

**CALIFORNIA COASTAL COMMISSION**

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# Th11a

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Hearing Date: 6/11/20

## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 5-19-0606

**Applicant:** Brandi Outwin and Jeff Beals

**Agent:** Kris Graham  
Glover + Graham Design Collective

**Location:** 304 Avenida La Costa, San Clemente  
Orange County

**Project Description:** Demolition of a 1,968 square foot single family residence and construction of a new 2,684 square foot, two story, 16 foot high, single family residence with an attached 461 square foot, two car garage, and spa, on an inland, coastal canyon lot. Removal of unpermitted development including stairs, walkway, landing, and low walls beyond the edge of the coastal canyon is also proposed.

**Staff Recommendation:** Approval with conditions.

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## SUMMARY OF STAFF RECOMMENDATION

The proposed project is located on an inland, coastal canyon lot in the City of San Clemente. The proposed project includes demolition of a single family residence, and construction of a new 2,684 square foot, two story, 16 foot high, single family residence with an attached 461 square foot, two car garage, and spa. The proposed development is consistent with the canyon setback requirements of the City's certified Land Use Plan.

The applicants are proposing to remove nonconforming development on the slope of the coastal canyon (wooden steps, landings, walkway and low garden walls) and to revegetate the disturbed area. The proposed residence will be supported on a caisson foundation system beneath the footprint of the proposed residence. The proposed caisson foundation system would stabilize the proposed residence only, would not retain rear yard area, and would not interfere with natural erosional processes. The proposed caisson foundations would be set back more than 18 feet from the canyon edge. The caisson foundation would, in effect, make the proposed residence independent of the slope and potential slope failure, allowing natural canyon processes to continue. The caissons would not function as a retention structure.

Based upon geotechnical information prepared for the proposed development, the development is not expected to create the need for a canyon protective device over the 75-year life of the proposed development. LUP Policy HAZ-35 requires that new development in hazard areas be conditioned to require the removal of the development if the development becomes unsafe to the point that a government agency determines the structure may no longer be occupied or must be removed, or if the development would require a canyon protection device, or for other reasons listed in that policy. **Special Condition No. 1** is recommended, requiring conformance with this LUP policy.

Likewise, the geotechnical information prepared for the proposed development indicates that the caissons are not expected to be exposed over the life of the development. However, in the unlikely event that the caissons do become exposed in the future, coastal resource impacts may occur, including impacts to public views. **Special Condition No. 3** is recommended, requiring the applicants to submit an application for an amendment to the coastal development permit or for a new coastal development permit to address resource impacts raised should the caissons be exposed in the future.

The applicants are proposing to remove nonconforming development on the canyon slope and to revegetate the disturbed area. As proposed, the landscape plan for the canyon slope area includes plant species that are not native to San Clemente coastal canyons, and would remove one lemonade berry plant. As proposed, the landscape plan is inconsistent with the coastal canyon habitat and public view policies of the certified LUP and the Coastal Act. **Special Condition No. 6** requires a revised landscape plan that includes only plant species that are native to San Clemente coastal canyons on the canyon slope and retains any existing native plants.

Staff is recommending approval of the proposed development as conditioned to assure consistency with the Coastal Act and LUP policies regarding hazards, canyon protective devices, habitat and scenic views. Staff is recommending twelve special conditions, which require: 1) no future canyon protective device; 2) the foundation plan shall be the caisson foundation plan with caissons located within the footprint of the proposed residence only, and the shear pin foundation option shall not be used; 3) conformance with geotechnical recommendations; 4) preparation of caisson exposure plan; 5) conformance with geotechnical recommendations; 6) conformance with the drainage plan as proposed; 7) revised landscape plan and irrigation plan; 8) conformance with

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the spa leak prevention/detection plan as proposed; 9) conformance with construction Best Management Practices (BMPs); 10) future improvements require an amendment or new CDP; 11) assumption of risk; and 12) deed restriction.

The motion is on page 5. The standard of review is Chapter 3 of the Coastal Act.

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### EXHIBITS:

1. Vicinity Map
2. Geologic Cross Sections
3. Site Plan Depicting Canyon Edge Location & Factor of Safety Line
4. Location of Nonconforming Development to be Removed
5. Drainage Plan
6. Spa Leak Prevention/Detection Plan
7. LUP Figure 4-2-B Coastal Canyons
8. Vegetation Survey
9. Landscape Plan
10. Project Plans
11. Public View from West Avenida Alessandro

## MOTION AND RESOLUTION

### Motion:

I move that the Commission approve Coastal Development Permit 5-19-0606 pursuant to the staff recommendation.

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

### Resolution:

The Commission hereby approves the Coastal Development Permit for the proposed project and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

## 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 or 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**

This permit is granted subject to the following special conditions:

### **1. No Future Canyon Protective Device(s).**

**A.** By acceptance of this permit, the applicants agree, on behalf of themselves and all successors and assigns, that routine repair and maintenance of the caissons and grade beams approved by this permit on the subject site shall be allowed. However, the caissons and grade beams shall not be enhanced, augmented, or reconstructed for purposes of protecting the development approved by CDP No. 5-19-0606, and no new canyon protective device(s) shall be constructed to protect the development approved pursuant to CDP No. 5-19-0606, including, but not limited to, the residence, foundations, patios, water feature/spa, decks, balconies, and any future improvements and/or accessory structures, in the event that the development is threatened with damage or destruction from landslide activity, erosion, earth movement, or coastal hazards in the future. By acceptance of this permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to enhance, augment, and/or reconstruct such devices that may exist under applicable law.

**B.** By acceptance of this permit, the applicants further agree, on behalf of themselves and all successors and assigns, that the landowner is required to remove the development authorized by this permit if the City or any other government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to natural hazards and that there are no measures that could make the structures suitable for habitation or use without the use of canyon protective devices. The permittee shall obtain a coastal development permit for removal of approved development unless the Executive Director provides a written determination that no coastal development permit is legally required.

