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## CALIFORNIA COASTAL COMMISSION

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# Th12b

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## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 5-19-0196

**Applicant:** Kenneth and Teri Savage

**Agent:** Peter & Associates, Inc.

**Project Location:** 1001 Buena Vista No. 2, San Clemente, Orange County.  
(APN 935-120-02)

**Project Description:** The application proposes removal of portions of unpermitted development, including an approximately 225 square-foot deck, above-grade portions of eight 24-inch caissons, concrete drainage swale, and railroad tie retaining wall. The applicant proposes retention of the below-grade portions of the eight 24-inch unpermitted caissons, and retention of a masonry retaining wall. The applicant proposes construction of a new 2.5-foot walkway supported by three new wooden posts with concrete footings, and a 42-inch high guardrail.

**Staff Recommendation:** Approval in part, with conditions, and denial in part.

## SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission approve a portion of the proposal and deny the remaining portion as follows:

**Approve the Coastal Development Permit for:** Removal of the unpermitted 225 square-foot deck, above-grade portions of the eight 24-inch caissons, concrete drainage swale, and railroad tie retaining wall. Construction of a new 46-inch high guardrail along the remaining concrete patio walkway.

**Deny the Coastal Development Permit for:** Construction of a new 2.5-foot walkway supported by three new posts with concrete footings, the retention of the below-grade unpermitted masonry retaining wall, and retention of the below-grade portions of the unpermitted caissons for which the applicant has requested after-the-fact approval.

The Commission must adopt a two-part resolution in order to carry out the staff recommendation. **See Page 5 for the motion and resolution.**

The subject development is located along the coastal bluffs of San Clemente. Violations of the Coastal Act exist on the subject property including, but not necessarily limited to unpermitted construction of a wood deck, a masonry retaining wall, a railroad tie retaining wall, concrete caissons, and a concrete drainage swale. The unpermitted wood deck that is the subject of this report is located adjacent to a concrete deck/patio that is immediately south of the multi-family residential building. The wood deck overhangs the edge of the bluff and is supported along its rear (upslope) side by a masonry retaining wall, and is supported mid-span by a row of concrete piles and wood posts. A railroad tie retaining wall is located just upslope of the row of piles. A concrete slab, intended as a drainage swale, is located between the masonry retaining wall and the railroad ties. The concrete drainage swale and all of the components of the wood deck, with the exception of the concrete patio that was permitted with the primary multi-unit residential structure, are unpermitted.

The applicant is requesting approval to remove the unpermitted 225 square-foot deck, above-grade portions of the eight 24-inch caissons, railroad tie retaining wall, and a concrete drainage swale located underneath the unpermitted deck. The applicant is also seeking after-the-fact approval of the below-grade portions of the existing eight unpermitted caissons, and below-grade masonry retaining wall to support the construction of the proposed new approximately 22-foot long, 2.5-foot wide concrete pathway supported by three new wooden posts with concrete footings. A 42-inch high guardrail is also proposed along the outside of the new pathway.

The multi-unit residential structure received a coastal development permit in 1975 from the South Coast Regional Commission (Coastal Development Permit No. P-6-27-75-5625). The southwest corner of the condominium complex contains Unit 2 (the applicant's unit) and is located approximately six (6) feet from the edge of the coastal bluff. The new proposed walkway would encroach into the required setback for coastal bluffs under the City of San Clemente's Certified LUP. The major issues raised by the

proposed development concern consistency with coastal bluff-top development, hazards, and visual resources.

Staff is recommending **approval** of the removal of the unpermitted deck, removal of a portion of the associated caissons, removal of the railroad tie retaining wall, and removal of the concrete drainage swale, because removal of these structures is consistent with both Chapter 3 policies of the Coastal Act and the certified LUP. Additionally, staff is recommending **denial** of the proposed new deck and posts with concrete footings and **denial** of the applicant's request for after-the-fact authorization of, and authorization to retain, the below-grade portions of the caissons and masonry retaining wall, because they do not conform to the requirements of Section 30253 of the Coastal Act due to their impact on the natural landforms along the bluff and Section 30251 due to their visual impacts of the natural landform, and because these elements of the proposal does not conform to the policies of the San Clemente LUP. Denial of the proposal to authorize the retention of the below-grade portions of the caissons, and the masonry retaining wall, pursuant to the staff recommendation will result in violations remaining on the property. The Commission's enforcement division will consider how to address said violations as a separate matter.

