyon open space from potential lighting impacts generated by the project. Additionally, **Special Condition 11** requires the applicant to record a deed restriction to inform future property owners of the restrictions imposed by this Commission action.

Therefore, the Commission finds that the proposed development, as conditioned, conforms to Section 30240 of the Coastal Act and San Clemente’s LUP policies regarding protection of biological resources, sensitive habitat, and coastal canyons.

D. 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 that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of

waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The proposed development has a potential for discharge of polluted runoff from the project site into coastal waters both during construction and post-construction. Due to this, the Commission has imposed **Special Condition #10**, which requires the applicant to comply with construction-related requirements related to storage of construction materials, mechanized equipment and removal of construction debris.

Other sources of polluted runoff could include runoff from impervious surface on the lot and over-watering, which sometimes occurs from installation of landscaping with a high water demand. Plants with a high-water demand are typically not well-suited to the Mediterranean climate of southern California, and therefore often require intense fertilization and application of pesticides/herbicides as a maintenance regime, in addition to regular irrigation. Thus, this type of landscaping can add pollutants to both dry weather and stormwater runoff.

Therefore, the Commission imposes **Special Condition #8** requiring the applicant comply with the proposed planting/landscaping plan which includes non-invasive, drought tolerant native vegetation within the canyon. Native, drought tolerant plants are required because they require little to no watering once they are established (1-3 years), they have deep root systems that tend to stabilize the soil, and are spreading plants that tend to minimize erosion impacts of rain and runoff.

Combined with the proposed use of non-invasive drought tolerant vegetation, the project will minimize adverse impacts on coastal waters to the extent that it will not have a significant impact on marine resources, biological productivity or coastal water quality. Therefore, the Commission finds that the proposed development, as conditioned, conforms to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to protect marine resources, promote the biological productivity of coastal waters, and to protect human health.

E. Coastal Act Violations

Violations of the Coastal Act have occurred on the subject site , including but not limited to, unpermitted grading and landform alteration of the natural coastal canyon slope; unpermitted construction and installation of retaining walls, steps, and landscaping; and placement of “private property” signs that act to deter the public from entering accessway to the beach. All work occurred on a coastal canyon slope. The applicant is proposing after-the-fact approval of the unpermitted development associated with the landscaping and patio improvements noted above and described in more detail in the project description.

Any non-exempt development activity conducted in the Coastal Zone without a valid CDP or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act.

On August 16, 2016 Commission staff issued a notice of violation letter to the property owner for the above described unpermitted development. The property owner has worked with Commission staff to develop this application to authorize the improvements including 34 cu. yds. cut/fill, 3-ft. wide sloped dirt path, decomposed granite path with wood border, dirt access steps, garden planter walls, backfilled 2-ft. tall keystone wall, landscaping of areas retained by planter wall and keystone wall, fencing, and grading of a 480 sq. ft. area after-the-fact through this permit amendment. The property owner has also worked with Commission staff to develop a new public access signage plan. In order to resolve the public access violations associated with the unpermitted placement of "Private Property" signs that denied access to the coast by deterring the public from entering the public accessway to the beach, the applicant proposes to install nine (9) 18"x24" signs at three (3) different points along the trail informing the public utilizing the trail to "Please Stay on Unimproved Coastal Access Trail Only" (see **Exhibit 7**). The signs seek to help identify the location of the public access trail. The signs also warn the public of the danger of utilizing the unimproved and possibly unstable canyon slope trail.

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 the resources that would be present on site if unpermitted development had not occurred (i.e. grading and landform alteration of the natural coastal canyon slope; unpermitted construction and installation of retaining walls, steps, and landscaping; and placement of "private property" sign). 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.

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. 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.

F. Permit Fees

Section 30620(c)(1) of the Coastal Act states, in relevant part:

The Commission may require a reasonable filing fee and the reimbursement of expenses for the processing by the Commission of an application for a coastal development permit...

Section 13055 of the California Code of Regulations sets the filing fees for coastal development permit applications, and states in relevant part:

(d) Fees for an after-the-fact (ATF) permit application shall be five times the amount specified in section (a) unless such added increase is reduced by the Executive Director when it is determined that either:

(1) the ATF permit application can be processed by staff without significant additional review time (as compared to the time required for the processing of a regular permit,) or

(2) the owner did not undertake the development for which the owner is seeking the ATF permit, but in no case shall such reduced fees be less than double the amount specified in section (a) above. For applications that include both ATF development and development that has not yet occurred, the ATF fee shall apply only to the ATF development. In addition, payment of an ATF fee shall not relieve any persons from fully complying with the requirements of Division 20 of the Public Resources Code or of any permit granted thereunder or from any penalties imposed pursuant to Chapter 9 of Division 20 of the Public Resources Code.