**C.** If any portions of the existing caissons and/or grade beams are removed, the applicants/landowners shall have a geotechnical investigation prepared by a licensed engineer and geologist, retained by the permittees, which addresses whether any portions of the development approved per CDP No. 5-19-0606 are threatened by landslide activity, erosion, and/or earth movement or coastal hazards. The report shall identify all those immediate or potential future measures that could stabilize the development without canyon protective device(s), including but not limited to removal or relocation of portions of the development. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical investigation concludes that any portion of the development is unsafe for occupancy, the permittees shall, within 90 days of submitting the investigation, apply for a coastal development permit amendment to remedy the hazard.

**D.** Prior to removal/relocation, the permittees shall submit two copies of a Removal/Relocation Plan to the Executive Director for review and written approval. The Removal/Relocation Plan shall clearly describe the manner in which such development is to be removed/ relocated and the affected area restored so as to best protect coastal resources. In the event that portions of the development fall down the canyon slope before they are removed, the landowners shall remove all recoverable debris

associated with the development and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

## **2. Caisson Foundation Plan.**

**A.** By acceptance of this permit and as proposed by the applicants, the applicants agree to construct the proposed residence using the foundation plan demonstrating that the caissons are located within the footprint of the residence only, as depicted on the foundation plan labeled “Preliminary Foundation Plan with Caissons”, prepared by Coastline Engineering, dated 9/10/2019 (attached to this staff report as [Exhibit 10.2](#)). The foundation plan labeled “Preliminary Foundation Plan with Shear Pins” shall not be used in conjunction with the subject project.

**B.** The permittee shall undertake development in accordance with the approved foundation plan labeled “Preliminary Foundation Plan with Caissons”, prepared by Coastline Engineering, dated 9/10/2019 (attached to this staff report as [Exhibit 10.2](#)). Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the approved plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

## **3. Conformance with Geotechnical Recommendations.**

PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for the review and approval of the Executive Director, written evidence that a registered professional geotechnical engineer and/or registered geologist has reviewed and approved all final design plans including foundation and grading/drainage plans and certified that each of those final plans is consistent with all the recommendations contained in the geotechnical investigations prepared for the subject site.

## **4. Caisson Exposure Plan.**

**A.** By acceptance of this permit, the applicants agree on behalf of themselves and all successors and assigns that, in the event the caisson foundations approved by CDP 5-19-0606 become exposed in the future, the landowner is required to submit an application for an amendment to CDP 5-19-0606 or a new CDP to implement methods to address coastal resource issues raised, including but not limited to issues related to hazards, habitat, and/or public views.

**B.** The landowner shall undertake development in accordance with the approved final plan of the approved CDP amendment or new CDP. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission approved amendment to the CDP, unless the Executive Director determines that no amendment is legally required for any proposed minor deviations.

## **5. Removal of Nonconforming Development from the Canyon Slope.**

The permittee shall carry out removal of existing canyon slope development as proposed and as shown on Plan Sheet A-101 prepared by Glover + Graham Design Collective, dated 10/31/2019, which depicts removal of all development beyond the canyon edge (labeled “top coastal canyon line” on Plan Sheet A-101). The area will be revegetated consistent with the revised landscape plan for the canyon slope area consistent with the requirement of Special Condition 7 of this permit titled Native Plantings Landscape & Irrigation Plans.

#### **6. Drainage Plan.**

**A.** The project approved by this permit shall conform to the drainage depicted on the plans prepared by Toal Engineering, dated 10/17/2019 (Plan Sheet C-1), showing that surface runoff will be directed to the street and filtered prior to exiting the site.

**B.** The permittee shall incorporate Best Management Practices (BMPs) into the construction and post-construction phases of the subject development.

**C.** The permittee shall undertake development in accordance with the approved final landscaping and drainage plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the approved plans shall occur without a Commission amendment to this CDP unless the Executive Director determines that no amendment is legally required.

#### **7. Native Plantings Landscape & Irrigation Plans.**

**A.** PRIOR TO ISSUANCE OF THIS PERMIT, the applicants shall submit to the Executive Director for review and written approval, revised landscape and irrigation plans demonstrating that:

- (1) No native plants (including but not limited to lemonade berry) will be removed from the site;
- (2) Only plants native to the San Clemente coastal canyon habitat type/vegetation community will be planted on the canyon slope (the area beyond the canyon edge, labeled “top coastal canyon line” on Plan Sheet A-101);
- (3) No change will occur in the canyon bottom (beyond the existing lower chain link fence);
- (4) No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest 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;
- (5) No plant species listed as a ‘noxious weed’ by the State of California or the U.S. Federal Government shall be utilized within the project site.
- (6) Permanent irrigation on canyon slopes and canyon bottom is prohibited. Only temporary irrigation for initial plant establishment on the canyon slope is allowed. All temporary irrigation must be removed once vegetation has established.



**B.** The permittee shall also comply with the applicable water efficiency and conservation measures of the City's adopted CALGreen standards concerning irrigation systems, and efficient fixtures and appliances.

**C.** The permittee shall undertake development in accordance with the approved final landscape and irrigation plan(s). 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 CDP unless the Executive Director determines that no amendment is legally required.

**8. SPA LEAK PREVENTION/DETECTION PLAN.**

**A.** The permittee shall undertake development consistent with the spa leak prevention/detection plan prepared by Glover + Graham Design Collective, dated 1/13/2020 (Plan Sheet A-102). As proposed, the plan provides: 1) a separate water meter for the spa to allow for specific monitoring of spa water usage; 2) an interior waterproof surface lining; 3) use of concrete intended to have low permeability when exposed to water; 4) installation of a sub-drain system below the entire bottom of the spa; and 5) the spa water fill system will be provided with an automatic cut-off switch programmed to cut off water flow when normal and expected flow is exceeded.

