

**CALIFORNIA COASTAL COMMISSION**

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# W13e

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## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 5-19-1155

**Applicant:** David & Jenny Wojtaszek

**Agents:** Scot Laidlaw, Laidlaw Schultz Architects  
Charles Cisneros, M.S., RPA, Psomas

**Location:** 2580 Riviera Drive, Laguna Beach, Orange County  
APN: 053-317-10

**Project Description:** Demolition of a 3,763 square foot, single family residence and construction of a new 5,946, 14 feet high above natural grade, two-level single-family residence with an attached 527 square foot, 3 car garage. 1,380 cubic yards of cut and 260 cubic yards of fill to accommodate the lower level and swimming pool.

**Staff Recommendation:** Approval with conditions.

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## SUMMARY OF STAFF RECOMMENDATION

The proposed development is the replacement of an existing single-family residence with a new residence, not located on a bluff top or ocean fronting lot, but located in an area with the potential for the presence of cultural resources. To address this, the applicant has submitted a proposed Cultural and Paleontological Resources Treatment

and Monitoring Plan (Plan). Staff is recommending a few revisions to the Plan as proposed. The recommended revisions are outlined in **Special Condition No. 1**. With the recommended revisions, the Plan will be adequate to assure protection of cultural resources that may be present on site. With the recommended revisions, the Plan includes monitoring of all earth disturbing activities by archaeological, Native American, and paleontological monitors with the ability to halt work, and specific procedures to be followed in the event of any discoveries. Consultation with Native American groups with documented ancestral ties to the area and review and approval from the Executive Director is required for next steps should cultural resources be discovered. These steps are outlined in the proposed Plan, as revised. The Plan, as revised, also outlines specific requirements that must be followed in the event ancestral human remains are discovered at the site, including consultation with the Native American Most Likely Descendent (MLD).

The proposed project is located within an existing locked gate community located between the sea and the first public road paralleling the sea. Public access through this community does not currently exist. The proposed project will not create new adverse effects on public access. The nearest public access is located approximately half a mile west of the site, at Crystal Cove State Park.

Staff is recommending **approval** of the proposed development **with two special conditions** to assure consistency with the Coastal Act policies regarding protection of cultural resources and protection of water quality. The **two special conditions** would require: 1) implementation of a revised Cultural and Paleontological Resources Treatment and Monitoring Plan; and, 2) implementation of water quality best management practices during construction.

The motion to approve the project consistent with the staff recommendation is on page 4. The standard of review is Chapter 3 of the Coastal Act.

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## Exhibits:

1. Vicinity Map
2. Proposed Project Plans
3. Native American Heritage Commission Letter 12/28/2018 re: Sacred Lands File
4. Joyce Perry, President, Juaneno Band of Mission Indians, Acjachemen Nation, Email Correspondence Commenting on Cultural and Paleontological Resources Treatment and Monitoring Plan

## I. MOTION AND RESOLUTION

### Motion:

I move that the Commission approve Coastal Development Permit No. 5-19-1155 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.

## 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 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.

### **III. SPECIAL CONDITIONS**

#### **1.Cultural Resource Treatment and Monitoring Plan.**

##### **A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**

AMENDMENT, the applicant shall submit for the review and approval of the Executive Director, a revised Cultural and Paleontological Resources Treatment and Monitoring Plan (Plan) prepared by a qualified professional that includes all the recommendations of the Plan prepared by Charles Cisneros, M.S., RPA, Psomas, dated April 2020 except as modified by the requirements below (any conflicts between the April 2020 Plan and the revised Plan shall be controlled by the requirements below):