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

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## EXHIBITS

Exhibit 1 – Vicinity Map, Project Location

Exhibit 2 – Site Plan of Existing Deck

Exhibit 3 – Site Plan of Proposed Pathway

Exhibit 4 – Site Photos

Exhibit 5 – Aerial Photos of Site Modifications from 1972 and 2010

Exhibit 6 – Bluff Edge Map

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission adopt the staff recommendation to **approve-in-part and deny-in-part** Coastal Development Permit No. 5-19-0196, with the approval subject to the conditions set forth in the staff recommendation, by adopting the two-part resolution set forth in the staff report.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in conditional approval of the permit in part, denial of the permit in part, and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### Resolution:

#### Part 1: Approval with Conditions of a Portion of the Proposed Project

The Commission hereby **approves** the portion of the coastal development permit consisting of: **1) removal of the unpermitted deck, 2) removal of the above-grade portions of the eight unpermitted caissons, 3) removal of the railroad tie retaining wall, 4) removal of the unpermitted drainage swale, and 5) construction of a new 42-inch high guardrail along the outside edge of the remaining concrete patio**, on the grounds that these aspects of the proposal conform to the policies of Chapter 3 of the Coastal Act and the City's Certified Land Use Plan policies.

#### Part 2: Denial of the Remainder of the Proposed Project

The Commission hereby **denies** the portion of the coastal development permit consisting of: **1) after-the-fact approval for retention of the below-grade portions of the eight unpermitted caissons, 2) after-the-fact approval for retention of the existing unpermitted below-grade masonry retaining wall, 3) construction of a new approximately 22-foot long by 2.5-foot wide pathway, and 4) three new wooden posts with deepened concrete footings**, on the grounds that the proposed development will not conform with the policies of Chapter 3 of the Coastal Act, and does not conform to the City's Certified Land Use Plan policies.

## II. 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 the 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.

### III. SPECIAL CONDITIONS

1. **Revised Final Plans.** Within 60 days of Commission action, or within such additional time as the Executive Director may grant for good cause, the applicants shall submit for review and written approval of the Executive Director, final plans for the removal of the unpermitted deck, above-grade portions of the 8 caissons, railroad tie retaining wall, and concrete drainage swale that are in substantial conformance with the submitted plans dated March 5, 2019 (by Peter and Associates, Inc.) The revised plans shall first be approved by the City of San Clemente before submittal to the Executive Director and be revised to include the following:
  - a. Removal of the unpermitted deck, above-grade portions of the 8 caissons, railroad tie retaining wall, and concrete drainage swale.
  - b. Said unpermitted development **shall be removed within 90 days of issuance of the coastal development permit.**
  - c. Removal of the proposed new walkway and three new posts with concrete footings from the plans.
  - d. Construction of the 42-inch high guardrail to be built along the outside portion of the existing concrete patio for safety.
  - e. Mark the below-grade portions of the caissons and the masonry retaining wall with the following statement: "This component of the plans is not a part of the approval, and no coastal development permit has been approved or issued to authorize this component."

The permittees shall undertake the development in accordance with the approved plans within 90 days of issuance of this permit. Any proposed changes to the approved 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 determines that no amendment is legally required.

**2. Final Landscape Plans.** Within 180 days of Commission action, or within such additional time as the Executive Director may grant for good cause, the applicants shall submit for review and written approval of the Executive Director, final landscape plans for the landscaping on the coastal bluff. The revised plans shall first be approved by the City of San Clemente before submittal for the Executive Director's review and approval, and shall include the following:

- a. The landscaped area shall, at a minimum, include the areas where the unpermitted structures have been removed.
- b. Only drought tolerant native or non-invasive plant materials may be planted on the subject property. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, 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 'noxious weed' by the State of California or the U.S. Federal Government shall be planted within the property. A plant pallet supporting the plant community naturally found in this area, Coastal Bluff Scrub species, is preferred in this location.
- b. The landscaping shall incorporate both container stock and hydroseeding. Temporary low pressure irrigation may be used for a maximum of 12 months and all temporary irrigation components shall be removed within 26 months.

The permittees shall undertake the 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 plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**3. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris**

The permittees 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, streams, wetlands, or their buffers.

- (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 permittees 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.

4. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from erosion and coastal bluff collapse; (ii) 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; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
5. **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 permit application, which totals \$7,254.

## IV. FINDINGS AND DECLARATIONS

### A. Project Description and Site History

The applicant is requesting removal of unpermitted development, including an approximately 225 square-foot wooden deck, the above-grade portions of eight caissons, a concrete drainage swale, and a railroad tie retaining wall ([Exhibit 2](#)). The applicant is also proposing after-the-fact approval and retention of the below-grade portions of eight caissons and after-the-fact approval and retention of the below-grade masonry retaining wall to support the construction of a approximately 2.5-foot wide walkway supported by three new posts with concrete footings, with a 42-inch high guardrail along the outside of the new pathway ([Exhibit 3](#)).

