

**CALIFORNIA COASTAL COMMISSION**

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# W19c

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**STAFF REPORT: REGULAR CALENDAR**

**Application No.:** 5-20-0505

**Applicant:** David and Rene Lindahl

**Agent:** Dustin Morris

**Location:** 1812 Calle De Los Alamos, San Clemente, Orange County (APN: 692-282-30)

**Project Description:** Remodel and 1,237 sq. ft. addition to an existing blufftop 5,617 sq. ft., 2-story single-family residence, and removal of an unpermitted wall structure and fence along the bluff edge in the rear yard of the property.

**Staff Recommendation:** Approval with conditions

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**SUMMARY OF STAFF RECOMMENDATION**

The San Clemente project site is currently developed with a 5,617 sq. ft., 24 ft. high, two-story single-family residence with two attached garages (one one-car and the other two-car), an outdoor patio with a bar, and a detached pool and jacuzzi. The applicants propose to remodel and expand the single-family residence, including a 1,237 sq. ft. addition (to garages and interior living space) to the landward portion of the home, reconfiguration of living space, updating kitchen and bathrooms, remodeling exterior stucco, new standing seam metal roof, new driveway and courtyard, expansion of rear concrete patio, and removal of existing sod and replacement with artificial turf in rear yard. The applicants are also proposing to remove an unpermitted wall structure and

fence along the bluff edge in the rear yard of the property. The project would result in a 6,403 sq. ft. two-story, 24 ft. high single-family residence on a blufftop lot fronting the public beach.

The primary issues raised by the subject development are twofold: Whether the proposed development would be safe from coastal hazards; and issues related to the unpermitted wall and fence along the bluff edge in the rear yard of the property.

The applicants submitted a slope stability analysis (LGC, dated 2/9/2021) and a coastal hazards analysis (GeoSoils, dated 11/11/2020). The studies identified a minimum 1.61 factor of safety line 110 ft. landward of the bluff edge, indicating that the bluff is stable against deep-seated bluff failures, and that future bluff erosion would not threaten the proposed new development, which is primarily inland of the identified factor of safety. The Commission's staff geologist has reviewed the studies and generally concurs with the analyses, except that the GeoSoils study may underestimate the potential for future shoreline retreat, and that wave attack and renewed erosion at the bluff toe is a possibility in the latter part of the century under the higher sea level rise scenarios (>1.5 m or 4.9 ft).

However, given that significant bluff retreat would only occur in the high sea level rise scenarios in the later decades of the 75-year project life, and that the proposed additions would be sited more than 100 ft. inland of the identified bluff edge, it is very unlikely that the proposed additions would be threatened by bluff instability during the project life.

Nevertheless, development on coastal bluff sites is inherently dangerous, and the proposed development may be subject to unforeseen or underestimated geologic hazards in the future, which could lead to proposals for new shoreline or bluff protective devices to protect the proposed development, with the potential to adversely affect coastal resources. Therefore, the Commission imposes **Special Condition 2** which prohibits construction of any future bluff or shoreline protective device(s) to protect the development approved pursuant to Coastal Development Permit No. 5-20-0505. Additionally, the Commission imposes **Special Condition 3** (assumption of risk), and **Special Condition 4** (deed restriction) which require the applicant to acknowledge the risks associate with the proposed development and provides notice of the restrictions associated with the development at the site for any future property owners.

The existing single-family residence was approved by the Commission in 1978 (Ref: P-78-3860) and the development was undertaken by previous property owners. The permit was approved subject to two special conditions prior to issuance of the permit. The first condition required that, prior to issuance of the permit, the property owner submit revised plans showing no development located within 25 ft. of the bluff edge, and required a drainage system to collect runoff from the site and direct it to the street, thereby prohibiting any site runoff to flow over the edge of the bluff. The second condition required the property owner to record a deed restriction prohibiting the construction of private stairways, structures, or alterations on or down the bluff or within

25 ft. of the bluff face. On November 21, 1978, the Commission confirmed compliance with the conditions, including recordation of the deed restriction, and issued the permit.