(i) The required fee shall be paid in full at the time an application is filed. However, applicants for an administrative permit shall pay an additional fee after filing if the executive director or the commission determines that the application cannot be processed as an administrative permit. The additional fee shall be the amount necessary to increase the total fee paid to the regular fee. The regular fee is the fee determined pursuant to this section. In addition, if the executive director or the commission determines that changes in the nature or description of the project that occur after the initial filing result in a change in the amount of the fee required pursuant to this section, the applicant shall pay the amount necessary to change the total fee paid to the fee so determined. If the change results in a decreased fee, a refund will be due only if no significant staff review time has been expended on the original application. If the change results in an

increased fee, the additional fee shall be paid before the permit application is scheduled for hearing by the commission. If the fee is not paid prior to commission action on the application, the commission shall impose a special condition of approval of the permit. Such special condition shall require payment of the additional fee prior to issuance of the permit.

In this case, the owners undertook the development for which they are seeking an after-the-fact permit and additional staff review time was required. Thus, the fee for the unpermitted portion of the proposed development is not reduced by the Executive Director. Per the CDP application Filing Fee Schedule for the 2019/2020 fiscal year (Section 13055, subsection (a)(5)(B)(1) of the California Code of Regulations), the fee for development based on development cost is \$3,810 (development cost up to and including \$100,000) times five (5) is \$19,050. Because the applicant has already paid \$1,249, **Special Condition 11** requires the applicant to pay the balance of \$17,801 prior to issuance of the permit, consistent with the requirements of California Code of Regulations Section 13055(i).

G. Local Coastal Program (LCP)

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit for development in an area with no certified Local Coastal Program (“LCP”) only if the project will not prejudice the ability of the local government having jurisdiction to prepare an LCP that conforms with Chapter 3 policies of the Coastal Act. The Commission certified the Land Use Plan (LUP) for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan (IP) portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City re-submitted 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. There is no certified LCP at this time.

The proposed development is consistent with the policies contained in the certified Land Use Plan. Moreover, as discussed herein, the development, as conditioned, is consistent with the Chapter 3 policies 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 (CEQA)

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a

proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The City of San Clemente is the lead agency for purposes of CEQA compliance. The City determined that the project is categorically exempt from CEQA giving it a Class 3 (15303(e)) development status. The project is located within an existing residential neighborhood. Development already exists on the subject site. The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing payment of application fee, assumption of risk due to hazards, future development deed restriction, compliance with proposed landscaping plan, open space/habitat use restrictions, lighting prohibition, construction best management practices, in order to 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, can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

City of San Clemente Certified Land Use Plan

Staff Report for CDP Application 5-97-122 (Sawall) Subdivision of a single 1.47 acre parcel into two parcels of 28,060 sq. ft. (Parcel 1) and 36,040 sq. ft. (Parcel 2).

CDP 5-97-122-A1 (Sawall) – Request to amend the previously approved building setback line to be consistent with current site conditions with respect to native vegetation and utility easements at Parcel 1.

CDP 5-01-097 (Moe) – Construction of a new 1,912 sq. ft. 3-level, 23-ft. high, single-family residence with an attached 448 sq. ft. 2-car garage, 40 cu. yds. of cut and 3 cu. yds. of fill for basement excavation and site preparation on a vacant coastal canyon lot. Excess material will be disposed outside the coastal zone.

CDP 5-01-097-A1 (Moe) – Returned due to inactivity. No Commission action taken.

APPENDIX B - STANDARD AND SPECIAL CONDITIONS PURSUANT TO CPD NO. 5-01-097 THROUGH CDP AMENDMENT NO. 5-01-097-A2

Note: Appendix B provides a list of all standard and special conditions imposed pursuant to Coastal Development Permit 5-01-097, as approved by the Commission in its original action and as modified and/or supplemented by this subject amendment number 5-01-097-A2. Any changes and new special conditions pursuant to amendment A2, from the previously approved special conditions are shown in **underline, bold**. Thus, this Appendix B provides an aggregate list of all currently applicable adopted special conditions.

STANDARD CONDITIONS AND SPECIAL CONDITIONS

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.

SPECIAL CONDITIONS:

1. Conformance of Design and Construction Plans to Geotechnical Recommendations
 - A. The applicant shall comply with all recommendations contained in the *Report on Investigation Geologic/Soils and Foundation Conditions the West 200 Block of Avenida Alessandro (Portion of Block 11 of Tract No.*

852), San Clemente, CA (Job No: 90-001) prepared by Ian S. Kennedy, Inc. dated June 3, 1997 and revised March 12, 2001.

- B. The permittee shall undertake development in accordance with the approved plans. Any proposed changes to the approved 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 required.