The subject property consists of a developed, roughly level graded, rectangular-shaped, half-acre parcel located on the southwest side of Buena Vista in San Clemente ([Exhibit 1](#)). The parcel is a coastal bluff lot, and the toe of the bluff is buffered from direct wave action by a rip-rap seawall that protects the railway easement and the San Clemente Pedestrian Beach Trail, both of which lie between the subject property and the revetment.

The lot supports a two-story, six-unit residential structure, which was permitted by the South Coast Regional Commission in 1975 (Coastal Development Permit No. P-6-27-75-5625) and constructed in 1976. The rear-yard area on the seaward side of the units has been improved with brick walkways, wood and concrete decks, and planter areas. The subject Unit 2 is located near the southeasterly property line, next to and above a small drainage ravine (a Coastal Canyon) that was partially filled prior to development of

the lot in 1975. Immediate access to the rear yard/patio area from Unit 2 will be restricted, without the unpermitted deck, to a concrete walkway approximately 2.5-feet from the adjacent building corner. However, the rear yard/patio area from Unit 2 can also be accessed from the north side of the property. According to the applicant, around 1988, a new 27-foot long, 8.5-foot wide wood deck was constructed by a previous owner to attach to the existing concrete walkway, resulting in an approximately 225 square-foot deck ([Exhibit 4](#)). The deck overhangs the edge of the bluff, and is supported along its rear (upslope) side by a masonry retaining wall, and is supported mid-span by a row of eight 24-inch concrete piles and wood posts. The railroad tie retaining wall is located just upslope of the concrete piles to support the deck, and the concrete drainage swale is located between the masonry retaining wall and the railroad ties. These improvements were all constructed without a coastal development permit, and also without the appropriate permits required by the City of San Clemente. The deck was rebuilt in 1997 and 2013, also without a CDP.

A code enforcement case was initiated by the City of San Clemente in April 2013, and City staff advised the owner of the property that in order to resolve the violation, the owner either needed to 1) remove the unpermitted development with permits, or 2) apply and obtain the necessary approvals for the deck, including a variance from the City to allow for the non-conforming bluff edge setback. The City subsequently denied the property owner's variance request to retain the unpermitted deck as inconsistent with the coastal bluff protection policies of the Land Use Plan. The City issued an Approval-in-Concept on February 27, 2019, for the new 2.5-foot wide wooden deck/walkway to be added to the existing 2.5-foot wide concrete patio. This walkway would essentially serve as a 5-foot wide accessway around the perimeter of the existing structure, as "an addition to an existing structure" pursuant to the City of San Clemente's Municipal Code, and as a second means of safe egress from Unit 2 as required by Chapter 10 of the California Fire Code and California Building Code.

## **B. Coastal Hazards**

Section 30235 states:

**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. Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible.**

Section 30253 of the Coastal Act states, in part:

**New development shall:**

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

**(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.**

**City of San Clemente LUP Policies**

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

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

- HAZ-32 New Development in Hazard Areas.** New development shall only be permitted where an adequate factor of safety can be provided including on sites with ancient landslides, unstable slopes, or other geologic hazards.
- HAZ-33 Development on Hillsides, Canyons and Bluffs.** New development shall be designed and sited to maintain the natural topographic characteristics of the City's natural landforms by minimizing the area and height of cut and fill, minimizing pad sizes, siting and designing structures to reflect natural contours, clustering development on lesser slopes, restricting development within setbacks consistent with HAZ-41 and HAZ-47, and/or other techniques. Any landform alteration proposed shall be minimized to the maximum extent feasible. Development partially or wholly located in a coastal canyon or bluff or along the shoreline shall minimize the disturbance to the natural topographic characteristics of the natural landforms.
- HAZ-36 Improvements to Non-Conforming Structures.** Principal and accessory structures lawfully built along a coastal canyon, bluff or shoreline area pursuant to a Coastal Commission-issued Coastal Development Permit or subject to a Categorical Exclusion prior to the effective date of the LCP that do not conform to the LCP shall be considered legal non-conforming structures. Such structures may be maintained and repaired, as long as the maintenance or repairs do not increase the size or degree of non-conformity. Additions and improvements to such structures that are not considered a Major Remodel, as defined herein, or development authorized under a Categorical Exclusion Order, may be permitted provided that such additions or improvements do not increase the size or the degree of the nonconformity, comply with the current policies and standards of the LCP, and the remaining portion of the structure complies with the laws and regulations in effect when the structure was established. Complete demolition and reconstruction or Major Remodel is not permitted unless the entire structure is brought into conformance with the policies and standards of the LCP, including any requirement for a CDP.
- HAZ-38 Accessory Legal Nonconforming Structures.** For CDPs authorizing repair and maintenance of existing legal, non-conforming accessory structures on a shoreline, bluff or canyon lot that do not meet the shoreline, bluff or canyon setback, a condition shall be applied that requires the permittee (and all successors in interest) to apply for a CDP to remove the