**B.** The permittee shall undertake development in accordance with the approved final landscaping and drainage plans. 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 CDP unless the Executive Director determines that no amendment is legally required.

**9. Construction Best Management Practices.**

**A.** The 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.

**B. 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 permittee 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 permittee shall develop and implement spill prevention and control measures;
- (3) The permittee 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 permittee shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

**10. Future Improvements.** This permit is only for the development described in CDP No. 5-19-0606. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to this development governed by CDP No. 5-19-0606. Accordingly, any future improvements to the structures authorized by this permit, including but not limited to, repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to CDP No. 5-19-0606 from the Commission or shall require an additional CDP from the Commission or from the applicable certified local government.

**11. 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 landslide activity, erosion and/or earth movement; (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.

## **12. Deed Restriction.**

PRIOR TO ISSUANCE OF THIS PERMIT, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the landowners have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

## **IV. FINDINGS AND DECLARATIONS**

### **A. Project Description and Location**

The proposed project site is located at 304 Avenida La Costa, in the City of San Clemente on an inland, coastal canyon lot ([Exhibit 1](#)). The applicants propose to demolish a single story, 1,968 square foot single-family residence and construct a new 2,684 square foot, two story, 16-foot-high, single family residence with an attached 461 square foot, two car garage. A spa/water feature is also proposed. The proposed residence would be supported on a caisson foundation system. Existing encroachments beyond the canyon edge (including wooden stairs, walkways, landings, and low garden walls) are proposed to be removed and the area revegetated. The proposed new residence conforms with the canyon setback requirements of the City's certified LUP (i.e. a 15-foot setback from the top of the canyon edge, a stringline setback, and 30% the depth of the lot).

The 11,870 square foot, trapezoidal shaped property fronts approximately 65 feet on Avenida La Costa and extends northwesterly approximately 200 to 213 feet from the street to the rear property line in the coastal canyon. Roughly half of the site closest to the street is essentially flat at elevation +/-114 feet. The rear half of the site consists of a +/-35-foot high 1.5:1 (horizontal: vertical) ratio slope descending to the rear property line.

The site is designated Low Density Residential in the City of San Clemente LUP and the proposed project is consistent with this designation. The project is located within an existing developed urban residential area. The site is surrounded by single-family residential development and is compatible with the character and scale of the surrounding area. The subject site is located on an inland lot between the first public roadway (South Ola Vista) and the sea. The nearest coastal access is available

approximately 700 feet west of the subject site at the public access way that extends from the bluff top on Plaza a la Playa, just north of its intersection with Avenida La Costa, to the beach below.

### Standard of Review

The City of San Clemente has a certified Land Use Plan, but does not yet have a certified Implementation Plan. The standard of review is the Chapter 3 policies of the Coastal Act.

## **B. Hazards**

Coastal Act Section 30253(a)-(b) states:

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (b) 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.

Coastal Act section 30251 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.

Relevant San Clemente LUP Hazard Policies include:

**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-21 Restrict Bluff/Canyon/Shoreline Retention Devices.** When consistent with Policy GEN-8<sup>1</sup>, the construction, reconstruction, expansion, and/or replacement bluff/canyon/ shoreline protective device, (i.e. revetments, breakwaters, groins, of a seawalls, bluff protective devices, deep piers/caissons, or other artificial structures as defined in Chapter 7 that alter natural landforms or alter bluff/canyon/shoreline processes), for coastal erosion control and hazards protection, are prohibited, except pursuant to a CDP where it can be shown that either the device fully complies with all relevant LCP policies and the coastal access and recreation policies of the Coastal Act, or all of the following are met: a. The bluff, canyon or shoreline protective device is required for the protection of coastal-dependent uses, existing structure(s) (including a principal structures or residence or public beaches in danger from erosion, b. Where there is no less environmentally damaging alternative to the bluff, canyon or shoreline protective device, c. The device is sited to avoid sensitive resources, d. The device is designed to eliminate or mitigate adverse impacts on local shoreline sand supply and public access and to avoid or, where avoidance is infeasible, to minimize and mitigate the encroachment on the public beach, and e. The device is designed to minimize adverse visual impacts to the maximum extent feasible.

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

**HAZ-35 Removal of Development.** Except for coastal-dependent development, new development, including Major Remodels, in hazardous areas shall be conditioned to require that the development shall be removed and the affected area restored to its previous or natural condition if: (a) any government agency has ordered that the structures are no longer allowed to be occupied due to coastal hazards, or if any public agency requires the structures to be removed; (b) services to the site can no longer be maintained (e.g., utilities, roads); (c) the development is no longer located on private property due to the migration of the public trust boundary, and the development significantly impairs public trust resources; (d) removal is required pursuant to LCP policies for SLR adaptation planning; or (e) the development requires new and/or augmented bluff or shoreline protective devices and such devices cannot be authorized consistent with the LCP.

**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

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<sup>1</sup> GEN 8 Taking of Private Property. The City does not have the power to grant or deny a permit in a manner which will cause a physical or regulatory taking of private property, without the payment of just compensation. This policy is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States (Coastal Act Section 30010).

environmentally damaging drain system is feasible, and the drainpipes are designed and placed to minimize impacts to the bluff face, toe, and beach.

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

- 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.

**HAZ-48 Canyon Pool Setbacks.** The minimum setback for swimming pools adjacent to coastal canyons is 15 ft. from the canyon edge. All new or substantially reconstructed swimming pools shall incorporate a leak prevention/detection system. This minimum setback may be altered to require greater setbacks when required or recommended as a result of geotechnical review required by policy HAZ-8 or HAZ-9.

