

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-21-0079

Applicant: Ben Vioria

Agent: Iain Buchan

Project Location: 225 West Marquita, San Clemente, Orange County (APN 692-076-04)

Project Description: Construction of an approximately 424 sq. ft. second story wooden deck with steel posts and a grade beam foundation attached to an existing 2,437 sq. ft. single family residence on a coastal canyon lot.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project is the construction of an approximately 424 sq. ft. second story wooden deck with steel posts and a grade beam foundation attached to an existing 2,437 sq. ft. single-family residence on a coastal canyon lot. The project site is located adjacent to Palizada Canyon, (a.k.a., Marquita Canyon) one of seven coastal canyons in San Clemente identified in the certified Land Use Plan as containing potentially sensitive habitat. Primary issues associated with this development include geologic hazards and protection of potentially sensitive habitat areas.

As proposed, the steel posts and grade beam foundation proposed to support the approximately 424 sq. ft. wooden deck would be constructed at least 15 ft. landward of the canyon edge, and would cantilever over the canyon edge, encroaching five feet into the 15-foot setback. Section HAZ-47 of the Certified San Clemente Land Use Plan requires a 15-foot setback from coastal canyons for accessory structures with foundations. **Special Condition 1** requires submittal of revised plans showing the entire deck will be located at least 15 ft. from the canyon edge in conformance with this LUP Policy.

Coastal Act Section 30253 requires new development to minimize risks to life and property in areas of high geologic, flood, and fire hazard, and assure stability and structural integrity to such areas. Preservation and enhancement of San Clemente's coastal canyons is a goal supported by both the environmental protection policies of the Coastal Act and the certified LUP.

As proposed, the development does not conform to Coastal Act Policy 30253 or LUP Policy HAZ-47.

Staff recommends **APPROVAL** of the proposed project with four (4) special conditions: 1) submittal of revised final plans; 2) compliance with construction-related best management practices (BMPs); 3) assumption of risk; and 4) payment of the appropriate coastal development permit application fee.

The standard of review is Chapter 3 of the Coastal Act, and the certified LUP may be used as guidance.

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EXHIBITS

Exhibit 1 – Vicinity Map, Project Location

Exhibit 2 – Project Plans

Exhibit 3 – Site Plan with Canyon Edge

Exhibit 4 – Site Photo

Exhibit 5 – City of San Clemente Land Use Plan Figure 4-2-A

I. MOTION AND RESOLUTION

Motion:

I move that the Commission **approve** Coastal Development Permit Application No. 5-21-0079 pursuant to the staff recommendation.

Staff recommends a YES vote. 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 the Commissioners present.

Resolution:

The Commission hereby approves a coastal development permit for the proposed development 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 and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided the assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. **Revised Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director two (2) sets of final plans that substantially conform with the plans submitted to the Commission on February 9, 2021, but shall be revised to include the following:

- a. No portion of the proposed second story deck shall encroach into the 15-foot canyon edge setback.

The permittee shall undertake the 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 plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. **Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris**

The permittee shall comply with the following construction-related requirements:

- a. No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
- b. No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands, or their buffers.
- c. All debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
- d. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- e. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.

- f. The permittee shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
 - g. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
 - h. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
 - i. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
 - j. The discharge of any hazardous materials into any receiving waters shall be prohibited.
 - k. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
 - l. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity.
 - m. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.
3. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the permittee acknowledges and agrees (i) that the site may be subject to hazards from erosion and coastal bluff collapse; (ii) to assume the risks to the permittees 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.

- 4. Application Fee.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall pay the balance owed for the application fee for the Regular Calendar permit application, which totals \$3,175.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Site History

The proposed project site is located at 225 West Marquita in the City of San Clemente, Orange County ([Exhibit 1](#)). The subject site is developed with an approximately 2,437 sq. ft. single family residence constructed circa 1956 on a 7,104 sq. ft. lot. The project site is designated RM (Residential Medium Density) in the San Clemente certified Land Use Plan (LUP), and the proposed project is consistent with that use. Surrounding development consists of single-family and multi-family residences. The site consists of a generally flat pad facing Palizada/Marquita Canyon and slopes approximately 40 feet down the coastal canyon slope ([Exhibit 1](#)). The nearest public access to the beach is available at the Linda Lane access point, approximately 0.25 miles west of the subject site ([Exhibit 1](#)).