1. The permittee shall provide sufficient archeological, paleontological and Native American monitors and the Native American most likely descendent (MLD) when State Law mandates identification of a MLD, to assure that all project earth disturbing activities and machines are monitored at all times;
2. Native American monitors shall be selected from tribal groups with documented ancestral ties to the area, and preferably from groups that participated in the tribal consultation process.
3. All project monitors shall be notified a minimum of 30 days prior to commencement of any earth disturbing construction activities; notification shall occur via email, telephone, and U.S. Mail;
4. Prior to the commencement and/or re-commencement of any monitoring, the permittee shall notify each archeological and Native American monitor of the requirements and procedures, and shall provide a copy of this special condition, any archaeological monitoring or research plans, past archeological reports, and any other plans required pursuant to this condition and which have been approved by the Executive Director, to each monitor;
5. The Native American Most Likely Descendent (MLD), as identified by the Native American Heritage Commission, shall be allowed a minimum of two weeks to arrive at the site to inspect human remains discovered on-site and identified by the coroner as pre-historic, and to offer recommendations for their disposition;
6. The landowner is agreeing at this time and by acceptance of this permit to allow MLD inspection of pre-historic human remains discovered on site;
7. The recommendations of the Native American Most Likely Descendent (MLD), shall be the predominant guidance when addressing ultimate disposition of pre-historic human remains discovered on site;
8. The ultimate disposition of any other archaeological/cultural resources discovered at the site, shall be determined in consultation with the Native American groups with documented ancestral ties to the area as determined by the Native American Heritage Commission.

**B.** If the Executive Director determines that the discovery is significant or that the treatment method preferred by the affected Native American tribe is in conflict with the approved development plan, the permittee shall seek an amendment from the Commission to determine how to respond to the discovery and to protect both those and any further cultural deposits that are encountered. Development within at least 100 feet of the discovery shall not recommence until an amendment is approved, and then only in compliance with the provisions of such amendment.

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

## **2. Construction Responsibilities and Debris Removal.**

- (1) No demolition or construction materials, equipment, 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;
- (2) Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project;
- (3) 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;
- (4) Machinery or construction materials not essential for project improvements are prohibited at any time in the intertidal zone;
- (5) If turbid conditions are generated during construction, a silt curtain shall be utilized to control turbidity;
- (6) Floating booms shall be used to contain debris discharged into coastal waters and any debris discharged shall be removed as soon as possible but no later than the end of each day;
- (7) Non buoyant debris discharged into coastal waters shall be recovered by divers as soon as possible after loss;
- (8) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- (9) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;

- (10) 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;
- (11) 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;
- (12) 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;
- (13) The discharge of any hazardous materials into any receiving waters shall be prohibited;
- (14) 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;
- (15) 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; and
- (16) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

## **IV. FINDINGS AND DECLARATIONS**

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

The applicants propose to demolish a 3,763 square foot, single level, single family residence with attached garage and swimming pool and to construct a new 5,946 square foot, 14 feet high above natural grade (21 feet above finished grade and the centerline of the frontage road), two level single family residence with an attached 527 square foot, three car garage and new swimming pool ([Exhibit 2](#)). Also proposed is 1,380 cubic yards of cut and 260 cubic yards of fill, resulting in 1,120 cubic yards of export off site. The location of the disposal site is not known at this time. If it is located within the Coastal Zone, an amendment to this permit or a new coastal development will be required unless the Executive Director determines that no permit or amendment is

legally required. The subject lot is mostly flat, but it slopes upward from the street. The site is an interior, 9,999 square foot lot surrounded by other similarly developed residential lots and Riviera Drive. The site is not a bluff top or oceanfront lot.

### Standard of Review

The proposed project is located at 2580 Riviera Drive in the City of Laguna Beach, Orange County. The site is located within the located gate community of Irvine Cove. Laguna Beach has a certified Local Coastal Program (LCP) except for the four areas of deferred certification: Irvine Cove, Blue Lagoon, Hobo Canyon, and Three Arch Bay. Certification of the Irvine Cove area was deferred due to public access issues arising from the nature of the locked gate community. The proposed development needs a coastal development permit from the Coastal Commission because it is located in the Irvine Cove area of deferred certification. Chapter 3 policies of the Coastal Act are the standard of review.

### **B. Cultural Resources**

Section 30244 of the Coastal Act states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