2. Submittal of Revised Planting Plan

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a revised planting plan prepared by an appropriately licensed professional which demonstrates the following:
 - (a) All planting shall provide 90 percent coverage within 90 days and shall be repeated if necessary to provide such coverage;
 - (b) All plantings 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 planting plan;
 - (c) Landscaped areas in the rear and side yard (canyon-facing) areas 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 Riviera Canyon shall consist of native, drought resistant plants. Invasive, non-indigenous plant species that tend to supplant native species shall not be used;
 - (d) Landscaped areas in the front yard (street-facing) area can include ornamental or native, drought-tolerant plants. Vegetation installed in the ground, which is not buffered from the canyon by the residence, shall consist of native, drought tolerant plants. Vegetation which is placed in above-ground pots or planters or boxes may be non-invasive, non-native ornamental plants; and
 - (e) No permanent in-ground irrigation systems shall be installed on site. Temporary above ground irrigation is allowed to establish plantings.
- B. The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

3. Revegetation of Canyon Slope

The applicant shall limit disturbance to existing native canyon vegetation to the maximum extent feasible. In the event that existing vegetation is disturbed during construction of the project authorized by CDP 5-01-097, the applicant shall replant the canyon slope with native, drought-tolerant species.

4. Conformance with Drainage and Runoff Control Plan

C. The applicant shall comply with the Grading and Drainage Plan prepared by Toal Engineering dated March 19, 2001 and with all recommendations contained in the *Conclusions and Recommendations* section of the *Report on Investigation Geologic/Soils and Foundation Conditions, the West 200 Block of Avenida Alessandro (Portion of Block 11 of Tract No. 852), San Clemente, CA (Job No: 90-001)* prepared by Ian S. Kennedy, Inc. dated June 3, 1997, as revised March 12, 2001. In addition, the applicant shall comply with the following provisions:

(a) Run-off from all roofs, patios, driveways and other impervious surfaces and slopes on the site shall be collected and discharged via pipe or other non-erosive conveyance to the frontage street or designated canyon outlet point to avoid ponding or erosion either on- or off- site;

(b) Runoff shall not be allowed to pond adjacent to the structure or sheet flow directly over the sloping surface to the canyon bottom;

(1) The functionality of the approved drainage and runoff control plan shall be maintained throughout the life of the development.

B. The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

5. Assumption-of-Risk, Waiver of Liability, and Indemnity Deed Restriction

By acceptance of this permit, as amended by amendment 5-01-097-A2, the applicant acknowledges and agrees (i) that the site may be subject to hazards from geologic instability, **slope instability, erosion, landslides, earth movement, and fire**; (ii) to assume the risks to the applicant and the property, that is the subject of this permit, of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards, (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims,

demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from injury or damage due to such hazards.

~~B. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant and landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of subsection A of this condition. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. The deed restriction and lease restriction shall not be removed or changed without a Commission amendment to this coastal development permit.~~

6. Future Development Deed Restriction.

This permit is only for the development described in Coastal Development Permit No. 5-01-097-**A2**. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610 (a) shall not apply to the entire parcel. Accordingly, any future improvements to the development authorized by this permit, including but not limited to repair and maintenance activities identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-01-097-**A2** from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

~~B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on development within the parcel. The deed restriction shall include legal descriptions of the applicant's entire parcel(s). The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.~~

7. Compliance with Landscaping Plan.

The applicant shall comply with the Landscape Plan submitted on January 3, 2020 and included as Exhibit #6 of this staff report. Final landscape planting necessary to achieve compliance with the approved landscape plan shall be implemented no later than sixty (60) days after issuance of the Coastal Development Permit.

8. Open Space/Habitat Use Restrictions.

No development, as defined in Section 30106 of the Coastal Act, shall occur within the open space habitat area within the subject property, as shown in Exhibit #5 of this staff report. The lands identified in this restriction shall be maintained as open space by the landowner(s) in perpetuity.

9. Lighting Prohibition.

No lighting plan for the proposed new deck/patio area is proposed or authorized by this coastal development permit. No lighting around the perimeter of the site and no lighting for aesthetic purposes is proposed or permitted. Lighting shall be prohibited to protect adjacent biological resources within the canyon open space from potential lighting impacts.

10. Construction Best Management Practices.

By acceptance of this permit, permittee shall comply with the following construction-related requirements and shall do so in a manner that complies with all relevant local, state and federal laws applicable to each requirement:

- (1) No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, rain, or tidal erosion and dispersion;
- (2) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
- (3) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;
- (4) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMP's shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and
- (5) All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

Best Management Practices (BMP's) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the onset of such activity. Selected BMP's shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:

- (1) The applicant shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. It shall be located as far away from the receiving waters and storm drain inlets as possible;
- (2) The applicant shall develop and implement spill prevention and control measures;
- (3) The applicant shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50 feet away from a storm drain, open ditch or surface water; and
- (4) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

11. Application Fee.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall pay the balance of the application fee for the after-the-fact (ATF) permit application, which is \$17,801.

12. Deed Restriction.

PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT (5-01-098-A2), the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit amendment a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, as amended, 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 amended, as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit amendment. 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, as amended, 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. This deed restriction shall supersede and replace the deed restriction recorded pursuant to Special Condition No. 6 of Coastal Development Permit Amendment 5-01-097, approved on June 14, 2001.