The applicant proposes to construct a new approximately 424 sq. ft. wood-framed second story deck supported on a grade beam foundation embedded 18 inches below the existing patio slab. The deck is proposed in the back of the home adjacent to a coastal canyon. The applicant is proposing to saw-cut the existing patio slab to install the steel posts to support the new deck. The deck foundation would be located 15 ft. from the canyon edge, conforming with the LUP's setback requirement. However, as proposed, the deck would cantilever five feet into the 15 ft. canyon edge setback. Project plans are included as [Exhibit 2](#).

The subject application was submitted with only the fee for a De Minimis Waiver (\$635). Although the type of development proposed could typically be processed as a De Minimis Waiver if determined to be consistent with relevant Coastal Act and City LUP policies, the development proposed encroaches five feet into the 15-foot canyon edge structural setback. Commission staff communicated to the applicant that if the applicant were to submit revised plans complying with the setback this CDP application could be processed as a de minimis waiver; however, the applicant disagrees with the staff recommendation as addressed in more detail below, requiring this item to be scheduled for a Regular Calendar hearing. The fee for a Coastal Development Permit for a detached residence (1,500 sq. ft. or less) was \$3,810 when the applicant submitted this application in February 2021. Thus, the balance due on this application is \$3,175. Therefore, the Commission imposes **Special Condition 4**, which requires the applicant to submit the fees for a full CDP (as opposed to a De Minimis Waiver) before a CDP can be issued for this project.

There are no past Commission actions for the subject home. However, in August of 2006, the Commission approved Coastal Development Permit No. 5-06-120 for storm drain improvements within Palizada Canyon below the subject site and neighboring parcel (221-225 West Marquita), which included replacement of the existing catch basin junction structure and approximately 85 linear feet of storm drain pipe, slope reconstruction, and replanting with native species. Approximately 1,160 cubic yards of grading were conducted for trenching and slope reconstruction as well.

The City of San Clemente has a certified Land Use Plan (LUP) but does not yet have a certified Implementation Plan. The standard of review is the Chapter 3 policies of the Coastal Act and the LUP is used as guidance.

B. Coastal Hazards and Biological Resources

Section 30253 of the Coastal Act states, in part:

New development shall:

- (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.

Section 30240 of the Coastal Act states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

City of San Clemente LUP Policies:

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-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-33 Development on Hillsides, Canyons and Bluffs. New development shall be designed and sited to maintain the natural topographic characteristics of the City's natural landforms by minimizing the area and height of cut and fill, minimizing pad sizes, siting and designing structures to reflect natural contours, clustering development on lesser slopes, **restricting development within setbacks consistent with HAZ-41 and HAZ-47**, and/or other techniques. Any landform alteration proposed shall be minimized to the maximum extent feasible. Development partially or wholly located in a coastal canyon or bluff or along the shoreline shall minimize the disturbance to the natural topographic characteristics of the natural landforms [emphasis added].

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 [emphasis added].

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. [emphasis added]

Canyon Edge is defined as follows in the LUP:

“CANYON EDGE” means 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.

Stringline is defined as follows in the LUP:

“STRINGLINE” means in a developed area where new construction is generally infill and is otherwise consistent with the policies of the Land Use Plan of the City of San Clemente Local Coastal Program, no part of a proposed new structure, including decks, shall be built closer to a bluff edge, canyon edge or beach-front than a line drawn between the nearest adjacent corners of the adjacent structures for a structural stringline and to the nearest corner of an accessory structure for an accessory stringline.

San Clemente's certified Land Use Plan (LUP) discusses the importance of coastal canyons and states:

In most cases, coastal canyons are designated for natural open space, which limits potential development and helps to ensure preservation.

City of San Clemente LUP Policies

RES-68 Coastal Canyons. Development on coastal canyon lots shall maintain or improve the biological value, integrity and corridor function of the coastal canyons through native vegetation restoration, control of non-native species, and landscape buffering of urban uses and development.

RES-69 Coastal Canyon Areas Protection. Preserve coastal canyons as undeveloped areas intended to be open space through implementation of appropriate development setbacks.