As described above, the proposed project includes earthwork consisting of 1,380 cubic yards of cut and 260 cubic yards of fill to accommodate a new, lower level and replacement of the swimming pool. In recent past actions, the Commission has found that where culturally sensitive archaeological sites have been recorded within a project's vicinity, the subject area should be treated as potentially culturally sensitive. This is because, if the property was developed prior to 1970, when CEQA was enacted, the property very likely would not have been inspected for the presence of archaeological resources and so the potential for the presence of buried cultural materials remains. In addition, Mr. Andrew Salas, Chairman of the Gabrieleno Band of Mission Indians – Kizh Nation, has indicated that coastal promontories such as the one upon which the Irvine Cove community sits, were very commonly used by Native Americans. The Commission typically requires that such projects (i.e. projects on sites near areas where cultural resources are have been mapped and/or are known/likely to occur, in addition to sites with known resources themselves) to include a special condition for preparation of a Cultural Resources Monitoring and Treatment Plan, which must include, among other requirements, the requirement for monitoring by qualified archaeological and Native American monitors during earth disturbing activities, a significance testing procedure, and, when warranted, a Supplemental Archaeological Plan, as well as procedures to be implemented in the event human remains are discovered at the site.

A Cultural and Paleontological Resources Treatment and Monitoring Plan (Plan) was prepared for the proposed development by Charles Cisneros, M.S., RPA, Psomas (dated April 2020). The Native American Heritage Commission (NAHC) conducted a

Sacred Lands File record search for the subject site, which was positive for cultural resources important to Native Americans ([Exhibit 3](#)). The NAHC recommended outreach to the Juaneno Band of Mission Indians by the project archaeologist.

The project archaeologist, Charles Cisneros, reached out to the Juaneno Tribal groups recommended by the NAHC. Joyce Perry, Tribal Manager, Cultural Resource Director of the Juaneno Band of Mission Indians, Acjachemen Nation responded to that outreach. Ms. Perry provided comments on the Plan, specifically regarding monitoring ([Exhibit 4](#)). In addition, Coastal Commission staff sent letters and emails to eight Native American groups on the list provided by NAHC. A response was received from Mr. Andrew Salas, Chairman of the Gabrieleno Band of Mission Indians – Kizh Nation. Coastal Commission staff consulted with Mr. Salas via telephone on 7/29/2020. During the telephone consultation Mr. Salas stated that all earth disturbing activities should include Native American monitor(s). Mr. Salas expressed concerns that, in addition to requiring monitoring in undisturbed earth, there is also the need to monitor all earth disturbing activities, even in areas known to have been previously disturbed. He explained that this monitoring is needed because, although some archaeologists and others consider only artifacts discovered in situ to be “valuable,” to Native Americans a cultural resource retains its value whether found in situ or within previously disturbed earth.

As proposed, the Plan requires that “archaeological, paleontological, and Native American monitors be present during all grading operations and subsurface construction activity that has the potential to impact significant cultural resources.”<sup>1</sup> Thus, as proposed, the project will include archaeological and Native American monitoring of grading and subsurface activities. However, as proposed, this monitoring would be required during grading and subsurface work “that has the potential to impact significant cultural resources.” This qualifying phrase is not specifically defined. To be clear, the Plan must require that archaeological and Native American (as well as paleontological) monitors shall be present during “all” earth disturbing activities. This requirement is imposed in **Special Condition No. 1**.

The Plan identified nine cultural resources (e.g. archaeological sites) within the 300-foot search radius surrounding the Project site. Six of the cultural resources: P-30-000002; P-30-000069; P-30-000334; P-30-001608; P-30-000542; and P-30-001608 – are of prehistoric context. These include shell middens, habitation debris, lithic scatters (ground stone fragments and discarded debris from the manufacturing of stone tools), quartz crystals, and a fragment of a bone harpoon. The remaining three cultural resources are from the historic-era and include structural foundations (P-30-000624), a World War II era subterranean fire control station (P-30-001633), and a concrete cistern (P-30-001739). Of the nine cultural resources, one resource (CA-ORA-002) was plotted

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<sup>1</sup> Page 15 of the Cultural Resources Treatment and Monitoring Plan, Psomas, April 2020.

on the SCCIC maps as located partially within a portion of the Project site. This is described in more detail below (from the Plan):