The proposed development currently before the Commission is a remodel and expansion of the single-family residence and the removal of an unpermitted wall and fence along the bluff edge in the rear yard. Based on plans and aerial photos submitted by the applicants, a wall structure with a metal fence on top of it is currently located along the bluff edge of the property ([Exhibits 2 and 5](#)), which is inconsistent with the conditions of the underlying permit P-78-3860, which prohibits any development within 25 ft. of the bluff. No Commission-approved permits for the wall structure and fence have been identified. Thus, the wall structure and fence constitute unpermitted development.

To resolve the violations on the property, the applicants have proposed to remove the wall structure and fence as part of the project proposal. Therefore, the Commission imposes **Special Condition 1** requiring the applicants to submit revised plans showing the removal of the unpermitted wall structure and fence. Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent compliance with all terms and conditions of the permit will result in resolution of the violations described above.

The Chapter 3 policies of the Coastal Act constitute the standard of review for the project, with the certified San Clemente LUP used as guidance.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 5-20-0505 with **four** special conditions. The motion and resolution can be found on **Page 5**.

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## EXHIBITS

[Exhibit 1 – Vicinity Map and Project Site](#)

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – Lost Winds Coastal Access Point](#)

[Exhibit 4 – Geologic Map and Cross Section](#)

[Exhibit 5 – Aerial photos of the Project Site](#)

[Exhibit 6 – CDP No. P-78-3860](#)

[Exhibit 7 – Recorded Deed Restriction](#)

## MOTION AND RESOLUTION

### Motion:

I move that the Commission approve Coastal Development Permit 5-20-0505 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.

## SPECIAL CONDITIONS

1. **Submittal of Revised Plan.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicants shall submit for the review and approval of the Executive Director, two (2) full size sets of revised plans that have been reviewed and approved by the City of San Clemente, which demonstrate the following:

- A. Any development within 25 ft. of the bluff edge, including the existing unpermitted wall structure and fence, shall be removed.

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

2. **No Future Bluff or Shoreline Protective Device(s) to Protect the Proposed Development.**

- A. By acceptance of this permit, the permittees agree, on behalf of themselves and any successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal

Development Permit No. 5-20-0505 including, but not limited to, the residence and foundation, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, sea level rise, or any other natural hazards in the future. By acceptance of this permit, the permittees hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235, any similar provision of a certified LCP, or any applicable law.

- B. By acceptance of this Permit, the permittees further agree, on behalf of themselves and all successors and assigns, that they are required to remove all or a portion of the development authorized by this permit and restore the site, if:
- i. The City of San Clemente or any government agency with 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 damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, sea level rise, or other natural hazards related to coastal processes, and that there are no feasible measures that could make the structure suitable for habitation or use without the use of bluff or shoreline protective devices;
  - ii. Essential services to the site (e.g. utilities, roads) can no longer feasibly be maintained due to the coastal hazards listed above;
  - iii. Removal is required pursuant to LCP policies for sea level rise adaptation planning; or
  - iv. The development requires new or augmented shoreline protective devices that conflict with applicable LCP or Coastal Act policies.

Approval of CDP No. 5-20-0505 does not allow encroachment onto public trust lands. Any future encroachment onto public trust lands shall be removed unless authorized by the Coastal Commission. Additionally, encroachment onto public trust lands is subject to approval by the State Lands Commission or other designated trustee agency.

- 3. Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the permittees acknowledge and agree (i) that the site may be subject to hazards including but not limited to waves, erosion, storm conditions, liquefaction, flooding, and sea level rise; (ii) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and

amounts paid in settlement arising from any injury or damage due to such hazards; (v) that sea level rise could render it difficult or impossible to provide services to the site (e.g., maintenance of roadways, utilities, sewage or water systems), thereby constraining allowed uses of the site or rendering it uninhabitable; (vi) that the boundary between public land (tidelands) and private land may shift with rising seas, the structure may eventually be located on public trust lands, and the development approval does not permit encroachment onto public trust land; (vii) any future encroachment must be removed unless the Coastal Commission determines that the encroachment is legally permissible pursuant to the Coastal Act and authorizes it to remain, and any future encroachment would also be subject to the State Lands Commission's (or other trustee agency's) leasing approval; and (viii) that the structure may be required to be removed or relocated and the site restored if it becomes unsafe or if removal is required pursuant to the Coastal Act.