RES-70 Coastal Canyon Resources. Protect and enhance coastal canyon resources by restricting the encroachment of development, incompatible land uses and sensitive habitat disturbance in designated coastal canyon areas. Prohibit development and grading that adversely alters the biological integrity of coastal canyons, the removal of native vegetation and the introduction of non-native vegetation.

Coastal Canyon Edge

The applicant's canyon edge as shown on the site plan submitted with the application is at approximately +95 feet MSL, which varies in proximity from the subject residence approximately 35 feet to 60 feet from the canyon ([Exhibit 3](#)). The Commission's staff Geologist, Dr. Joseph Street, reviewed the plans and site photos, and generally agrees with the applicant's canyon edge determination. Therefore, the location of the canyon edge is not in dispute.

Canyon Setback

The proposed development is located adjacent to Palizada Canyon, one of seven coastal canyons in San Clemente identified in the certified LUP as containing potentially sensitive habitat. Preservation and enhancement of the City's coastal canyons is a goal supported by both the environmental protection policies of the Coastal Act and the certified LUP. The coastal canyons serve as open space and potential wildlife habitat, as well as corridors for native fauna. Encroachment into the canyon by development increases the potential for the predation of native species by domestic animals, and destabilization of the canyon. Encroaching development also threatens the visual qualities of the canyons.

To preserve and enhance the City's coastal canyons, the Commission typically imposes either a minimum canyon edge setback of 15 feet from the edge of the canyon for primary structures and accessory structures with foundations and a minimum 5-foot setback for at-grade decks and patios or requires conformance with the stringline, canyon bottom, and ESHA setbacks, whichever is most protective of the canyon. Consistently applying an appropriate canyon edge setback provides equitability for developments within the same general area. The above-cited policies of the LUP were designed for habitat protection and enhancement; to minimize visual impacts and landform alteration; to avoid cumulative adverse impacts of development encroachment into the canyon; and to limit brush management necessary for fire protection.

The proposed 424 sq. ft. second-story wooden deck is to be supported by seven steel posts braced by grade beams embedded 18-inches below the existing at-grade patio on the ground level ([Exhibit 2](#)). The applicant proposes to sawcut the at-grade patio to install the new posts, which are all located at least 15-feet landward of the canyon edge. The canyonward extent of the deck itself, however, will be cantilevered over the new posts, which will be located approximately 10-feet landward of the canyon edge.

The certified LUP identifies three canyon setback choices which are to be selected based upon 'site characteristics.' There are seven canyons identified in the LUP and these setback choices exist because conditions from canyon to canyon, and within each canyon, are highly variable. Each canyon has a different shape, width and depth. The degree of existing disturbance within each canyon is also different. The land uses, density and intensity of development also vary. Public views of the canyons vary from point to point. The lots along and in these canyons vary with regard to lot size and shape. The topography of each lot can be highly variable, where in some cases there

are canyon-top areas to site development, there are other lots comprised mostly of canyon slope and canyon bottom. The pattern of existing development from place to place along the canyon changes. Another site characteristic that changes is presence or absence of native vegetation and/or a stream on the lot. Considering these site characteristics, a setback must be chosen that achieves habitat protection and enhancement (including siting development to minimize required brush management), minimizes visual impacts and landform alteration, and avoids cumulative adverse impacts of development encroachment into the canyon. Finally, sometimes equity is a consideration (i.e. size of development footprint available under each setback scenario compared with adjacent development).

The lot in question is a roughly triangular lot that extends to the canyon bottom. The lot sits on a portion of the canyon where the canyon edge curves away from the canyon and more inland than adjacent lots, and the subject residence is sited close to the street in a fashion that recognizes the undulating canyon edge ([Exhibit 1](#)). The subject residence is situated at an angle to the edge of the canyon, and the proposed deck is to be located on the portion of the home that is located closest to the canyon edge. The neighboring lots on either side of the subject residence are situated much closer to the canyon edge, and the structures on those lots protrude farther into the canyon; thus, if one were to select the setback based upon depth of lot and the structural or deck stringlines, it would result in encroachment into the canyon with the proposed deck set back only five feet from the canyon edge. Accordingly, if one were to select the setback based upon depth of lot and structural or deck stringlines, it would not achieve the goals of the LUP and Coastal Act policies. Furthermore, while there is a discernable line of vegetation demarcated by a fence along the edge of the canyon as shown in [Exhibit 4](#), there was no habitat survey submitted to discern whether it is coastal sage scrub or riparian vegetation.

