

**CALIFORNIA COASTAL COMMISSION**

South Coast District Office  
301 E Ocean Blvd., Suite 300  
Long Beach, CA 90802-4302  
(562) 590-5071

**F5a**

Filed:	3/24/21
180 <sup>th</sup> Day:	9/20/21
Staff:	CP – LB
Staff Report:	7/22/21
Hearing Date:	8/13/21

**STAFF REPORT: CONSENT CALENDAR**

<b>Application No.:</b>	<b>5-21-0059</b>
<b>Applicant:</b>	<b>John Dorey</b>
<b>Agent:</b>	Russell Proo
<b>Location:</b>	2312 Plaza A La Playa, San Clemente, Orange County (APN No.: 060-192-24)
<b>Project Description:</b>	Remodel and 127 sq. ft. addition to an existing one-story, 2,145 sq. ft. single family residence
<b>Staff Recommendation:</b>	Approval with conditions.

---

**SUMMARY OF STAFF RECOMMENDATION**

The project site is currently developed with a 2,145 sq. ft., one-story single family residence with an attached garage and a patio. The applicant proposes to remodel and expand the single family residence, including a 127 sq. ft. addition, demolishing and reconstructing the kitchen, utility, dining and great rooms; updating the bathrooms; converting 8 sq. ft. of existing garage space to living area; adding exterior soft lighting at the courtyard and rear patio roof overhangs; replacing two water heaters; replacing various windows and doors throughout; demolishing 30% of the exterior walls; demolishing and replacing 40% of the roof; and re-roofing the rest of the roof areas. 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%.

The project site is located at 2312 Plaza A La Playa in San Clemente, Orange County. The site is designated as Residential Low Density (RL) in the San Clemente Land Use Plan (LUP) and the proposed development adheres to this land use.

The main Coastal Act issues associated with this project include coastal hazards typically associated with development on a beachfront lot and potential impacts to water quality and marine resources during the project construction phase and life of the project. Development on beachfront 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 1** which prohibits construction of any future bluff or shoreline protective device(s) to protect the development approved pursuant to Coastal Development Permit No. 5-21-0059. Additionally, the Commission imposes **Special Condition 2** which requires the applicant to acknowledge the risks associated with the proposed development and **Special Condition 4** requiring the applicant to provide notice of the restrictions associated with the development at the site for any future property owners. In addition, **Special Condition 3** requires the applicant to adhere to construction best management practices to avoid adverse construction-related impacts upon water quality and marine resources.

The Commission's standard of review for the proposed development is Chapter 3 policies of the Coastal Act and the City of San Clemente's certified Land Use Plan (LUP) may be used for guidance.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 5-21-0059, as conditioned. The motion to carry out the staff recommendation is on **Page 4** of the staff report.

## TABLE OF CONTENTS

I.	MOTION AND RESOLUTION.....	4
II.	STANDARD CONDITIONS.....	4
III.	SPECIAL CONDITIONS .....	5
IV.	FINDINGS AND DECLARATIONS .....	8
A.	Project Description and Location .....	8
B.	Public Access .....	10
C.	Marine Resources.....	11
D.	Water Quality .....	11
E.	Deed Restriction .....	11
F.	Local Coastal Program .....	11
G.	California Environmental Quality Act (CEQA).....	12
	APPENDIX A- SUBSTANTIVE FILE DOCUMENTS.....	12

## EXHIBITS

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

[Exhibit 2: Project Plans](#)

[Exhibit 3: CoSMoS Sea Level Rise Projection \(6.6 ft. with a 100-year storm\)](#)

## I. MOTION AND RESOLUTION

### Motion:

I move that the Commission approve the Coastal Development Permit applications included on the consent calendar in accordance with the staff recommendations.

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

### Resolution:

The Commission hereby approves Coastal Development Permit No. 5-21-0059 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

## II. STANDARD CONDITIONS

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

### III. SPECIAL CONDITIONS

#### 1. 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 or bluff protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-21-0059 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 or bluff protective devices that conflict with applicable LCP or Coastal Act policies.

Approval of CDP No. 5-21-0059 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.

#### 2. 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 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.

**3. Construction Responsibilities and Debris Removal.** The permittee shall comply with the following construction related requirements:

- A. No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion and dispersion;
- B. Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project;
- C. 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;
- D. Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone;
- E. If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity;
- F. Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day;

- G. Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss;
  - H. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
  - I. 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;
  - J. 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;
  - K. Sand from the beach, cobbles, or shoreline rocks shall not be used for construction material;
  - L. 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;
  - M. The discharge of any hazardous materials into any receiving waters shall be prohibited;
  - N. 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;
  - O. Best Management Practices (BMP's) and Good Housekeeping Practices (GHP's) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and
  - P. All BMP's shall be maintained in a functional condition throughout the duration of construction activity.
4. **Deed Restriction.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the

California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit, as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit, shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

## IV. FINDINGS AND DECLARATIONS

### A. PROJECT DESCRIPTION AND LOCATION

The subject site is currently developed with an existing 2,145 sq. ft. single family residence with an attached two-car garage and a patio ([Exhibit 2](#)). The applicant proposes to remodel and expand the single family residence, including a 127 sq. ft. addition, demolishing and reconstructing the kitchen, utility, dining and great rooms; updating the bathrooms; converting 8 sq. ft. of existing garage space to living area; adding exterior soft lighting at the courtyard and rear patio roof overhangs; replacing two water heaters; replacing various windows and doors throughout; demolishing 30% of the exterior walls; demolishing and replacing 40% of the roof; and re-roofing the rest of the roof areas.

