

CALIFORNIA COASTAL COMMISSION

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W16b

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-21-0114

Applicant: Patrick Kobielsky

Agent: Kristine Sprague
Lampert Dias Architects

Location: 200 (aka 256) Avenida Palizada
San Clemente, Orange County
APN: 692-051-09

Project Description: Construction of a new two-story, 27-foot high, 2,807 square foot single family residence with an attached 664 square foot, 3-car garage (including one set of tandem spaces) on a vacant 6,203 square foot, inland canyon lot on Palizada Canyon.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project is located on a vacant, inland, coastal canyon lot in the City of San Clemente. The proposed project includes construction of a new two-story, 27-foot high, 2,807 square foot single family residence with an attached 664 square foot, 3-car garage (including one set of tandem spaces). The Preliminary Geotechnical Investigation Report finds that subject site is geologically stable and is subject to very minimal erosion. The Commission's staff geologist concurs with that assessment and

with the consultant's canyon edge location. The Biological Assessment prepared for the subject site found that there is no native vegetation on site. Palizada Canyon in the area of the subject site is not identified as potential sensitive habitat in the City's certified LUP ([Exhibit 6](#)). All proposed development, including all grading and the construction of the residence, meets the canyon setback requirements of the certified LUP. No canyon protective device exists at the subject site and none is proposed. The proposed drainage plan directs all site drainage to the street as required by the LUP. As proposed, site drainage will be filtered prior to leaving the site. The proposed landscape plan proposes only coastal native plantings on the canyon slope, with no permanent irrigation. The proposed development is consistent with the character and scale of surrounding development. Due to existing surrounding development, there are no public views of the canyon in the area.

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 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. Recommended **Special Condition No. 1** requires conformance with this LUP policy.

Staff is recommending **approval of the proposed development as conditioned** to assure consistency with the Coastal Act and LUP policies regarding hazards and water quality. Staff is recommending **eight special conditions**, which require: 1) no future canyon protective device; 2) conformance with geotechnical recommendations; 3) conformance with the drainage plan as proposed; 4) conformance with the landscape and irrigation plan as proposed; 5) conformance with construction Best Management Practices (BMPs); 6) future improvements require an amendment or new CDP; 7) the applicant's assumption of risk; and 8) recordation of a deed restriction imposing all special conditions.

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. The motion is on page 4.

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EXHIBITS:

1. Vicinity Map
2. Project Plans
 - Drainage Plan
 - Landscape Plan
3. Canyon Edge Location
4. Vegetation Survey
5. LUP Figure 4-3 Coastal Canyons General Location Map
6. LUP Figure 4-2-A Potential Habitat Study Areas – Map A

MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 5-21-0114 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 applicant agrees, on behalf of himself and all successors and assigns, that no canyon protective device(s) shall be constructed to protect the development approved pursuant to CDP No. 5-21-0114, including, but not limited to, the residence, foundations, patios, 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, or earth movement in the future. By acceptance of this permit, the applicant hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under applicable law.

B. By acceptance of this permit, the applicant further agrees, on behalf of himself 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 a canyon protective device(s). 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 development are removed, the applicant/landowner shall have a geotechnical investigation prepared by a licensed engineer and geologist, retained by the permittee, which addresses whether any portions of the development approved per CDP No. 5-21-0114 are threatened by landslide activity, erosion, and/or earth movement. 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 permittee 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 permittee 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 landowner 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. Conformance with Geotechnical Recommendations.

The permittee shall undertake development in conformance with the recommendations contained in the Preliminary Geotechnical Investigation Report, prepared for the proposed project by Geo-Etka, dated 8/24/2020, and in the two Response to California Coastal Commission letter reports prepared by Geo-Etka, dated 4/15/2021 and 6/8/2021. These recommendations shall be reflected in all final design plans including foundation and grading/drainage plans.

3. Drainage Plan.

A. The project approved by this permit shall conform to the drainage depicted on the Plan Sheets G-02 and G-03, prepared by d'zn Engineering, dated 11/4/2020 ([Exhibit 2](#)), 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 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.

4. Native Plantings Landscape & Irrigation Plan.

A. The project approved by this permit shall conform to the Landscape Planting Plan depicted on the plans prepared by James Pekarske, Landscape Architect, Plan Sheet L-2, dated 4/20/2021 ([Exhibit 2](#)), showing that only coastal native plantings will be used on the canyon slope canyonward of the residence and that no permanent irrigation will occur on the canyon slope.

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-approved amendment to this CDP unless the Executive Director determines that no amendment is legally required.

5. 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 (BMPs) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMPs 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 (BMPs) 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 BMPs 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;
- (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.