The proposed project should be sufficiently set back to protect habitat and avoid frustration of future enhancement efforts by avoiding encroachment into the canyon (both individually and cumulatively). Due to the configuration of the lot and the undulating canyon edge, it is most appropriate to apply the minimum 15 ft. canyon edge setback to preserve canyon habitat. As proposed, the project does not meet the structural canyon edge setback of 15 feet because the deck portion is proposed to cantilever over the posts by five feet, which will result in the deck being setback only 10-feet from the canyon edge which would result in canyon-ward encroachment by approximately 5 feet more than what is allowable under the LUP. Therefore, Commission staff is recommending approval of the proposed deck with **Special Condition 1**, which requires submittal of revised final plans showing the canyon-ward extent of the proposed deck is setback approximately five additional feet to meet the 15-foot canyon edge setback for non-at-grade structures to preserve the coastal canyon as an undeveloped area intended to be open space.

The applicant contends that the deck is at-grade and does not require structural foundations and therefore HAZ-47 allows construction of the deck within the 15 ft. canyon setback area. According to the applicant, his proposed deck does not require a structural foundation and could be considered "at-grade" because the term "at-grade" is

not defined in the LUP, and could be interpreted to apply to this second story deck because it is located on the same level as the street and entry grade of the residence. The applicant has not provided any rationale as to why the proposed steel post and grade beam foundation should not be considered a “structural foundation.” Additionally, the applicant contends that the canyon in this location will not erode because it has a permanent concrete drainage culvert at the bottom, has no interaction with a natural creek or wave action, and was regraded and repaired in recent years with slope protection measures to further ensure the long-term stability of the slope.

The applicant’s contention that the proposed second story deck supported by steel posts and a grade beam foundation could be considered “at-grade” because there is no given definition of “at-grade” in the City’s Certified LUP, is not consistent with common use of the term. Although it is not specifically defined in the LUP, the term “at-grade” is widely known to describe the level of the earth at a specific location or at ground level. In construction, the terms “above grade” or “below grade” are respectively used routinely to describe the portion of a building that is above or below the ground.¹ Clearly, LUP policy HAZ-47 was meant to apply to patios and decks located on the ground that could be easily removed if necessary, should a slope failure or some sort of erosive event occur.

Moreover, the applicant’s contention that the portion of the proposed deck encroaching into the 15-foot setback does not require a structural foundation and should not be held to the structural setback is incorrect. Although the deck’s proposed steel posts and grade beam foundation are proposed to be installed at a relatively shallow depth, such elements are still considered a structural foundation. Therefore, because the proposed deck is not “at grade” and requires a structural foundation, subsection (d) of HAZ-47 does not apply in this case.

Finally, although the applicant’s contention that the 15-foot setback for the entire second story deck is not necessary to prevent further erosion of the canyon because the canyon has been completely regraded and repaired (Coastal Development Permit No. 5-06-120) may have some merit, erosion is not the only factor 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 with all of the attendant resource benefits (e.g. protection of wildlife habitat, open space, corridors for native fauna, etc.). Encroachment into the canyon also increases the potential for the predation of native species by domestic animals and contributes to the destabilization of the canyon. 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.

¹ https://www.designingbuildings.co.uk/wiki/At_grade

Potential Sensitive Habitat

The City of San Clemente certified LUP includes maps of the coastal canyons that identify areas within some of the canyons as “potential sensitive habitat”, recognizing that development of the area surrounding the coastal canyons, which occurred prior to the effective date of the Coastal Act, has adversely impacted the coastal canyons to varying degrees. In this case, the subject site is on Palizada Canyon. LUP Figure 4-2-A ([Exhibit 5](#)) identifies sections of Palizada Canyon as potential sensitive habitat. However, the more inland portions of Palizada Canyon, including the location of the subject site, are not mapped as potential sensitive habitat. Nevertheless, the LUP recognizes all coastal canyons as areas that contain native habitat, typically in smaller patches, though perhaps degraded by past activities and the presence of invasive species. Maintaining the habitat value of the coastal canyons, or preferably enhancing the value when feasible, is required by the City’s certified LUP, via the various coastal canyon policies cited above.

The 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.