**RES-71 Drainage Devices.** Drainage devices on coastal bluffs and canyon lots shall be directed to frontage roads away from the bluff or canyon slopes. Exceptions shall only be made when 100 percent site drainage to the street is not practical, to be determined by the City, based on the design of the structure and the ability to drain all water to the street. In this case, the amount of site drainage to the street shall still be maximized. Drainpipes are to be designed and placed to minimize impacts, including landform alteration and visual impacts. When extensions are made to existing drainpipes, the entire length of pipe shall be analyzed to ensure the drain system minimizes impacts to the bluff or canyon. Adequate visual impact mitigation may include coloration of the original pipe, painting of the pipe to blend with natural surroundings, screening of the pipe using vegetation and other natural land features, or any other method deemed appropriate.

Coastal Act Section 30253 requires that risks be minimized, that stability and structural integrity be assured, and that development 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. Coastal Act Section 30251 requires that development be sited and designed to minimize alteration of natural land forms. In implementing these Coastal Act requirements, the City's certified LUP has addressed these concerns through a number of policies, especially, in this case, policies addressing the City's coastal canyons. The relevant LUP policies are cited above. The Coastal Act and the City's LUP work together to ensure protection of the coastal canyons, by minimizing hazards, promoting the open space benefits of the canyons, and protecting public views.

Section 30253 of the Coastal Act and the City's LUP policies require that new development shall not require construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The Coastal Act and the LUP limit construction of protective devices for many reasons, but in this case particularly because of adverse effects on scenic public views and natural landforms. Construction of a protective device to protect new residential development would also conflict with Section 30251 of the Coastal Act which states that permitted development shall be designed to protect views of scenic coastal areas, to minimize the alteration of natural land forms, and to be visually compatible with the character of surrounding areas. Because of inconsistencies with these policies, the Commission typically does not allow such protective devices.

A Preliminary Geotechnical Investigation was prepared for the proposed project by Geofirm, dated 3/5/2018. In addition, a Response to California Coastal Commission letter report, prepared by Geofirm, dated 9/24/2019 was also submitted in conjunction with the proposed development. The geotechnical information identifies a canyon edge location, and includes a slope stability analysis and a canyon slope retreat rate analysis. The submitted geotechnical information considered expected long-term average retreat rate over the expected life of the proposed residence (75 years) and determined a minimum factor of safety for the site.

According to the geotechnical information prepared for the proposed development, the subject site was created in conjunction with the grading associated with development of the larger subdivision in 1956 (Tract No. 2964, of which the subject site is Lot 14). The building pad and canyon slope at the subject site consist of approximately 20 feet of artificial fill, resulting from the 1956 subdivision grading. At that time, the fill in the area of the canyon slope and a portion of the building pad was placed on ancient landslide materials ([Exhibit 2](#)).

The geotechnical consultant has identified the location of the canyon edge along the slope break at the canyonward edge of the building pad. The Commission's staff geologist has reviewed the topographic survey and three geologic cross sections prepared for the site and determined that this existing topographic canyon edge, occurring within the artificial fill at the top of the slope, more or less overlies the buried natural canyon edge. Moreover, from a hazards perspective, the existing canyon edge is more important, since potential for instability in the fill slope contributes to the position of the 1.5 factor of safety line. Thus, staff concurs with the location of the canyon edge as determined by the applicants' geotechnical consultant ([Exhibit 3](#)). Development as proposed will meet the LUP's 15-foot setback from the canyon edge for primary structures, and 5 feet for accessory patio development. The proposed development also meets the other LUP methods for determining the appropriate setback from the canyon edge: 30% of the depth of the lot and a stringline setback.

At present, the project site consists of approximately 20 feet of fill material placed over natural marine terrace deposits, Capistrano Formation bedrock and, along the canyon slope, ancient landslide deposits. Under current accepted practices, artificial fill would not be placed on an unstabilized landslide. Due to this pre-existing condition, roughly half of the building pad (the half closest to the canyon edge) does not possess 1.5 factor of safety (minimum FS = 1.1). The low factor of safety is due to the presence of the ancient landslide.

In order to achieve the required 1.5 factor of safety for the new development, the applicants have proposed two potential alternatives based on the recommendations of the geotechnical consultant: 1) placement of a line of eight, 30" diameter concrete shear pins, embedded into bedrock to a depth of 40' feet below grade, between the proposed house and the canyon edge, or, 2) use of a deepened foundation system, consisting of sixteen, 30" diameter concrete caissons, founded approximately 30' below grade into competent bedrock, to support the proposed residence. The caissons would be located a minimum of 18' away from the canyon edge. ([Exhibit 3](#)).

The shear pins alternative is designed to stabilize the canyon top lot and reduce the potential for a large slope failure event. The shear pins may not "retain" material in the sense that they don't prevent gradual, "grain-by-grain" erosion, but by adding strength, they are intended to keep canyon material in place and prevent a large landslide, and thus would "alter a canyon process" under HAZ-21. Thus, the shear pins would constitute a canyon slope retaining device, or "protective device" per the LUP definition.



In contrast, the deepened foundation alternative is designed to support the proposed house by embedding caissons in competent bedrock. The caissons would not retain rear yard area, would not interfere with natural erosional processes, and would be set back more than 18 feet from the canyon edge. The caisson foundation would, in effect, make the proposed residence independent of the slope and potential slope failure. In other words, the shear pin alternative would stabilize the entire canyon top (essentially a retention structure, or “protective device”), whereas the caisson foundation would stabilize the proposed residence only, and would not have a significant retaining effect. With the caissons option, natural canyon processes would be allowed to continue. Thus, the caissons would not function as a retention structure. It is also important to note that only minor grading within the proposed project’s footprint is proposed. No grading is proposed to create building pad area or to stabilize the site. Additionally, no new retaining walls are proposed.