accessory structure(s), if it is determined by a licensed Geotechnical Engineer and/or the City, that the accessory structure is in danger from erosion, landslide, or other form of bluff or slope collapse.

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

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

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

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

In the Certified Land Use Plan (LUP), the stringline is defined as follows:

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

The subject property is situated on a high coastal bluff slope that descends approximately 90 feet to the toe of the bluff with the City's Coastal Trail, the Orange County Transit Authority (OCTA) railroad tracks, and public beach beyond. Based on published engineering documents on file with the City of San Clemente, the southeastern property line of the lot (where the unpermitted development is located) lies along a ravine containing a storm drain, which was historically a natural arroyo or gully that was channelized and partially filled in the 1970s for the storm drain. The portion of the ravine above elevations of approximately 75 to 90 feet above mean sea level (MSL) was reportedly covered up with approximately 18 feet of artificial fill. Additional fill may have been placed to allow for the development of the principal structure at 1001 Buena Vista in 1976. The neighboring structure at 915 Buena Vista was built largely within the ravine. [Exhibit 5](#) includes aerial photos of the storm drain ravine in 1972, prior to the development of the adjoining lots, and in 2013 with the structures (and unpermitted deck) in place. Though reduced in size, the drainage gully remains as a topographic low and a discernable irregularity in the line of the coastal bluff edge.

Although Coastal Development Permit No. P-6-27-75-5625 approved the primary multi-unit structure with a 37-foot setback from the coastal bluff-edge, the staff report for that permit did not identify or address the preservation of the ravine along the southeasterly property line, or otherwise assign a canyon edge setback or identify a bluff edge setback for the side yard. Nevertheless, when there is a significant topographic feature like this, it can influence the position of the bluff edge, as in this case.

### **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 certified LUP contains a set of coastal bluff edge setback and stringline policies and definitions as a means of limiting the encroachment of development seaward toward the bluff edges on the highly erodible coastal bluffs and preventing the need for construction of revetments and other engineered structures to protect new development on coastal bluffs.

Under the City's Certified Land Use Plan (LUP), the bluff edge is defined as follows:

**“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 landward most

position of either the current of 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.

This definition is similar, though not identical, to the definition contained in the Commission's regulations. (14 CCR 13577(h)(2).)<sup>1</sup> The LUP contains a similar definition of the edge of a coastal canyon. (City of San Clemente Local Coastal Program Land Use Plan, Definition 24.)<sup>2</sup>

The applicant provided a geological report to determine the bluff edge location on this parcel entitled "*Evaluation of Bluff Edge Conditions at the Residential Property Located at 1001 Buena Vista No. 2, San Clemente, California*" by Pacific Geological Services, dated December 3, 2014. According to that evaluation, the applicant's consultant identified the ravine as a "filled coastal canyon." The City's LUP includes a definition of a coastal canyon as "any valley, or similar landform, which has a vertical relief of 10 feet or more." (City of San Clemente Local Coastal Program Land Use Plan, Definition 33). However, the LUP (which was adopted in 2018, four years after the applicant's bluff edge evaluation was written) also clearly identifies and maps a specific set of coastal canyons to which the LUP canyon policies apply. While the filled ravine at the project site would appear to meet the generic definition of a canyon because of its vertical relief of greater than 10 feet, this feature is not included among the "coastal canyons" designated in the LUP map, possibly because it was previously filled. (See Chapter 4, Marine and Land Resources, City of San Clemente Local Coastal Program Land Use Plan, p. 4-14). Therefore, according to the City's LUP, the filled ravine is not considered a "coastal canyon" and, according to the Commission staff Geologist, as explained below, the LUP policies regarding the coastal bluff edge, as opposed to coastal canyons, are more appropriate to apply in this case.

Regardless of whether the ravine is considered a coastal canyon or an irregularity in the bluff edge, the Coastal Commission has historically taken the position that the placement of fill does not change the position of a bluff edge or canyon edge, and the natural edge remains intact beneath the fill. Moreover, the 10-foot setback for accessory development is the same requirement for both coastal bluffs and coastal canyons pursuant to the City's LUP.