- 4. Deed Restriction.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the applicants 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.

## **FINDINGS AND DECLARATIONS**

### **A. Project Description and Background**

The proposed development is located at 1812 Calle De Los Alamos in the City of San Clemente, Orange County ([Exhibit 1](#)). The subject site is designated RL (Residential Low Density) in the San Clemente certified Land Use Plan (LUP) and surrounding development consists of single-family residences.

The project location is on a coastal bluff. The coastal bluff fronting this lot is not currently subject to marine erosion as the San Clemente Coastal Trail and the Orange County Transit Authority railroad tracks run parallel to the public beach below and are located between the toe of the bluff and the ocean. A rock revetment is also located seaward of the railroad tracks. The site consists of a generally flat pad facing Calle De Los Alamos and descends approximately 65 ft. down a steep coastal bluff. The nearest formalized

public access to the Coastal Trail and public beach is at the Lost Winds beach access trail, approximately 800 ft. south of the site ([Exhibit 3](#)).

The project site is currently developed with a 5,617 sq. ft., 24 ft. high, two-story single family residence with two attached garages (one one-car and the other two-car), an outdoor patio with a bar, and a detached pool and jacuzzi, which were permitted in 1978 (Ref: CDP no. P-78-3860) by the Commission to the previous property owners. The applicant proposes to remodel and expand the single family residence, including a 1,237 sq. ft. addition to the landward portion of the home, reconfiguration of living space, updating kitchen and bathrooms, remodeling exterior stucco, new standing seam metal roof, new driveway and courtyard, expansion of rear concrete patio, and removal of existing sod and replacement with artificial turf in rear yard ([Exhibit 2](#)). The applicants also propose to remove an unpermitted wall structure and fence along the bluff edge in the rear yard of the property.

There is a Coastal Act violation on the property pertaining to the unpermitted wall structure and fence along the bluff edge, which is further discussed in the Coastal Act Violation section of this report.

### **Standard of Review**

The Commission certified the City's LUP in 1988, and approved a comprehensive update most recently in 2018. However, the City does not yet have a certified Local Coastal Program (LCP). Therefore, the Chapter 3 policies of the Coastal Act constitute the standard of review for the project, with the certified LUP used as guidance.

## **B. Coastal Hazards**

Section 30251 of the Coastal Act states, in pertinent part:

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.

Section 30253 of the Coastal Act states, in pertinent 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.



## City of San Clemente LUP Policies

**HAZ-3 Development Exposure to Hazards.** Minimize the exposure of new development to geologic, coastal (including inundation from sea level rise, wave up-rush, storm surge, and stream flooding), and fire hazards. Ensure that new bluff, canyon, or shoreline development will be safe from, and will not contribute to, geologic instability, erosion or other hazards over the life of the development, taking into account the effects of sea level rise on all relevant hazards. Ensure that new development does not contribute to the destruction of the site or the surrounding area.

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

**HAZ-9 Site-Specific Coastal Hazard and Erosion Study.** A site-specific coastal hazard and erosion study is required for all new shoreline and coastal bluff development that could be threatened by coastal hazards such as inundation, flooding, wave run-up and overtopping, erosion, etc. including an analysis of the changes to these hazards due to sea level rise within the anticipated life assuming no reliance upon existing or future shoreline protective devices. This study shall be prepared by a qualified professional, and shall use the best available science, and a scenario-based analysis to assess the potential coastal impacts (inundation, flooding, wave run-up and overtopping, erosion, etc.), taking into consideration the effects of sea level rise over the lifetime of the development (minimum of 75 years unless otherwise specified) considering, at a minimum, a high sea level rise scenario. If the new development cannot fully minimize hazards risks by avoiding all geologic and coastal hazards for the anticipated life of the development without reliance upon existing or future shoreline protection, the study should discuss

possible adaptation responses to the hazards to reduce risk as feasible and mitigate impacts to coastal resources. The study should also include an evaluation to determine whether any grading (permitted or unpermitted) has occurred and whether the grading, if any, has had an effect on potential inundation hazard.