The two options were submitted as “either or” alternatives. With the caisson foundation, the building site will meet the necessary 1.5 factor of safety and will also meet the 15-foot setback from the canyon edge. In addition, there is a low likelihood that caissons in the proposed position would become exposed over the 75-year life of the proposed development. The slope stability analysis indicates that the most likely slope failure event would originate in the buried landslide deposits, not in the fill materials on the face of the slope. This relatively deep-seated type of failure would most likely occur along a surface that daylights about 5-7 feet inland of the canyon edge, while the nearest caissons would be about 18 feet inland of the canyon edge. Thus, it would likely require multiple rounds of slope failure for the nearest caissons to become exposed. Some surficial slumping and erosion could occur on the face of the slope, but the geotechnical information for the site indicates that historically erosion rates (canyon edge retreat) have been very low, if not zero. This more gradual erosion would not be expected to cause 18 feet of retreat in 75 years. Erosion can be further minimized by ensuring that drainage from the site is collected and directed away from the canyon edge as is required by **Special Condition 5**.

Regarding erosion at the base of the canyon slope, the geotechnical consultant states:

“The toe of the fill slope on the property is set back from the channel approximately 70 feet and has not been subject to any stream erosion, nor is any such erosion anticipated in the future. Consequently, there is no proposal to “armor” or “harden” the fill slope or the streambank to protect against erosion caused by the stream (one canyon “process”). In addition, the top of slope does not show any signs of having eroded or retreated landward since the 1956 grading that created the pad/slope, so there is no need for (and the project does not propose any) “hardening” of the slope to protect against erosion.”

In summary, the proposed development, incorporating a caisson foundation system to support the proposed residence, would not interfere with natural canyon processes and is not expected to create the need for a canyon protective device over the 75-year life of the proposed development.

LUP Policy HAZ-21 limits construction of canyon protective devices, which may include caissons, for hazards protection unless approved pursuant to a coastal development permit when it is demonstrated that the device is consistent with all relevant LCP policies, or when it meets other enumerated requirements. In this case, as described above, the caisson foundations would not act as a retention structure or protective device. Nevertheless, it's worth reiterating that these caissons will stabilize the residence, not the entire site, and so will not interfere with natural canyon processes. Moreover, special conditions are imposed (discussed later in this staff report) to ensure compliance with other LUP hazard policies, and with the public canyon view and habitat policies of the LUP. The proposed caissons will have no impact on public access or recreation. In addition, the proposed caisson foundation system, because it does not act as a retention device, will also not have an adverse impact on local shoreline sand supply. Thus, the proposed development may be found to be consistent with the requirements of LUP Policy HAZ-21.

LUP Policy HAZ-32 requires that new development shall only be permitted in hazardous areas where an adequate factor of safety can be provided including on sites with ancient landslides, such as the subject site. The proposed caissons, which will not act as a retention device, will ensure a 1.5 factor of safety for the proposed residential structure without effecting natural canyon processes. Thus, the proposed development may be found to be consistent with LUP Policy HAZ-32 because the new development will have a 1.5 factor of safety, which is considered an adequate factor of safety.

#### Future Amendment

As described above, the caisson foundations are not expected to be exposed over the 75-year life of the proposed development. However, in the unlikely event that the caissons do become exposed at some point in the future, resource impacts arising from that exposure must be addressed. Such impacts would include impacts to public views. Currently the canyon slope at the site is visible from the public road across the canyon, West Avenida Alessandro. At a minimum, any impacts to public views would need to be addressed. However, exposure of the caissons may raise other resource impact issues, not currently anticipated. Therefore, in order to assure that the proposed development remains consistent with the Chapter 3 policies of the Coastal Act, and with the policies of the City's certified LUP, **Special Condition No. 3** is imposed which requires the applicants to apply for an amendment to this CDP or for a new CDP to address resource impacts raised by caisson exposure in the future. Only as conditioned can the proposed development be found consistent with the Coastal Act and the City's certified LUP.

#### Remove Development If Threatened

LUP Policy HAZ-35 requires that new development in hazard areas be conditioned to require the removal of the development if, despite the expectation of consultants today, development becomes unsafe to the point that a government agency determines the structure may no longer be occupied or must be removed, or if the development would require a canyon protection device, or for other reasons listed in that policy. As

described above, the site is not expected to be threatened due to erosion or instability of the canyon slope over the proposed development's 75-year life. Thus, it appears reasonable, based upon the information provided by the applicants' geotechnical consultant and generally accepted by the Commission's staff geologist, to conclude that the development will likely be safe for its 75-year life. Nevertheless, if any of the circumstances listed in LUP Policy HAZ-35 occur, the development must be removed. **Special Condition No. 1** is imposed which requires conformance with this LUP policy.

#### Nonconforming Development

LUP Policy HAZ-37 requires that when a principal structure is removed, all non-conforming accessory development be removed. The principal structure currently at the site, a single-family residence, is proposed to be removed. There is existing development on the canyon slope, beyond the canyon edge; its location makes it nonconforming development. This non-conforming development includes wooden stairs, a walkway made of broken concrete, and low masonry and wooden garden walls ([Exhibit 4](#)). The proposed development includes removal of this non-conforming development and revegetating the area with native and low water use plants. Removal of the non-conforming development and revegetating the area is consistent with LUP Policy HAZ-37. Specifics regarding the planting plan are discussed later in this staff report. **Special Condition No. 4** is imposed which requires that the removal of nonconforming canyon slope development be carried out as proposed.

#### Drainage

LUP Policies Res-71 and Haz-45 require that drainage on coastal canyon lots be directed away from the canyon edge and to the frontage road. As proposed, project site drainage will be directed to Avenida La Costa, the frontage road. In addition, site drainage will be filtered prior to leaving the site by directing site drainage to a trench drain equipped with a flogard or equivalent filter, prior to being discharged into the street and City's storm drain system. Thus, as proposed, the project is consistent with these LUP policy requirements. **Special Condition No. 5** is imposed which requires that the drainage plan be carried out as proposed (drainage plan as reflected on Plan Sheet C-1, dated 10/17/2019, [Exhibit 5](#)).