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<sup>1</sup> "Bluff line or edge shall be defined as the upper termination of a bluff, cliff, or seacliff. In cases where the top edge of the cliff is rounded away from the face of the cliff as a result of erosional processes related to the presence of the steep cliff face, the bluff line or edge shall be defined as that point nearest the cliff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff. In a case where there is a steplike feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the cliff edge..." (14 CCR §13577(h)(2).)

<sup>2</sup> "**CANYON EDGE**" The upper termination of a canyon: In cases where the top edge of the canyon is rounded away from the face of the canyon as a result of erosional processes related to the presence of the canyon face, the canyon edge shall be defined as that point nearest the canyon beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the canyon. In a case where there is a step like feature at the top of the canyon face, the landward edge of the topmost riser shall be taken to be the canyon edge. (City of San Clemente Local Coastal Program Land Use Plan, Definition 24.)



Following the incorrect assumption that the ravine represents a coastal canyon rather than an irregularity in shape of the coastal bluff, the applicant's geologic report also identified a coastal bluff edge seaward of the ravine ([Exhibit 6](#)). The applicant's bluff edge line descends from the bluff top (at an elevation of approximately +99 feet MSL directly in front of the residential complex) down into the mouth of the remnant ravine (to elevations as low as +72 feet MSL). This bluff edge line lies westward of the topographic slope break that comprises the termination of the bluff under the LUP and Commission definitions, and is thus located on the bluff face.

Accordingly, the City disagreed with this determination, and in its June 7, 2017 staff report interpreted the bluff edge in a significantly more landward location where it crosses the remnant ravine. The City's bluff edge line, at elevations of approximately +97 – 99 feet MSL, is based on the existing topography and attempts to trace the "upper termination" of the bluff – the slope break beyond which "the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the bluff," following the LUP and Commission definitions.

The Commission's staff Geologist, Dr. Joseph Street, has reviewed the available geologic and topographical information for the site, and agrees that the City's bluff edge determination is a reasonable interpretation of the existing topography. However, the bluff edge definition contained in the City's LUP states that "[i]n 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." This directive mirrors the Commission's typical approach to defining the bluff edge in situations where artificial fill is present. The City's bluff edge determination does not distinguish between natural bluff materials (i.e., Pleistocene marine terrace deposits) and the artificial fill that has been placed in the ravine, potentially burying or obscuring the natural bluff edge. Based on the available historical information, including a 1972 aerial photograph ([Exhibit 5](#)), the site description contained in a 1975 geologic investigation pre-dating the development of the site (Stickel & Associates, 1975), and pre-development topographic survey (RJ & RR Toal, Inc. Topographic Survey, Lot 10, Block 7, Tract 794, San Clemente (undated), Dr. Street has concluded that the natural bluff edge, per the LUP and Commission definitions, traces the edge of the ravine as visible in the 1972 aerial photo, at elevations of approximately +97 – 100 feet MSL and extending inland to near the edge of the street. The available information is not sufficient to allow for an exact delineation of the buried bluff edge, but it almost certainly occurs landward (northeast) of both the applicant's and City's coastal bluff edge delineations. This conclusion is supported by the 2014 Pacific Geological Services report, which estimates that the buried edge of the ravine lies beneath the residential complex, and approximately 30 to 45 feet inland of the unpermitted deck ([Exhibit 6](#)).

In the project vicinity, the Commission typically imposes either a minimum bluff edge setback of 25 feet from the edge of the bluff for primary structures (e.g. the enclosed living area of residential structures) and minimum 10 foot setback for secondary

structures (at grade patios, decks, garden walls) or requires conformance with the stringline setbacks, whichever is most protective of the bluff. 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.

LUP Policy HAZ-41 requires bluff edge setbacks for new development and accessory structures requiring a foundation (such as caissons or deepened footings) to be setback by the greater of the following distances: the setback distance recommended as a result of the geotechnical study, 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. Policy HAZ-41 does not permit deepened foundations, such as caissons, for proposed development, including accessory structures to be located within 25 feet of a bluff edge.

Here, Commission staff has determined that the bluff edge is located at elevations of greater than +97 feet Mean Sea Level (MSL), and well inland of the unpermitted deck. The unpermitted caissons supporting the deck are located along the same contour line within approximately one foot of the +96 MSL contour line, which means that the unpermitted deck straddles the bluff edge as determined by the City, and is far seaward of the buried, natural bluff edge as determined by the Commission. The applicant proposes to remove the 225 square-foot unpermitted deck, the above-grade portions of the caissons, the railroad tie retaining wall, and a concrete drainage swale, which are all encroaching into the 10-foot setback for secondary structures. The removal of the encroaching structures is not inconsistent with the LUP hazards policies, and in fact, the proposal to remove the development actually promotes those policies by removing development that could not have been approved in the first place.