**HAZ-18 Limits on Bluff or Shoreline Protective Devices.** Limit the use of protective devices to the minimum required to protect coastal-dependent uses, or existing structures or public beaches in danger of erosion, unless such devices are otherwise consistent with the public access and recreational policies of the Coastal Act and all relevant policies of the LCP. Protective devices shall be permitted when required to serve coastal dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Any approved protective devices shall also be designed to avoid, or mitigate where unavoidable, impacts on public access and recreation, habitat, scenic views, beach width and other coastal resources, and they shall not substantially impair public trust resources.

**HAZ-19 No Right to Future Bluff or Shoreline Protective Device for New Development.** New development, including Major Remodels, shall be sited and designed to avoid the need for shoreline protective devices over the life of the structure(s)....

**HAZ-21 Restrict Bluff/Canyon/Shoreline Retention Devices.** When consistent with Policy GEN-8, the construction, reconstruction, expansion, and/or replacement of a bluff/canyon/ shoreline protective device, (i.e. revetments, breakwaters, groins, 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,...

**HAZ-29 Avoidance of Geologic and Other Hazards.** Require applicants for development in bluff, shoreline or canyon areas potentially subject to hazards such as seismic hazards, tsunami run-up, landslides, liquefaction, episodic and long-term shoreline retreat (including beach or bluff erosion), wave action storms, tidal scour, flooding, steep slopes averaging greater than 35%, unstable slopes regardless of steepness, and flood hazard areas, including those areas potentially inundated by accelerated sea level rise, to demonstrate, based on site-specific conditions and using the best available science, that for the expected life of the development (minimum of 75 years unless otherwise specified):

- a. The area of construction is stable for development based on geologic/geotechnical and coastal hazards review,
- b. The development will not create a geologic, coastal, or fire hazard or diminish the stability of the area, and
- c. The development complies with the policies in this chapter.

**HAZ-30 Development and Uses in Hazard Areas.** New development or re-development and land uses shall:

- a. Minimize risks to life and property in areas of high geologic, coastal, 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...

**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-42 New Development and Accessory Structures in Bluff Setbacks.** All new development, except for public access facilities, including additions to existing structures, on blufftop lots shall be landward of the setback line required by Policy HAZ-41. This requirement shall apply to the principal structure, additions and accessory or ancillary structures such as guesthouses, pools, and septic systems, etc. with a foundation...

As cited above, Coastal Act Section 30253 prohibits development that would “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 minimize alteration of natural landforms (such as coastal bluffs), and also requires that scenic and visual qualities be protected. The Coastal Act limits construction of bluff protective devices because they have a variety of negative impacts on coastal resources including adverse effects on shoreline sand supply, public access, scenic views, and natural landforms. The City’s certified LUP also includes similar policies that require landform alteration be minimized, and that scenic qualities be protected. The LUP defines caissons that are designed to retain the bluff and protect an existing structure, or use from the effects of wave action, erosion, and other natural forces, as a shoreline protective device, and only allows for the construction of shoreline protective devices to protect coastal-dependent uses, existing structures, or beaches in danger of erosion (Ref: LUP Policies HAZ-8, HAZ-18, and HAZ-21). Furthermore, LUP Policy HAZ-30 requires that new development in hazardous areas shall assure stability and structural integrity and shall not require the construction of protective devices that would substantially alter natural landforms.

The location where new development<sup>1</sup> must be sited so that it will neither be subject to nor contribute to significant geologic instability throughout the life span of the project (a period of 75 years) is typically referred to as the Geologic Setback Line (GSL). The GSL is determined by combining slope stability analyses with estimated bluff retreat at a site.