#### Spa Leak Prevention/Detection

LUP Policy Haz-48 requires that swimming pools adjacent to coastal canyons be setback a minimum of 15 feet from the canyon edge and that they incorporate a leak prevention/detection system as part of the project design. The proposed project does not include a pool, but does include a spa. The applicants are also proposing a spa leak prevention/detection plan, in order to prevent leaks to the extent feasible, and should a leak occur, it will be recognized as soon as possible. Measures included in the spa leak prevention/detection plan include: a separate water meter for the spa to allow for specific monitoring of spa water usage; an interior waterproof surface lining; use of concrete intended to have low permeability when exposed to water; installation of a sub-drain system below the entire bottom of the spa; and, a spa water fill system will be provided with an automatic cut-off switch programmed to cut off water flow when normal and expected flow is exceeded. The leak prevention/detection plan will help to prevent

and/or limit excessive water from being introduced at the site. If left untreated, a leak could create the potential for instability at the site. As proposed, the leak prevention/detection plan would limit the likelihood of this occurring. Thus, as proposed the project is consistent with this LUP policy requirement. **Special Condition No. 7** is imposed which requires that the spa leak prevention/detection plan be carried out as proposed (Plan Sheet A-102, dated 1/13/2020, [Exhibit 6](#)).

#### Assumption of Risk

LUP Policy Haz-10 requires that development located in hazardous areas (such as the subject site) be conditioned to record a deed restriction acknowledging the hazards associated with the property and acknowledging that future canyon protection devices are prohibited. The subject site is a coastal canyon lot with an ancient landslide on site. As such, it is subject to hazards. As proposed and conditioned, the project will minimize hazards consistent with the requirements of the Coastal Act and LUP policies. Nevertheless, it is important that the applicants acknowledge, on behalf of themselves and future owners, the risk associated with development of the site. In addition, the recorded deed restriction must also acknowledge the restrictions imposed upon the site by this permit as necessary to assure consistency with the Coastal Act and certified Land Use Plan. Recordation of such a deed restriction will make current and future site owners aware that these restrictions run with the land and bind all successors in interest. Therefore, **Special Condition 1** is imposed which requires that the landowner and/or any successor-in-interest to acknowledge the restrictions placed upon the property, including the prohibition on future canyon protection devices, and to assume the risk of undertaking the development and to include this requirement in a deed restriction recorded against the property. As conditioned, the Commission finds that the development conforms to the requirements of Section 30253 of the Coastal Act regarding the siting of development in hazardous areas.

#### **C. Habitat**

Coastal Act Section 30240 states:

- a. Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.
- b. 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.

**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 nonnative 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 nonnative vegetation.

**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.

**HAZ-37 Removal of Non-conforming, Unpermitted and/or Obsolete Structures and Uses.** When a principal structure is removed, all non-conforming accessory development and/or uses shall be removed. Development on the shoreline, canyon, and/or bluff sites must identify and remove all unpermitted and/or obsolete structures that are no longer being used, including but not limited to protective devices, fences, walkways, stairways, etc. which encroach into canyons or bluffs or shoreline or onto public property.

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

In addition, LUP Policy Haz-47, cited earlier, establishes setback requirements for development adjacent to coastal canyons. Policy HAZ-47 setback requirements are implemented to minimize risk due to hazard, but also to protect canyon habitat as well. As proposed, the development is consistent with the LUP required setbacks.

Regarding San Clemente's Coastal Canyons, the LUP states:

Major issues associated with urban encroachment into San Clemente's coastal canyons include erosion, invasive plant species, surface slope failures, detrimental drainage improvements, excess watering, visual disruptions, private access ways used by the general public, changes in runoff patterns, and significant unique maintenance issues. In addition, the canyons (with the exception of Marblehead Coastal and Calafia Canyons) are divided into hundreds of privately owned parcels, presenting challenges for restoration efforts. **To address these issues, the LUP provides policies requiring development setbacks from coastal canyons for both new development and redevelopment, policies requiring that drainage be directed away from**

**canyons to reduce erosion, and policies requiring native landscaping.** [Emphasis added.]

Regarding coastal canyons, the LUP further states:

“San Clemente's coastal canyons represent remnants of what was once a much larger habitat zone. Most of the City's coastal canyons (the only exception being the canyons located in Marblehead Coastal) are surrounded by residential development. The canyons have been cut off from larger habitat areas since the 1930s. Urbanization around the coastal canyons has led to the introduction of invasive nonnative plants. In addition, the introduction of domestic animals has impacted the native fauna. The introduction of domestic dogs and cats from the surrounding urban areas impacts native bird, small mammal, and reptile populations. **Despite these impacts, indicator species of Coastal Sagebrush Scrub plant communities are present. The primary environmental value of these habitat areas is their representation of an ever-diminishing resource within an urbanized area of the coast.**” [Emphasis added.]

The City of San Clemente certified LUP includes maps of the coastal canyons that identify areas within some of the canyons as “potential sensitive habitat”, recognizing that development of the area surrounding the coastal canyons, which occurred prior to the effective date of the Coastal Act, has adversely impacted the coastal canyons to varying degrees. In this case, the subject site is on Riviera Canyon. LUP Figure 4-2-B ([Exhibit 7](#)) identifies lower Riviera Canyon, where it adjoins Lobos Marinos Canyon, as potential sensitive habitat. However, the more inland portions of Riviera Canyon, including the location of the subject site, are not mapped as potential sensitive habitat. LUP Figure 4-2-B does identify a potential ephemeral stream in the canyon bottom at the site. Nevertheless, the LUP recognizes all coastal canyons as areas that contain native habitat, typically in smaller patches, though degraded by past activities and the presence of invasive species. Maintaining the habitat value of the coastal canyons, or preferably enhancing the value when feasible, is required by the City's certified LUP, via the various coastal canyon policies cited above.