However, the applicant is requesting after-the-fact approval of the below-grade portions of the caissons that were constructed to support the unpermitted deck and to leave them "in-situ" so as not to disturb the existing slope. According to the proposal, the deck would be removed, the exposed portion of the caissons would be removed, and the remaining underground portions of the caissons would remain. Section 30253 of the Coastal Act requires that new development shall neither create nor contribute to erosion nor require the construction of protective devices that would alter natural landforms along bluffs and cliffs. The below grade caissons have and continue to alter the natural landform along the coastal bluff and have contributed to destruction of the site. Were the caissons not constructed here, the natural bluff would be intact.

The row of eight caissons along the bluff edge does function as a protective device, originally intended to support the unpermitted deck, but also prevents the erosion of the bluff. The existing residential structure, as approved by Coastal Development Permit No. P-6-27-75-5625 in 1975, was constructed on a caisson foundation system. Because the primary structure is already supported by caissons, it is not clear that any additional

support for the primary residence is needed and the geological reports submitted do not indicate that these caissons provide such support. Section 30235 of the Coastal Act states that cliff retaining walls that alter natural shoreline processes (by preventing natural erosion) shall be permitted when required to protect existing structures in danger from erosion. Section 30235 compels the approval of cliff retaining devices as necessary to support existing structures, so in this case, approval of the below grade caissons is not mandated. Again, at this site the existing primary permitted use is already constructed on a caisson foundation and is not in danger from erosion. As such, the retaining walls and bluff retention devices cannot be approved in compliance with Chapter 3 policies. Additionally, as discussed, the eight 24-inch diameter caissons are located within one foot of the bluff edge without any setback, which cannot be found to be consistent with the City's certified LUP bluff setback policies listed above.

The applicants are requesting after-the-fact approval of the below-grade masonry retaining wall, which would support the construction of a new 2.5-foot walkway supported by three new posts with concrete footings (which would extend the concrete pathway from 2.5 to an approximately 5-foot wide pathway around the southwest corner of Unit 2). The proposed walkway would include a 42-inch high guardrail to be constructed around the outside edge of the walkway. The new posts are proposed to be located immediately adjacent to the unpermitted caissons. For the reasons discussed above, the proposed development cannot be found consistent with Section 30253 of the Coastal Act or the City's certified LUP bluff setback policies, and Commission staff is recommending denial of the retention of the masonry retaining wall.

Furthermore, the existing masonry retaining wall is not a Pre-Coastal structure, as it was constructed in 1988. As discussed above, Section 30235 compels the approval of cliff retaining devices as necessary to support existing structures, so in this case, approval of the below grade caissons is not mandated. The existing structure has no right to protection provided by a retaining wall. In addition, the Commission has generally interpreted Section 30235 to require the Commission to approve protective devices for residential development only for existing principal structures and not for accessory development such as the proposed wood deck. In this case, the proposed after-the-fact approval of the masonry retaining wall would be approval of a new accessory structure, not to protect an existing principal structure constructed prior to passage of the Coastal Act.

Again, as discussed above, the masonry retaining wall is located within approximately one to two feet of the bluff edge, and is non-conforming to the City's required 10 foot setback from bluff edge, and therefore cannot be found to be consistent with the City's certified LUP bluff setback policies listed above.

The construction of the masonry wall has and will continue to alter the natural landform along the coastal bluff, as described by the Commission staff Geologist, and has contributed to destruction of the site. Were the retaining wall not constructed here, the natural bluff would be intact. As such, the retention of the masonry retaining wall is inconsistent with Section 30253 of the Coastal Act and must be denied.