The Factor of Safety is an indicator of slope stability, where values of 1.5 for static analysis and 1.1 for seismic analysis are common standards used by the Commission for many years (and codified in the City LUP) for establishing the geologic stability of new blufftop development. In theory, failure is imminent when the factor of safety drops to 1.0. Therefore, the factor of safety at increasing values above 1.0 lends increasing confidence in the stability of the slope. To establish a safe setback for slope stability, the geotechnical analysis needs to establish the distance from the edge of a coastal bluff at which the factor of safety is equal to 1.5 (static)/1.1 (seismic).

In addition to this landslide potential, the bluff is also subject to erosion over time. As the bluff retreats by gradual or sudden erosion, the position of the bluff edge and face creeps nearer to the development site, and the factor of safety for the development will generally decrease as well. Thus, establishing the required GSL includes determining the setback to achieve a factor of safety of 1.5 (static)/1.1 (seismic) as well as estimating bluff retreat over 75 years. As discussed in greater detail below, it is critical to look at both slope stability and the predicted rate of erosion when determining the GSL, because as the bluff naturally continues to retreat, the location of a safe setback for slope stability will move inland.

To analyze the stability of the bluff beneath the property, the applicant submitted a slope stability analysis (LGC, dated 2/9/2021). The study identified that the underlying bedrock is almost entirely Capistrano Formation sandstone, which is generally more stable than the siltstone members of this geologic unit, and that it lacks the weak clay layers that typically have the potential to raise bluff instability concerns. The study identified a minimum 1.61 factor of safety line 110 ft. landward of the bluff edge, indicating that the bluff is stable against deep-seated bluff failures. The proposed additions are located well landward of this minimum factor of safety line (110 ft. landward of the bluff edge), suggestive of even greater stability at the location of the new development ([Exhibit 4](#)). The Commission's staff geologist concurs with the LGC slope stability analysis of the project site.

The applicant has also submitted a coastal hazards analysis (GeoSoils, dated 11/11/2020). The study considered wave runup with up to 6.3 ft. of sea level rise, and separately considered historical rates of shoreline retreat. The study concluded that it is unlikely that the shoreline will retreat back to the railroad, or that the bluff would experience renewed marine erosion or significant retreat within the 75 -year project life. The Commission's staff geologist has reviewed the coastal hazards analysis, and agrees with the general conclusion that future bluff erosion would not threaten the

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<sup>1</sup> In this case, new development means the proposed additions to the single family residence since the overall project is not considered a "major remodel."

proposed new development. However, the Commission geologist believes that the GeoSoils study may underestimate the potential for future shoreline retreat, and that wave attack and renewed erosion at the bluff toe is a possibility in the latter part of the century under the higher sea level rise scenarios (>1.5 m or 4.9 ft).

However, given that significant bluff retreat would only occur in the high sea level rise scenarios in the later decades of the 75-year project life, and with the proposed additions being sited more than 100 ft. inland of the identified bluff edge, it is very unlikely that the proposed additions would be threatened by bluff instability during the project life.

Nevertheless, development on coastal bluff sites is inherently dangerous, and the proposed development may be subject to unforeseen or underestimated geologic hazards in the future, which could lead to proposals for new shoreline or bluff protective devices to protect the proposed development, with the potential to adversely affect coastal resources. Therefore, the Commission imposes **Special Condition 2** which prohibits construction of any future bluff or shoreline protective device(s) to protect the development approved pursuant to Coastal Development Permit No. 5-20-0505 including the proposed additions to the residence, but not limited to, the residence, foundations, patio, pool, and spa, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, sea level rise or other natural coastal hazards in the future. Thus, pursuant to Special Condition 2, the applicants must agree to waive any right to construct any future bluff or shoreline protective devices such as revetments, seawalls, caissons, cliff retaining walls, shotcrete walls, and other such construction that armors or otherwise substantially alters the bluff. Special Condition 2 does not preclude the applicants from applying for future coastal development permits for maintenance of existing development or future improvements to the site (other than blufftop or shoreline protective devices to protect the development approved pursuant to this permit) including landscaping and drainage improvements aimed to prevent slope and bluff instability. The Commission would determine the consistency of such proposals with the Coastal Act in its review of such applications. The proposed development does not constitute major redevelopment, as alterations to the major structural elements of the residence (foundation, floor structure, and roof structure) are individually less than 50%. Thus, Special Condition 2 does not apply to the residence in its entirety.

