

**CALIFORNIA COASTAL COMMISSION**

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**F10d****ADDENDUM**

August 9, 2021

TO: Coastal Commissioners and Interested parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM F10d COASTAL DEVELOPMENT PERMIT APPLICATION NO. 5-21-0079 (Viloria) FOR THE COMMISSION MEETING OF FRIDAY, AUGUST 13, 2021**

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**I. CORRESPONDENCE RECEIVED FROM THE APPLICANT**

Since the publication of the staff report on July 23, 2021, the Commission staff received comments from the applicant's agent, Iain Buchan, which is attached as **Attachment A** to this addendum. According to Mr. Buchan, the applicants are opposed to staff's recommendation requiring Special Condition 1, which requires the submittal of revised plans showing the entire deck located at least 15 ft. from the canyon edge in conformance with Section HAZ-47 of the Certified San Clemente Land Use Plan. Mr. Buchan opposes Commission staff's recommendation for several reasons, including 1) that the Commission staff's interpretation of Section HAZ-47 is incorrect; 2) that contextual consideration should be given to the proposed project based on the surrounding residential development in Palizada Canyon, some of which encroaches into the canyon; and 3) that the applicant relied on the City's approval in concept for the proposed project which purportedly included a pre-submittal authorization from Commission staff.

With regard to Section HAZ-47 of the City's LUP, the applicants contend that while it is "written with room for interpretation," that they believe the logical rationale for the 15-foot canyon edge setback is "intended to provide a buffer from structural concrete and foundation elements being placed too close to the canyon to protect the slopes, and to protect from being exposed in the event of future erosion." In addition, the exception for "ancillary improvements such as decks and patios, which are at-grade and do not require a foundation may encroach into the canyon edge may extend into the setback no closer than 5 feet from the canyon edge" indicates that decks and patios without footings are allowed in the setback, so a framed cantilevered deck above the ground surface with no structural supports into the setback has no impact on the canyon slope or vegetation. Therefore, the applicant rationalizes, a framed cantilevered deck above the ground surface with no structural supports into the setback has no impact on the canyon.

As addressed more fully in the staff report, impacts to the canyon slope or vegetation are not the only factors to be considered in this analysis. In this case, only the minimum 15 ft. canyon edge setback achieves the goal of preventing further encroachment toward the canyon. The 15 ft. setback protects wildlife habitat, corridors for native fauna, and preserves open space with potentially sensitive habitat. Furthermore, if built as proposed, the project would create a new future stringline closer to the canyon that would be applicable for possible future redevelopment of adjacent residential lots. Thus, siting development on this lot closer to the canyon edge would add to cumulative adverse impacts upon coastal resources. The City's policies aim to preserve coastal canyons as undeveloped areas intended to be open space through implementation of appropriate development setbacks, with the objective of protecting and enhancing coastal canyon resources by restricting the encroachment of development, incompatible land uses, and sensitive habitat disturbance. Similarly, Coastal Act policies aim to prevent impacts which would significantly degrade sensitive habitat areas and ensure that development shall be compatible with the continuance of those habitat areas.

With regard to contextual consideration being given to the proposed project based on the surrounding residential development encroaching into Palizada Canyon, Commission staff notes that preliminary research of the eleven residential developments referenced in the photo survey submitted demonstrated that four of the structures have no relevant permit history (221 and 239 West Marquita and 316 and 320 Encino Lane); three residential structures were constructed prior to the implementation of the Coastal Act (235 and 245 West Marquita and 318 Encino Lane); and four were issued CDPs prior to the 2018 certification of the City's Land Use Plan (217, 229 and 231 West Marquita and 318 Encino Lane). Therefore, most all of the residences referenced by the applicant that were approved by the Commission were analyzed under a different set of standards and do not reflect the Commission's current approach to permitting development within coastal canyons in San Clemente.

Finally, the applicant contends that this project should be approvable because the applicant consulted with the City's planning staff and an individual from the Commission's staff on a different project with a cantilevered deck. This reliance is misguided. While an approval in concept (AIC) from an uncertified City is a filing requirement for an applicant to be able to demonstrate that the City has reviewed and approved the project, the Coastal Commission issues coastal development permits and makes final determinations regarding development in the coastal zone on a case-by-case basis. Moreover, Commission staff has recently discussed HAZ-47 of the City's LUP with the City of San Clemente planning staff, and while the City's zoning code does allow for such cantilevering, the City's staff acknowledges that the LUP is more restrictive and that only at-grade decks/patios without foundations would be allowed to encroach five feet into the required setback. This deck is not at-grade and requires steel posts and a grade-beam foundation. As such, the applicant's interpretation of HAZ-47 is incorrect, and the applicant's reliance on something Commission staff allegedly said to San Clemente city staff is irrelevant to the application of the LUP to this proposed project.