6. Future Improvements. This permit is only for the development described in CDP No. 5-21-0114. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to this development governed by CDP No. 5-21-0114. 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. 5-21-0114 from the Commission or shall require an additional CDP from the Commission or from the applicable certified local government.

7. Assumption of Risk, Waiver of Liability and Indemnity. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from landslide activity, erosion and/or earth movement; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and

employees for injury or damage from such hazards; 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.

8. Deed Restriction.

PRIOR TO ISSUANCE OF THIS PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has 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 200 (aka 256)¹ Avenida Palizada, in the City of San Clemente on an inland, coastal canyon lot ([Exhibit 1](#)). The applicant proposes to construct a new two-story, 27-foot high, 2,807 square foot single family residence with an attached 664 square foot, 3-car garage (including one set of tandem spaces) on a vacant 6,203 square foot lot. The proposed residence will be supported on slab on grade foundations. The subject site is located on Palizada Canyon.

The 6,203 square foot lot is roughly rectangular in shape, measuring approximately 175 feet long and approximately 40 feet wide. The site terrain is generally level at the front of the lot by Avenida Palizada then begins to slope down to the northwest at a gradient of roughly 5H:1V. The back portion of the lot (last ~30 feet before the rear property line) descends at its steepest gradient of approximately 1.6H:1V for a total 18 vertical feet.

¹ The site address will be changed from 200 to 256 W. Ave. Palizada upon building permit application to the City.

The proposed project includes grading in the form of removal and recompaction of the existing soils to a depth of at least five feet below existing ground surface, with a lateral extent of the overexcavations to at least five feet, where possible. The geotechnical consultant states: “The extent of the proposed compacted fill pad beyond building lines is necessary to mitigate the effects of differential settlement.” All earthwork, including all fill, will be located more than fifteen feet landward of the canyon edge.

The site is designated Residential Medium Density (RM) in the City of San Clemente LUP. The RM land use designation allows various residential densities, including single family detached homes. The proposed project is consistent with this designation. The project is located within an existing developed urban residential area. The site is surrounded by a mix of single-family and multi-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 a thousand feet southwest of the subject site at the public access way at Linda Lane, where there is an undercrossing below the railroad.

The subject site is located on Palizada Canyon. Palizada Canyon is recognized as a coastal canyon in the City’s certified LUP (Figure 4-3 Coastal Canyons General Location Map), but in the subject site’s vicinity Palizada Canyon is not identified as Potential Sensitive Habitat (LUP Figure 4-2-A Potential Habitat Study Areas – Map A). A Biological Resources Assessment was prepared for the subject site (Biological Resources Assessment for the 256 West Avenida Palizada Project, Dudek, April 2021). The Assessment found that no native plants are present on site. Within the area of the site nearest the canyon bottom, the Assessment mapped Palm Grove plant community. The Assessment describes the Palm Grove plant community as “an open to continuous tree canopy of less than 100 feet with an open to intermittent shrub layer. Date palms are non-native trees that have been naturalized in the wild. Non-native ornamental landscaping may occur within the mapping unit.” The Assessment mapped the remainder of the site as Disturbed habitat. The Assessment describes Disturbed Habitat as one that does not typically support vegetation or habitat for species. The proposed project includes a landscape plan (Plan Sheet L-2, prepared by James Pekarske, Landscape Architect, dated 4/20/2021). The proposed landscape plan proposes only coastal native plantings on the rear slope, canyonward of the proposed residence. No permanent irrigation is proposed within this canyon slope area. No new plantings are proposed in the lowest approximately 20 feet nearest the canyon bottom. **Special Condition No. 4** requires the landscape and irrigation plan to be carried out as proposed.

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, in part:

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-8², 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

² 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).

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 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.

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.

LUP definition of canyon edge:

CANYON EDGE The upper termination of a canyon: In cases where the top edge of the canyon is rounded away from the face of the canyon as a result of erosional processes related to the presence of the canyon face, the canyon edge shall be defined as that point nearest the canyon beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the canyon. In a case where there is a step like feature at the top of the canyon face, the landward edge of the topmost riser shall be taken to be the canyon edge.

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.

A Preliminary Geotechnical Investigation Report was prepared for the proposed project by Geo-Etka, dated 8/24/2020. In addition, two Response to California Coastal Commission letter reports were also prepared by Geo-Etka, dated 4/15/2021 and 6/8/2021 and submitted in conjunction with the proposed development. In these reports, the geotechnical consultant evaluated the site's slope stability and found it to have a minimum factor of safety of 2.60 and 1.78 under static and pseudo-static conditions, respectively (with strong groundshaking during large earthquake). These factors of safety exceed the minimum required factors of safety of 1.5 (static) and 1.1 (seismic). The geotechnical review also examined the potential for surficial stability, and concluded that this hazard was also absent, though some minor sloughing and erosion could occur if site drainage is not controlled. The Commission's staff geologist has reviewed the geotechnical consultant's findings and concurs.