Additionally, the Commission imposes **Special Condition 3**, requiring the applicants to assume the risk of development. By this means, the applicants are notified that the proposed development is built in an area that is potentially subject to bluff and slope instability, sea level rise, erosion, landslides and wave uprush or other tidal induced erosion that can damage the applicant's property. The applicant is also notified that the Commission is not liable for such damage as a result of approving the permit for development. Finally, the condition requires the applicant to waive claims against the Commission and indemnify the Commission for third-party claims.

As conditioned, the project can be found consistent with Sections 30251 and 30253 of the Coastal Act and the hazard policies of the certified LUP.

## C. Visual Resource

Section 30251 of the Coastal Act states, in pertinent part:

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.

### City of San Clemente LUP 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-10 Development Review.** Review and require changes to development proposals, as needed, to minimize obstructions of designated significant public views and designated Public View Corridors, and to ensure public and private development projects in the Coastal Zone use high-quality materials and are designed to be attractive and aesthetically compatible with adjacent structures, site improvements, utilities and landscape features.

The Project proposes to remodel and expand the existing single-family residence. The residence is of similar mass and scale as other structures in the project vicinity, and the height of the structure will remain unchanged. In addition, the project site is not located within or in close proximity to designated significant public views or designated Public View Corridors as prescribed in policies VIS-1 and VIS-10 and identified on Figures 6-1, 6-2-A, and 6-2-B of the certified San Clemente LUP. Therefore, the proposed development is not anticipated to have any new adverse impact on visual resources in this area and the Commission finds the proposed project consistent with the visual resource policies of the Coastal Act and the certified San Clemente LUP.

## D. Public Access and Recreation

Section 30210 of the Coastal Act states:

"In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public

safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.”

### **City of San Clemente LUP Policies**

**PUB-37 Preserving Public Coastal Access.** Review proposals for coastal land use changes and development to ensure they do not interfere with the public's right of access to the coast...

**PUB-47 Maximizing Public Access and Recreation.** Consistent with the LUP policies, provide maximum public access, which shall be conspicuously posted, and recreational opportunities for all the people from the nearest public roadway to the shoreline and along the shoreline consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

The beach fronting this location is used for a variety of recreational activities. As proposed, the development at the top of the bluff will not affect existing public access to the shoreline in two respects. First, no access across the property to the beach currently exists because of the hazardous nature of the approximately 65-ft. high coastal bluff. Second, public access to the beach below this existing residence is currently available immediately adjacent (downcoast) to the subject site, at the Lost Winds Access Point, which is one of the principal beach access points in San Clemente ([Exhibit 3](#)). Access to the beach is via an access trail down the bluff to meet the San Clemente Pedestrian Beach Trail. The Commission finds that the proposed development will not impact existing public access and recreation and there is adequate, safe public access in the vicinity. Therefore, the project is consistent with Sections 30210 and 30212 of the Coastal Act and the public access policies of the LUP.

### **E. Water Quality**

Section 30230 of the Coastal Act states:

“Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.”

Section 30231 of the Coastal Act states:

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

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

City of San Clemente certified LUP states:

**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.

**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.

### **Construction Impacts to Water Quality**

The above policies of the Coastal Act require protection of marine resources, including the protection of coastal waters by controlling runoff and preventing spillage of hazardous materials.

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species’ ability to see food in the water column.

### **Post-Construction Impacts to Water Quality**

The proposed project has the potential to adversely impact the water quality of the nearby Pacific Ocean. Much of the pollutants entering the ocean come from land-based development. The Commission finds that it is necessary to minimize to the extent feasible within its jurisdiction the cumulative adverse impacts on water quality resulting from incremental increases in impervious surface associated with new development. In order to address post construction water quality impacts, the applicant has submitted a



drainage plan that manage on-site percolation of runoff, including downspouts, trench drains, and drain inlets, which are directed to the public right-of way and storm drain. The applicant also submitted a landscaping plan that proposes to replace existing grass with artificial turf in the rear yard, thereby eliminating the need to irrigate the top of bluff area and minimizing bluff erosion. Therefore, the project will minimize the project's adverse impact on coastal waters to such an extent that it will not have a significant impact on marine resources, biological productivity or coastal water quality. The project is consistent with Sections 30230 and 30231 of the Coastal Act and HAZ-46 and 47 of the certified San Clemente LUP.