“Archaeological site CA-ORA-002 was recorded in 1949 by J.R. Briggs as a cultural midden consisting of shellfish remains and ground stone metate artifacts. At the time a residential home was noted as being onsite. In 1956 the site was excavated by J.P. Redwine from the University of Southern California (USC). The results of the excavation included ground stone artifacts (pestles and manos) and fragments of flaked stone tools. The site was revisited again in 1963 by R.F. Hoffman and A. Lask, and once more in 1966 by P.G. Chance. The 1960s site updates documented additional remnants of a cultural midden consisting of faunal and shellfish remains (mussel, scallap [sic], clam, abalone, and Olivella). Cultural artifacts included ground stone tools and fragments of projectile points and stone blades. In 1976, L.L. Mitchell documented fragments of ground stone and flaked stone tools. S.A. Evans and J.C. Brown completed the last documented update to the site record in 1991. Additionally, the records prepared by Briggs (1949), Redwine (1956) Mitchell (1963, 1979) and Evans and Brown (1991), noted that site CA-ORA-002 had been impacted by construction related to modern residential development. All cultural material collected from the site is curated at the Natural History Museum of Los Angeles County (NHMLAC). The site does not appear to have been evaluated for eligibility.

“However, it should be noted that Psomas georeferenced the archaeological site from the primary archaeological site record, and compared to current and historical topographic maps, has shown archaeological site CA-ORA-002 is plotted incorrectly on the SCCIC map. Nevertheless, CA-ORA-002 is located nearby (see Exhibit 3) and the Project site should be considered extremely sensitive for prehistoric cultural resources.”

As noted above, the Plan finds that the project site should be considered extremely sensitive for prehistoric cultural resources, and states: “The purpose of the Plan is to identify cultural resources and the means and methods for their treatment, protection and/or avoidance. The Plan describes the process for construction monitoring and communication protocols; the objectives, schedule, and process for implementing cultural resources monitoring; and the communication and project management strategy.”

As proposed, the Plan states:

“It is the goal of this Plan to avoid impacts to all significant cultural and paleontological resources within the Project site. The construction of the proposed Project includes ground-disturbing activities that have the potential to impact unknown cultural resources. This Plan outlines the measures the Applicant and/or the Applicant’s representative will employ to avoid and manage newly discovered cultural and paleontological resources within the Project site.

“Cultural and paleontological resources monitoring is defined as on-the-ground, close-up observation by a qualified California Office of Historic Preservation (OHP) archaeologist/paleontologist and a Native American representative with documented ancestral ties to the area. The monitor(s) shall monitor all Project grading, excavation work, site preparation or landscaping activities, occurring within the Project site. The monitors will identify and record any archaeological/paleontological finds, halt construction in the vicinity of the find if necessary, keep a daily log of construction activities and finds made and assess significance and treat if necessary.”

As proposed the Plan requires a pre-grading meeting and worker education for all construction personnel, which is intended to raise awareness of the potential presence of sensitive resources, outline procedures to be followed if resources are discovered, and detail proper protection of resources. Training will be conducted by a qualified cultural resources consultant. If resources are discovered, all work will be re-directed at least 100 feet<sup>2</sup> away from the discovery and the Project Archaeologist will make the necessary plans for evaluation and treatment of the find(s). In addition, the Plan requires that archaeological, paleontological, and Native American monitors be present during all grading operations and subsurface construction activity that has the potential to impact significant cultural resources. The Project Archaeologist is responsible to complete daily documentation of monitoring activities. In the event cultural resource(s) are discovered, the Project Archaeologist will determine a course of action and implement appropriate measures to protect any find from further impacts (see below regarding significance testing and Supplemental Archaeological Plan). Construction will not proceed within an area designated by the Project Archaeologist relating to any unanticipated discovery until the evaluations, which may include test excavations, have been conducted.

The Plan further requires:

“In the event of an unanticipated discovery, the Project Archaeologist shall prepare and submit a Significance Testing Plan, for review of and approval by the Commission’s Executive Director, identifying measures to be undertaken to determine the significance of the find. The Plan shall be prepared in consultation with the Native American monitors and the most likely descendent (MLD) when State law mandates the identification of an MLD, such as the discovery of ancestral human remains. The Executive Director shall, in writing, determine the adequacy of the Plan if it can be implemented without further Commission action and provide written authorization to proceed. The Significance Testing Plan results, along with the Project Archaeologist’s recommendation as to whether the discovery should be considered significant, and the comments from the Native American monitors and

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<sup>2</sup> Because the subject site is 100 by 100 feet, this effectively means all earth disturbing activity shall cease while the resource find is investigated.