The applicants' property extends to the canyon bottom. The canyon at this particular site is considered somewhat degraded due to the ornamental, nonnative and invasive plant species mixed in with the native vegetation in the canyon bottom. The canyon slope, with one exception, currently supports only nonnatives and invasive plants, primarily ice plant, annual weeds, and ornamental grass species ([Exhibit 8](#)). The exception to the nonnatives on the canyon slope is a single lemonade berry shrub located about half way up the canyon slope, along the southeastern property line. This isolated lemonade berry plant is surrounded by ice plant, ornamental grasses and weeds, and a golden wattle acacia tree. The canyon bottom, however, supports patches of native habitat, although also interspersed with nonnatives and invasive plants. The nonnative plants in the canyon bottom include palm trees, pepper trees, golden wattle acacia trees, eucalyptus trees, honeysuckle, pittosporum, ice plant, annual weeds and ornamental grasses. The isolated lemonade berry shrub is located about 50 feet below the canyon edge, and about 65 feet from the proposed residence. The remainder of the native plants, in the canyon bottom, are eighty or more feet from the canyon edge, and

95 or more feet from the proposed residence. Due to the presence of a relatively significant amount of nonnatives and invasive plants interspersed amongst the natives, the site does not rise to the level of ESHA. Regardless, preservation and enhancement of the City's coastal canyons is a goal supported by both the habitat protection policies of the Coastal Act and the certified LUP.

At the base of the property, where the slope transitions to canyon bottom, the area is characterized by native species including lemonade berry, toyon, saltbush, and giant wild rye. These are all species native to San Clemente coastal canyons. These native plants will not be disturbed with the proposed development.

Currently there is nonconforming development located on the canyon slope. The nonconforming development includes a stairway, walkway, and low walls. As part of the proposed project, the applicants are proposing to remove this nonconforming development, as required by LUP Policy HAZ-37. In addition to removal of the nonconforming development, the applicants are proposing to revegetate the canyon slope in the area of past disturbance ([Exhibit 9](#)).

There is an existing chain link fence on the property that separates the area of past disturbance from the canyon bottom. It is the area downslope of the chain link fence (i.e. the canyon bottom) that supports the area comprised of the native plants described above. The proposed landscape plan will leave this area of existing vegetation untouched. The proposed landscape plan includes plants that are native to the coastal canyon. For example, the landscape plan proposes to plant giant wild rye near the base of the canyon slope, next to the existing patch of giant wild rye in the canyon bottom. In addition, existing nonnative trees in the area proposed for revegetation will be removed, including nonnative pepper trees, golden wattle accacias, paperbark, and palms. These will be replaced by planting coastal live oaks at the base of the canyon slope, adjacent to existing patches of native vegetation. Planting giant wild rye adjacent to existing giant wild rye and replacing nonnative, invasive trees with coast live oaks in the canyon bottom, as well as other native plants, will provide habitat benefits to the area. These aspects of the proposed landscape plan would enhance the habitat of the coastal canyon.

However, a few issues are raised by the landscape plan as proposed. One lemonade berry shrub is currently present on the canyon slope, based upon the vegetation survey prepared for the subject site. On the proposed landscape plan, this lemonade berry plant is missing. Removal of a valuable native plant such as lemonade berry would be inconsistent with the LUP Policy RES-70, which prohibits removal of native plants from coastal canyons. In addition, a number of LUP policies promote retention of the natural state of the coastal canyons for both visual and habitat purposes. As described above, the canyon slope vegetation is currently virtually all nonnative and invasive plants. The proposed landscape plan includes a number of native plants, but also a substantial number of nonnatives such as rosea iceplant, aloes, and buddleja davidii. Though low water use, these are not native to California and not to the coastal canyons. Moreover, as proposed, approximately half of the canyon slope would be planted in ice plant,

which is both nonnative and invasive. For these reasons the proposed revegetation of the disturbed area of the canyon slope is not consistent with the LUP policies regarding protection and enhancement of habitat in coastal canyons.

To address these issues, a revised landscape plan is necessary. The revised landscape plan must indicate that only plant species native to San Clemente coastal canyon slopes will be planted on the canyon slope, and that no native plants (including the existing lemonade berry shrub) will be removed. Such a revised landscape plan is required to find the proposed development consistent with the Coastal Act and LUP policies requiring protection of coastal canyons, preservation of native plants, and specifically with LUP Policy RES-72 which requires “native landscaping specific to the habitat type/vegetation community” in coastal canyon areas. **Special Condition No. 6** is imposed which requires the applicants to submit a revised landscape plan for the area canyonward of the canyon edge that indicates that only plant species native to San Clemente coastal canyon slopes will be planted on the canyon slope, and that the no native plants (including the existing lemonade berry shrub) will be removed. The proposed landscape plan in the area streetward of the canyon edge is acceptable and no changes in that area are necessary.

LUP policy HAZ-46 prohibits permanent irrigation in coastal canyons. It allows temporary irrigation only for initial plant establishment. It is not known whether irrigation is proposed and if so, whether it would be temporary or permanent on the canyon slope. Thus, an irrigation plan is required, indicating that either zero or only temporary irrigation for initial plant establishment will occur on the canyon slope in the area that has been disturbed by the presence of nonconforming development. The LUP requires these landscape and irrigation restrictions for a number of complimentary reasons including minimizing hazards, protecting habitat, and protecting public views. Therefore, **Special Condition No. 6** is imposed which requires a revised landscape and irrigation plan consistent with the LUP policies cited above and Section 30240 of the Coastal Act.