With regard to the proposed new walkway, the applicant contends the extension of the walkway is necessary to meet Chapter 10 of the California Fire Code and relevant sections of the California Building Code as they relate to means of egress. Commission staff disagrees that this expansion of the width of the walkway is necessary pursuant to these regulations. Specifically, Chapter 11A of the California Building Code expressly excludes from accessibility requirements multifamily dwellings constructed prior to March 13, 1991. (California Building Code, Ch. 11A, Accessibility, Section 1102A.2.) The subject multi-unit residential structure was constructed in 1976, and is merely required to be maintained to the accessibility standards in place as of 1976. (*Id.*) According to the California Building Code, Chapter 10, *Means of Egress*, “accessible” means of egress are not required to be provided in existing buildings, which were “grandfathered” in and not required to be retrofitted in that regard. (California Building Code, Ch. 10, Means of Egress, Section 1009.) Furthermore, there is already a means of egress from the back of the structure to the front of the building around the north side of the structure.<sup>3</sup>

Therefore, the Commission finds that the proposed development does not conform to the requirements of Section 30253 of the Coastal Act regarding the siting of development in a hazardous location and the development of bluff protective devices and alteration of natural bluffs and cliffs, and does not conform to the policies of the San Clemente Land Use Plan. Therefore, this portion of the proposal must be denied. Only as conditioned for approval can parts of the project be found consistent with the Coastal Act.

The applicant has chosen not to provide a full geotechnical investigation, has not provided any information regarding the depth of the caissons, and has not provided geologic evidence to support their position that it would be infeasible to remove the caissons entirely. Therefore, Commission staff is not approving after-the-fact approval of the below-grade portions of the caissons, which will remain an unresolved violation that the applicants will need to address with the Commission’s enforcement staff, unless the applicants provide the details of the complete removal of the caissons in the required revised plans pursuant to **Special Condition 1**.

## 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**

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<sup>3</sup> Furthermore, even if it were the case that the proposed walkway were required by some other body of law, if it would simultaneously violate a policy of the Coastal Act, it would result in a conflict of laws situation, and the applicant has not explained why that other body of law would necessarily prevail over the Coastal Act.

**compatible with the continuance of those habitat and recreation areas.**

**City of San Clemente LUP Policies**

**RES-72 Native Landscaping. Drought-tolerant native landscaping specific to the habitat type/vegetation community is required in coastal canyon and bluff areas, to reduce erosion and maintain natural open space areas. Invasive plant species are prohibited in all landscaping.**

The policies of San Clemente's certified LUP requires the preservation of native vegetation and discourages the introduction of non-native vegetation in coastal canyons and along coastal bluffs. Some of the applicants' proposed development for the retention of the below-grade portions of the caissons, and masonry retaining wall are located within the bluff edge setback, immediately adjacent to where the protection and enhancement of habitat values is sought; and thus there is no buffer from any sensitive bluff vegetation that may be present. 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. While the deck and accessory foundations encroached into the canyon and bluff that could have, at one time, supported native bluff scrub species, it is unclear if the unpermitted development had a direct impact on any native vegetation. Regardless, the proposal to remove these elements is consistent with Section 30240(b) of the Coastal Act, the Commission requires that the bare areas where the unpermitted development is removed be revegetated with native coastal bluff vegetation as addressed in **Special Condition 2**. Only as conditioned can the project be found consistent with Section 30240 and the relevant LUP policies.

**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 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.

The proposed development for which staff is recommending approval is located at the top of the bluff overlooking the Pacific Ocean. As such, drainage and run-off from the proposed removal of unpermitted development could potentially affect water quality of coastal waters as well as adversely affect the stability of the bluffs. In order to protect coastal waters from the adverse effects of polluted runoff, the Commission is imposing **Special Condition 3**.

## **E. Scenic and Visual Resources**

Section 30251 of the Coastal Act states:

**The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.**

San Clemente's certified LUP visual resource policies:

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

### **Coastal Views**

Section 30251 of the Coastal Act requires that the scenic and visual qualities of coastal areas be protected and, where feasible, to be restored and enhanced. Bluff edge setbacks are important tools used to protect coastal views. In this case, the proposed new pathway would extend into the 10-foot coastal bluff edge setback for

accessory development.

As previously discussed, it is the nature of bluffs to erode. Though currently not subject to direct wave attack, the San Clemente coastal bluffs are subject to natural erosion caused by other factors such as wind and rain, adverse bedding orientations, soils conducive to erosion and rodent burrowing.

The proposed structures, specifically the below-grade retaining wall and the below-grade portions of the caissons, are subsurface and would not immediately have a visual impact. However, future erosion and/or episodic failure could expose them. Additionally, the proposed new deck and walkway would be visible over the bluff edge while looking inland from the beach or the sea. Under such circumstances, the proposed structures would have an adverse visual impact since they would be visible from the public trail and beach, both now and in the future. As proposed, the Commission finds that the proposal for the new pathway and the retention of the caissons and the retention of the retaining wall would, upon exposure, be inconsistent with Section 30251 of the Coastal Act, and these elements must be denied. Only as conditioned for approval can the other proposed elements of project be found consistent with Section 30251.