MLD when State law mandates the identification of an MLD, shall be submitted to the Executive Director for a determination of the significance of the discovery. If the Executive Director determines that the discovery is significant, Project construction shall not recommence, and the permittee shall submit to the Executive Director a Supplementary Archaeological Plan.”

The Supplementary Archaeological Plan (SAP), when required, shall prepared by the Project Archaeologist in consultation with the Native American monitor(s), and the Native American MLD when State law mandates identification of a MLD. The SAP shall be submitted to the Executive Director for review and approval. Regarding the SAP, the Plan further states:

“The Supplementary Archaeological Plan shall identify proposed investigation and mitigation measures; in-situ preservation is the preferred mitigation and can be achieved through such methods as, but not limited to, Project redesign, capping, and deeding the cultural resource areas into open space. In order to protect archaeological resources, any further development may only be undertaken consistent with the provisions of the approved Supplementary Archaeological Plan, as well as, to the extent applicable, the original approved archaeological plan.”

As required by the Plan, the Executive Director, in reviewing and approving the Significance Testing Plan (STP) and the SAP, shall determine whether the STP and SAP require an amendment to the CDP or is consistent with the approved project Plan and no CDP amendment is needed. In the event human remains are discovered, the Plan requires that the remains be treated in a respectful manner and consistent with applicable law.<sup>3</sup> However, as proposed, the Plan also provides:

“With the permission of the landowner or its authorized representative, the MLD may inspect the site of the discovery. The MLD shall complete the inspection and offer recommendations for the disposition of the remains within 48 hours of notification by the NAHC.”

Requiring completion of inspection by the Most Likely Descendant (MLD) within 48 hours of notification by the NAHC may not allow enough time for the MLD to make arrangements to get to the site, and adequately evaluate the circumstances and ultimate decision regarding the ancestral remains. The MLD may not be near the project site/location of the remains at the time he or she receives notification from NAHC. Furthermore, the MLD may have pre-existing commitments that cannot be immediately rearranged within the proposed 48-hour period. Moreover, the stipulation “with the permission of the landowner,” may be incorrectly

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<sup>3</sup> In the event human remains are encountered, State Health and Safety Code Section 7050.5 states that no further disturbance shall occur until the County Coroner has made a determination of origin and disposition pursuant to PRC Section 5097.98. The County Coroner must be notified of the find immediately. If the remains are determined to be Native American, the County Coroner will notify the NAHC, which will determine and notify an Most Likely Descendent (MLD). Preservation in place and avoidance of identified remains shall be considered mitigation options.

interpreted to mean an MLD may only inspect the remains if the landowner agrees. It should be clear that the landowner is agreeing at this time to allow MLD inspection. To address these issues, **Special Condition No. 1** requires that a minimum of two weeks be allowed for the MLD to arrive at the site and inspect the remains and offer recommendations for their disposition. The Plan recognizes that “Preservation in place and avoidance of identified remains shall be considered mitigation options”<sup>4</sup> and “in-situ preservation is the preferred mitigation and can be achieved through such methods as, but not limited to, Project redesign, capping, and deeding the cultural resource areas into open space.”<sup>5</sup>

As proposed, the Plan would also require that any archaeological/cultural resources discovered at the site, will, only after consultation with the Executive Director and the project applicant, establish a repository agreement with a qualified repository (e.g., Natural History Museum of Los Angeles, Cooper Center, or Western Science Center) to curate the finds. However, ultimate disposition of any resources discovered at the subject site must also include consultation with the Native American groups with documented ancestral ties to the area. Ultimate curation or other disposition of the discovered resource(s) may include consideration of placement with the appropriate Native American group or other wishes identified by the Native American groups with documented ancestral ties to the area. To address this issue, **Special Condition No. 1** requires that ultimate disposition of any archaeological/cultural resources discovered at the site, will be determined in consultation with the Native American groups with documented ancestral ties to the area.

#### Paleontological Resources

A paleontological records search was requested by the project archaeologist at the Los Angeles County Museum of Natural History (LACM). The results indicated that there are no vertebrate fossil localities directly within the boundaries of the subject site. However, the Plan states that there are several fossil-bearing localities recorded near the subject site in the same sedimentary deposits. Regarding this, the Plan states:

“Excavation would likely involve disturbance of native soils at the Project site, which could result in the disturbance and/or destruction of paleontological resources that may be present in Quaternary Terrace and Monterey Formation deposits that underlie the Project site. As recommended by the LACM, any substantial excavations should be monitored closely to recover any fossil remains, and fossils recovered from such activities should be placed in an accredited scientific institution for the benefit of current and future generations.”