LUP Policy HAZ-32 requires that new development shall only be permitted in hazardous areas where an adequate factor of safety can be provided. The proposed development is consistent with LUP Policy HAZ-32 because the new development will have a factor of safety greater than 1.5 (static) and 1.1 (seismic), which is considered an adequate factor of safety.

The applicant's geotechnical consultant also reviewed the site to determine the canyon edge location, based on the LUP definition of canyon edge, and determined that it occurs at roughly the 127 foot contour elevation. The Commission's staff geologist has reviewed the bluff edge location and concurs with consultant's determination. All proposed development, including the proposed residence and all grading, exceeds the canyon setback requirements of the certified LUP (i.e., a 15-foot setback from the top of the canyon edge, a stringline setback, and a 30% the depth of the lot setback). **Special Condition 2** requires the applicant to submit evidence that a registered professional geotechnical engineer has reviewed and approved all final plans consistent with the recommendations contained in the geotechnical investigations prepared for the subject site.

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 Palizada, the frontage road. In addition, site drainage will be filtered prior to leaving the site by directing site drainage to the main drain outlet, which will be equipped with a fossil filter bag insert, prior to being

discharged into the street and City's storm drain system. Thus, as proposed, the project is consistent with these LUP policies. **Special Condition No. 3** requires that the drainage plan be carried out as proposed (The proposed drainage plan is reflected on Plan Sheets G-02 and G-03, by d'zn Engineering, dated 11/4/2020, [Exhibit 2](#)).

LUP Policy HAZ-10 requires that development located in hazardous areas (such as canyon lots) 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. As such, it is potentially 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. **Special Condition No. 7** requires the applicant to assume the risk of development. 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 No. 8** is imposed which requires that the landowner and/or any successor-in-interest 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.

LUP Policy HAZ-21 limits construction of canyon protective devices. The proposed development is considered safe without the need for a canyon protective device. No canyon protective device is proposed. 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 over the proposed development's 75-year life. Thus, it appears reasonable, based upon the information provided by the applicant's 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 threatened development must be removed. **Special Condition No. 1** requires conformance with this LUP policy. 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. Public Access and Recreation

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 one thousand

feet southwest of the subject site at the public access way at Linda Lane, where there is an undercrossing below the railroad. The proposed development will not interfere with public access. As conditioned, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Thus, as conditioned, the proposed development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

D. 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 a potential for a discharge of polluted runoff from the project site ultimately into coastal waters. Furthermore, uncontrolled runoff from the project site and the percolation of water could also affect the structural stability of the canyon slope. To address these concerns, the development, as proposed and as conditioned, incorporates design features to minimize the infiltration of water and the effect of construction and post-construction activities on the marine environment. The proposed drainage plan directs all site drainage to the street as required by LUP Policy RES-71. In addition, site drainage will be filtered prior to leaving the site. **Special Condition No. 3** requires that the drainage plan be implemented as proposed. In addition, **Special Condition No. 5** requires implementation of construction management BMPs. Other measures proposed to protect water quality include the use of non-invasive drought tolerant vegetation, and the use of post-construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

E. Future Development

As conditioned, the proposed development is consistent with the hazards and water quality policies of the Coastal Act and LUP. It is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. Thus, to assure that future improvements are consistent with the Chapter 3 policies of the Coastal Act, the Commission finds that it is necessary to impose **Special Condition No. 6** prohibiting future improvements to the proposed single-family structure without first obtaining an amendment to this permit or a new coastal development permit. Therefore, as conditioned, the development conforms to the Chapter 3 policies of the Coastal Act.

F. 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 and water quality, 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).

G. 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 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) conformance with geotechnical recommendations; 3) conformance with the proposed drainage plan; 4) conformance with the proposed landscape irrigation plan; 5) conformance with construction Best Management Practices (BMPs); 6) future improvements require an amendment or new CDP; 7) assumption of risk; and, 8) 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. 5-19-0114 and associated file documents.

Biological Resources Assessment for the 256 West Avenida Palizada Project, Dudek, April 2021.

Preliminary Geotechnical Investigation Report, Geo-Etka, 8/24/2020; and updates to the report dated 4/15/2021 and 6/8/2021.