## **F. Coastal Act Violation**

Violations of the Coastal Act have occurred on the property including, but not limited to, the construction of a wall structure and fence within 25 ft. of the bluff faces. Any non-exempt development activity conducted in the Coastal Zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act. As previously discussed, the existing single-family residence was approved by the Commission in 1978 (Ref: P-78-3860) and the development was undertaken by previous property owners. The permit was approved subject to two special conditions prior to issuance of permit. The first condition required the property owner to submit revised plans showing no development located within 25 ft. of the bluff, a drainage system that conveys site runoff to the street, thereby prohibiting any runoff from the site to flow over the edge of the bluff. The second condition required the recordation of a deed restriction prohibiting the construction of private stairways, structures, or alterations on or down the bluff or within 25 ft. of the bluff face ([Exhibits 6 and 7](#)). On November 21, 1978, the Commission confirmed compliance of the conditions, including recordation of the deed restriction, and issued the permit.

The proposed development currently before the Commission is remodel and expansion of the single-family residence and the removal of an unpermitted wall structure and fence in along the bluff edge in the rear yard of the property. Based on plans and aerial photos submitted by the applicants, there is a wall structure with a metal fence on top of it along the bluff edge of the property ([Exhibits 2 and 5](#)). The wall structure and fence are located within 25 ft. of the bluff in violation of the conditions of the underlying permit P-78-3860. No Commission-issued permits approving the wall structure or fence have been identified. Thus, the wall structure and fence constitute an unpermitted development.

To resolve the violations on the property, the applicants have proposed to remove the unpermitted wall structure and fence as part of the project proposal. Therefore, the Commission imposes **Special Condition 1** requiring the applicants to submit revised plans, reviewed and approved by the City, which show removal of the unpermitted wall structure and fence.

Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent compliance with all terms and conditions of the

permit will result in resolution of the violations described above. Although development has taken place prior to submission of this permit application, consideration of the permit application by the Commission has been based solely on consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations).

## **G. Deed Restriction**

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition 4**, which requires that the property owners record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the property. Thus, as conditioned, this permit ensures that any prospective future owner will receive notice of the restrictions and/or obligations imposed on the use and enjoyment of the land, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

## **H. Local Coastal Program**

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 Commission certified the Land Use Plan (LUP) for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan (IP) portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City re-submitted an IP on June 3, 1999, but withdrew the submittal on October 5, 2000. Most recently in 2018, the City certified an LUP amendment for a comprehensive update of the LUP. The City is currently also working on resubmittal of an IP, however, there is no certified LCP at this time.

As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified LUP for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

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

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by findings showing the approval, 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 Commission's regulatory program for reviewing and granting CDPs has been certified by the Resources Secretary to be the functional equivalent of CEQA. (14 CCR § 15251(c).)

In this case, the City of San Clemente is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of San Clemente determined that the proposed development is exempt under Section 15301, Class 1 (a) and (e), which exempts interior or exterior alterations and additions that do not result in an increase of more than 50 percent of the floor area to existing structures from CEQA requirements. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment, either individually or cumulatively with other past, present, or reasonably foreseeable probable future projects. 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. 5-20-0505 and associated file documents.
- Coastal Development Permit Application No. P-78-3860 and associated file documents.
- City of San Clemente Certified LUP
- LGC Geotechnical, Inc., "Preliminary Geotechnical Evaluation Proposed Building Additions for 1812 Calle De Los Alamos, San Clemente, California", dated February 9, 2021
- GeoSoils, Inc., "Wave Runup & Coastal Hazard Study for Proposed Remodel/Addition, 1812 Calle De Los Alamos, San Clemente, California", dated November 11, 2020