#### **D. Visual Resources**

Coastal Act Section 30251 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.

LUP Visual Resources 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.

**VIS-14 Coastal Canyon Visual Resources Restoration.** Promote the restoration of coastal canyons with native landscaping to enhance visual resources in a manner that is consistent with the goals of the City and the Coastal Act.

**VIS-15 Preservation of Open Space in Coastal Canyons.** Preserve the designated undeveloped "natural" coastal canyon areas where appropriate that were originally intended to function as open space (See Figure 4-3 Coastal Canyons General Location Map in Chapter 4).

Coastal Act Section 30251 and the LUP policies cited above require that visual resources in scenic areas be protected, and where feasible, enhanced. The LUP includes a number of policies regarding protection of scenic views generally and of coastal canyons in particular. LUP Policy VIS-1 echoes Section 30251, including more specifically, that scenic and visual qualities of coastal canyons be preserved and, where feasible, restored and enhanced. LUP Policy VIS-14 promotes restoration of coastal canyons with native landscaping to enhance visual resources. And LUP Policy VIS-15 states that coastal canyon areas should be preserved as undeveloped natural area.

The LUP also identifies a number of scenic gateways, scenic corridors, and public view corridors. The subject site is not visible from any of these designated public view areas. The nearest designated view area is along South Ola Vista which is designated as a Minor Recreation Scenic Corridor. In addition, the nearest public accessway, located near the bottom/seaward end of Avenida La Costa, where it intersects with Plaza a la Playa, is designated as a Public Access View Corridor. However, the site is not visible from either South Ola Vista or Plaza a la Playa. However, the canyon slope at the site is visible from the public road across Riviera Canyon, West Avenida Alessandro. Although the LUP designates specific view corridors to be protected, it also requires protection, and enhancement where feasible, of all scenic and visual qualities within the coastal zone. More specifically, the LUP requires preservation and enhancement of the scenic qualities of the coastal canyons, including Riviera Canyon where the subject site is located.

As proposed, development would not block or degrade public views to this stretch of Riviera Canyon from West Avenida Alessandro. Moreover, the proposed project would remove nonconforming development (including a stairway, walkway, and low walls) from the canyon slopes and would revegetate the area, resulting in a more natural

canyon view (as conditioned for a revised landscape plan) than is present now with the nonconforming development. As described previously, **Special Condition No. 6** is imposed which requires a revised landscape plan that will prohibit removal of any native plants and will allow planting of only plants native to coastal canyons. This will protect and enhance the natural appearance of the coastal canyon and preserve scenic public views of the canyon.

As described previously, the proposed residence will be supported on caissons (which will not act as canyon retention/protection devices). And, as also described above, the caissons are not expected to be exposed over the 75-year life of the proposed development. However, in the unlikely event that the caissons do become exposed at some point in the future, resource impacts, including potentially visual impacts, arising from that exposure must be addressed. If the caissons were to become exposed, it would alter the public views of the coastal canyon. The possible imposing visual presence of concrete caissons could interfere with the views of the canyon in its “natural” state, inconsistent with the LUP policies cited above and with Coastal Act Section 30251. The goals of the LUP’s coastal canyon and visual resources policies include maintaining the natural state of the canyons for public views and other purposes. A row of 30”-diameter caissons would not provide views of the canyon in a natural state. Although exposure of the caissons is not expected, it cannot be ruled out. Therefore, in order to assure that the proposed development remains consistent with the Chapter 3 policies of the Coastal Act, and with the policies of the City’s certified LUP, **Special Condition No. 3** is imposed which requires the applicants to apply for an amendment to the coastal development permit or for a new coastal development permit to address resource impacts, including visual resource impacts, raised by caisson exposure in the future. Only as conditioned can the proposed development be found consistent with the Coastal Act and the City’s certified LUP.

### **E. 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 August 2, 2019, a comprehensive update to the City’s LUP was effectively certified by the Coastal Commission. The City is currently also working on submittal of an Implementation Plan to complete the LCP; however, at this time the City has no certified LCP.

As conditioned, the proposed development is consistent with the policies contained in the certified Land Use Plan regarding hazards, public views, and environmental protection, and with the policies in Chapter 3 of the Coastal Act. Therefore, approval of the proposed development will not prejudice the City’s ability to prepare a Local Coastal Program for San Clemente that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

## **F. California Environmental Quality Act (CEQA)**

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The City of San Clemente is the lead agency for purposes of CEQA compliance. As determined by the City, this project is statutorily exempt from CEQA. The Commission has conditioned the proposed project in order to ensure its consistency with Coastal Act requirements regarding hazards, habitat, public views, and resource protection to lessen any potentially significant adverse impacts which the activity may have on the environment to a level of less than significant. These special conditions are: 1) no future canyon protective device; 2) the foundation plan shall be the caisson foundation plan with caissons located within the footprint of the proposed residence only and that the shear pin foundation plan shall not be used; 3) conformance with geotechnical recommendations; 4) preparation of caisson exposure plan; 5) conformance with geotechnical recommendations; 6) conformance with the drainage plan as proposed; 7) revised landscape plan and irrigation plan; 8) conformance with the spa leak prevention/detection plan as proposed; 9) conformance with construction Best Management Practices (BMPs); 10) future improvements require an amendment or new CDP; 11) assumption of risk; and, 12) deed restriction.

There are no other feasible alternatives or mitigation measures available which will lessen any significant adverse impact the project would have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

## **APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

Coastal Development Permit Application No. 5-19-0606 and associated file documents.

City of San Clemente Certified Land Use Plan.

Preliminary Geotechnical Investigation, prepared by Geofirm, dated 3/5/2018.

Response to California Coastal Commission, Notice of Incomplete Application, prepared by Geofirm, dated 9/24/2019.