## **F. Public Access and Recreation**

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

Section 30210 of the Coastal Act states:

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

Section 30212 of the Coastal Act states, in relevant part:

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

The beach fronting this location is used by local residents and visitors for a variety of recreational activities. As proposed, the development at the top of the bluff will not affect existing public access to the shoreline in two respects. No public access across the

property to the beach currently exists because of the hazardous nature of the approximately 90 foot high coastal bluff. The proposed development will not create any new adverse impacts on coastal access and recreation. The Commission finds that the proposed development does not pose significant adverse impacts to existing public access and recreation. Most importantly, there is adequate, safe public access in the vicinity. Therefore, the project as conditioned is consistent with Sections 30210 and 30212 of the Coastal Act.

## **G. Coastal Act Violations**

Violations of the Coastal Act have occurred on and continue to exist on the subject property, including, but not necessarily limited to, unpermitted construction of a wood deck, a masonry retaining wall, concrete piles, and a concrete drainage swale. The City has also pursued enforcement of its own local ordinances. As described above, a code enforcement case was initiated by the City of San Clemente in April 2013. City staff advised the property owner that in order to resolve the City code enforcement violation, the owner either needed to 1) remove the unpermitted development with permits, or 2) apply for and obtain the necessary approvals for the deck, including a variance from the City to allow for the non-conforming bluff edge setback. The City subsequently denied the property owner's variance request to retain the unpermitted deck as inconsistent with the coastal bluff protection policies of the City's Land Use Plan. The City issued an Approval-in-Concept on February 27, 2019 for the new 2.5-foot wide wooden deck/walkway to be added to the existing 2.5-foot wide concrete patio and after-the-fact approval of the below grade portions of the caissons and a concrete masonry retaining wall to support the new walkway. To effectuate the resolution of the City code enforcement violation, the property owner submitted this application to remove all of the unpermitted development described herein, except the masonry retaining wall and the below-grade portions of the caissons. Approval of the portions of this application seeking authorization for the removal of the unpermitted deck, removal of the above-grade portions of the associated caissons, and removal of the railroad tie retaining wall and concrete drainage swale, coupled with issuance of the CDP and the applicant's subsequent performance of the work authorized by the permit in compliance with all of the terms and conditions therein, will result in resolution of the above described violations. Denial of the portions of this application requesting after-the-fact approval of the below-grade portions of the caissons, and the masonry retaining wall, will result in violations remaining on the subject property.

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), other than the development approved herein, 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.



### **Administrative Filing Fee for After-the-Fact Development**

Under this permit application, the applicant is requesting retention of the below-grade portions of the eight 24-inch unpermitted caissons and a masonry retaining wall.

Section 30620 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 any application for a coastal development permit...**

Section 13055 of Title 14 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.**

**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. (*emphasis added*)**

Subsection (d) of Section 13055 indicates that the fee for an after-the-fact 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: the permit application can be processed by staff without significant additional review time or the owner did not undertake the development for which the applicants are seeking the after-the-fact permit.

The fee for the project is based on the fee related to development cost (Section II.B of the filing fee schedule). Based on the filing fee schedule for when this application was submitted in 2019, the permitting fee based on development cost is \$3,627. Commission staff recognizes that the applicant did not undertake the development for which they are seeking the ATF permit, as they were not the owner at the time of the initial construction of the unpermitted deck and associated development in circa 1988. However the prior owner was notified of the violations, and therefore the applicant should have known of the violations when they purchased the property in 2018. Furthermore, the proposed project has required significant additional review time given the complexity of the project proposed. Therefore, the Commission is requiring the applicant to pay three times the sum of the fee, which is \$10,881, which has not been fully paid by the applicant. Because the applicant of CDP No. 5-19-0196 has already paid \$3,627, **Special Condition 5** requires the applicant to pay the balance of \$7,254 prior to issuance of the permit, consistent with the requirements of California Code of Regulations Section 13055(i).

## **H. Local Coastal Program**

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit for development in an area with no certified Local Coastal Program only if the project will not prejudice the ability of the local government 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. In 2018, the City certified an LUP amendment for a comprehensive update of the LUP. The City is currently also working on resubmittal of an IP. There is no certified LCP at

this time. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that conforms with Chapter 3 policies of the Coastal Act.

## **I. California Environmental Quality Act**

Section 13096 of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act ("CEQA"). Section 21080.5(d)(2)(A) of CEQA prohibits approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment. The project as conditioned herein incorporates measures necessary to avoid any significant environmental effects under the Coastal Act, and there are no less environmentally damaging feasible alternatives or mitigation measures. Therefore, the proposed project is consistent with CEQA.