Thus, the Commission requires **Special Condition 1**, which requires the applicant to submit revised final plans reducing the encroachment of the proposed cantilevered deck into the canyon. Thus, as conditioned, the project is consistent with Section 30240 and 30253 of the Coastal Act and the relevant LUP policies.

C. Marine Resources and 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 LUP Policies

RES-33 Stormwater Runoff Plans. All projects that require a Coastal Development Permit (CDP) and have the potential for adverse water quality or hydrology impacts to coastal waters shall prepare both a construction-phase and a post-development runoff plan. Runoff management shall be addressed early in the development's planning and design stages. As part of CDP approval, the City shall require that the runoff plans include stormwater pollution control and runoff control measures or systems, and a maintenance program, as necessary, for both the construction-phase and post-development runoff plans. The post-development maintenance program shall be for the life of the development. The level of detail provided to address the plan's requirements shall be commensurate with the type and scale of the development, and with the potential for adverse water quality and hydrology impacts to coastal waters.

RES-34 Minimizing Pollutants and Runoff. Site, design, and manage new development and improvements, including – but not limited to – landscaping, to protect coastal waters from nonpoint source pollution by minimizing the transport of pollutants in runoff and minimizing post-development changes in the site's runoff volume, flow rate, timing, and duration. Review new development and improvements for potential degradation of water quality and water resources.

The proposed development is located along a coastal canyon with drainage features that hydrologically connect to the nearby beach during rain events. As such, drainage and run-off from the proposed development could potentially affect water quality of coastal waters. In order to protect coastal waters from the adverse effects of polluted runoff, the Commission is imposing **Special Condition 3**. Thus, as conditioned, the project is consistent with Section 30230 and 30231 of the Coastal Act and the relevant LUP policies.

D. Scenic and Visual Resources

Section 30251 of the Coastal Act 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.

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

Coastal Views

Section 30251 of the Coastal Act requires that the scenic and visual qualities of coastal areas be protected and, where feasible, to be restored and enhanced. Canyon edge setbacks are important tools used to protect coastal views. In this case, the proposed new cantilevered deck would extend five feet into the 15-foot coastal canyon edge setback for structural development.

The project site is potentially visible from the public park and trails of Linda Lane Park, which is a public beach park with beach access located in the bottom and mouth of Palizada Canyon. The new cantilevered deck as proposed could be visible by the public if one were to look canyon-ward from the farthest inland extent of the park. Although the proposed deck could potentially be obscured by the dense vegetation of the slope, under some circumstances, the proposed deck could have an adverse visual impact since it would be visible from the public below. As conditioned, however, Commission staff finds that pulling back the cantilevered portion of the proposed deck by five feet would obscure the new development because of its location behind the neighbors' residence. Therefore, as conditioned for approval, the project be found consistent with Section 30251 and the visual resource policies of the City's certified LUP.

E. Public Access and Recreation

Section 30604(c) of the Coastal Act requires that every coastal development permit issued for any development between the nearest public road and the sea include a

specific finding that the development is in conformance with the public access and recreation policies of Chapter 3 of the Coastal Act.

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.

Section 30212 of the Coastal Act states, in relevant part:

- (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:
 - (2) adequate access exists nearby.

The nearest public access is available at the Linda Lane access way, approximately 0.25 miles west of the subject site ([Exhibit 1](#)). The proposed development does not impact access either directly or indirectly to the ocean. As such, the development will not create adverse impacts, either individually or cumulatively, on public access and will not block public access from the first public road to the shore. Adequate access exists nearby. Therefore, the project as conditioned is consistent with Sections 30210 and 30212 of the Coastal Act and the public access and recreation policies of the City's certified LUP.

F. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit for development in an area with no certified Local Coastal Program only if the project will not prejudice the ability of the local government 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 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. 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. There is no certified LCP at this time. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that conforms with Chapter 3 policies of the Coastal Act.

G. California Environmental Quality Act

Section 13096 of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act ("CEQA"). Section 21080.5(d)(2)(A) of CEQA prohibits approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment. The project as conditioned herein incorporates measures necessary to avoid any significant environmental effects under the Coastal Act, and there are no less environmentally damaging feasible alternatives or mitigation measures. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and complies with the applicable requirements of the Coastal Act to conform to CEQA.