The Plan outlines procedures for field reporting, salvage of fossils (including recovery procedures and preparation procedures), and a requirement for a repository agreement

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<sup>4</sup> Page 24 of the Cultural Resources Treatment and Monitoring Plan, Psomas, April 2020.

<sup>5</sup> Page 23 of the Cultural Resources Treatment and Monitoring Plan, Psomas, April 2020.

in the event paleontological resources are discovered on site. In that event, the Project Archaeologist will establish a repository agreement with a qualified repository (e.g., Natural History Museum of Los Angeles, Cooper Center, or Western Science Center) to curate the finds. And, as proposed, the Plan requires that “archaeological, paleontological, and Native American monitors be present during all grading operations and subsurface construction activity that has the potential to impact significant cultural resources.”

### Conclusion

The proposed development will occur in a location where there is a potential for the presence of cultural resources. To reduce the potential for impacts on any cultural resources, the Commission imposes **Special Condition 1** requiring revisions to the proposed Cultural and Paleontological Resources Treatment and Monitoring Plan be implemented as approved by the Executive Director. As conditioned, the Commission finds that the development conforms with Section 30244 of the Coastal Act, which requires reasonable mitigation for archaeological and paleontological resources.

### **C. 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 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 waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The proposed development has the potential for the construction-related discharge of polluted runoff from the project site into coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters could result in an adverse effect on the marine environment. The proposed development includes a trench drain across the driveway and perforated drainage pipes that are directed to a bottomless trench drain. These measures will allow for site drainage to be infiltrated on site, or for drainage that does ultimately reach the ocean to be filtered prior to leaving the site.

To further assure protection of water quality, the Commission imposes **Special Condition No. 2**, which identifies construction-related measures to be incorporated into the project during construction including, but not limited to, appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. By incorporating these water quality protection measures into the proposed development, as conditioned, the project minimizes the effect of construction and post-construction activities on the marine environment. Therefore, the Commission finds that the proposed development, as conditioned, conforms to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

#### **D. Public Access**

The proposed project is located within an existing locked gate community located between the sea and the first public road paralleling the sea. Public access through this community does not currently exist. The proposed project will not create new adverse effects on public access. The nearest public access is located approximately half a mile west of the site, at Crystal Cove State Park.

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, the development, as conditioned, conforms with the public access sections of the Coastal Act.

#### **E. LCP**

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3.

The City of Laguna Beach Local Coastal Program was certified with suggested modifications, except for the areas of deferred certification, in July 1992. In February 1993 the Commission concurred with the Executive Director's determination that the suggested modification had been properly accepted and the City assumed permit issuing authority at that time.

The subject site is located within the Irvine Cove area of deferred certification. Certification in this area was deferred due to issues of public access arising from the locked gate nature of the community. However, as discussed above, the proposed development will not further decrease or impact public access within the existing locked gate community. Therefore, the Commission finds that approval of this project, as conditioned, will not prevent the City of Laguna Beach from preparing and certifying a Local Coastal Program that includes the areas of deferred certification.

## **F. CEQA**

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned 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 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 Laguna Beach is the lead agency responsible for certifying that the proposed project is in conformance with CEQA. The City determined that in accordance with CEQA, the project is Categorically Exempt (Class 3a) from Provisions of CEQA. However, Section 13096(a) of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of CEQA.

The proposed project has been conditioned to conform with the Chapter 3 policies of the Coastal Act. Mitigation measures, in the form of special conditions, require: 1) conformance with and implementation of a revised Cultural and Paleontological Resources Treatment and Monitoring Plan, and 2) implementation of construction water quality best management practices. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and complies with the applicable requirements of the Coastal Act to conform to CEQA.

5-19-1155 (Wojtaszek)

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

Coastal Development Permit Application No. 5-19-1155 and associated file documents.

City of Laguna Beach Certified Local Coastal Program.

Cultural and Paleontological Resources Treatment and Monitoring Plan, Charles Cisneros, M.S., RPA, Psomas, April 2020.