The proposed development is located at 2312 Plaza A La Playa in the City of San Clemente, Orange County ([Exhibit 1](#)). The site is designated as Residential Low Density (RL) in the San Clemente Land Use Plan (LUP) and the proposed development adheres to this land use. The project site is located between the first public road and the sea, directly landward of the San Clemente Pedestrian Beach Trail and the Orange County Transit Authority railroad tracks. The site is located approximately 75 ft. from the nearest sandy beach (Riviera Beach), which can be accessed through the tunnel upcoast of the project site under the railroad tracks. The proposed development will not have an adverse impact on public access to the coast or to nearby recreational facilities.

The applicant submitted a Wave Runup and Coastal Hazard Study<sup>1</sup> for the proposed remodel and addition. The Study estimates the development's expected life will be approximately 50 years and found that the home is not expected to be subject to coastal hazards such as coastal erosion, flooding, or wave uprush during the expected life. The Study uses the medium-high risk aversion from the Ocean Protection Council (OPC) 2018 Sea Level Rise guidance document to determine that in the year 2070 there is

---

<sup>1</sup> The Study assumed the absence of the Orange County Transit Authority railroad tracks that run parallel to the coastline seaward of the project.

only a 0.5% chance that sea level rise will meet or exceed 3.6 ft. According to the Study, since the site is approximately 275 ft. from the mean high tide line, the site slope will likely not be subject to marine erosion over its design life. In addition, the lowest finished floor is 29 ft. NAVD88, which is above any potential flood elevation from storm surge, extreme tides, including consideration of future sea level rise and wave runup on the shoreline. The Study concludes that the site is reasonably safe from flooding over its economic life. The Study also states that the wave runup is 6.9 ft., which when added to the design still water elevation of 9.6 ft. NAVD88 reaches a total of 16.5 ft. NAVD88, and thus concludes that the site is safe from direct wave attack, under the “no existing shore protection scenario,” due to the setback from the shoreline and the elevation of development at 29 ft. NAVD88.

Additionally, staff conducted an independent analysis of the project site’s susceptibility to coastal hazards. First, staff followed the methodology outlined in the 2018 OPC document to establish a projected sea level range for the new development. The 2018 OPC guidance uses NOAA tide gauges, a projected project lifespan, and risk aversion scenario to estimate a sea level rise range. Staff’s sea level rise analysis assumed a 75-year projected lifespan for the project. According to the 2018 OPC update, the projected sea level rise range for the project site is tied to the La Jolla NOAA Tide Gauge. This tide gauge estimates a range between 5.7 and 7.1 ft. of sea level rise by 2100 (which falls within the 75-year projected lifespan for the project). With regard to the risk-aversion scenario, both the Commission’s Sea Level Rise Policy Guidance and the OPC documents recommend a medium-high risk scenario for residential developments. Under a 75-year projected lifespan, a medium-high risk scenario, and the project’s location within the La Jolla NOAA tide gauge, staff estimated 6.4 ft. of sea level rise within the project vicinity.

Using the sea level rise estimates listed above, staff used the Coastal Storm Modeling System (CoSMoS) to analyze the project site’s vulnerability to sea level rise impacts. Staff ran the CoSMoS model using a 6.6 ft. sea level rise scenario (the closest available option that was within the determined sea level range) and a 100-year storm scenario to represent the worst-case scenario. Under an estimated 6.6-ft. sea level rise and 100-year storm scenario, the project site is not anticipated to be subject to coastal erosion, flooding or wave uprush; however, the CoSMoS tool is based on a model simulation that may change as more accurate data is compiled and input into the model ([Exhibit 3](#)). The tool also does not account for all variables that could impact the extent and depth of coastal hazards. Moreover, coastal areas are dynamic environments and it is difficult to predict with certainty how any particular project site will be impacted. Therefore, the proposed development, as a beachfront property, may be threatened by sea level rise at some point in the future if the rate of erosion and wave uprush accelerates faster than projected or if there are changes in the frequency or effectiveness of beach nourishment activities or changes to sediment management in the area, which has been the general trend in sea level rise.

Since development on beachfront 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, the Commission imposes **Special Condition 1**, which prohibits construction of any future bluff or shoreline protective device(s) to protect the development approved pursuant to Coastal Development Permit No. 5-21-0059. Pursuant to **Special Condition 1**, the applicant 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 1** does not preclude the applicant 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 and/or relevant certified LCP 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 1** does not apply to the residence in its entirety.

Additionally, the Commission imposes **Special Condition 2** which requires the applicant to acknowledge the risks associated with the proposed development. The applicant is noticed 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 tidally induced erosion that can damage the subject 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 in the event of any third-party claims.

The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect on the marine environment. The proposed project includes measures to help ensure protection of coastal waters and marine resources during construction. To ensure that all impacts (pre- and post-construction) to water quality are minimized and to reduce the potential for construction related impacts on water quality, the Commission imposes **Special Condition 3**, which requires, but is not limited to, appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants entering coastal waters and the continued use and maintenance of post construction BMPs.

## B. PUBLIC ACCESS

The proposed development will not affect the public's ability to gain access to, and/or to make use of, the coast and nearby recreational facilities. Therefore, as proposed the development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

## C. MARINE RESOURCES

The proposed project has been conditioned to minimize any significant adverse effect the project may have on the environment by avoiding or mitigating impacts upon sensitive marine resources. Therefore, the Commission finds that the proposed development, as conditioned, conforms with Sections 30224, 30230, 30231, and 30233 of the Coastal Act.

## D. WATER QUALITY

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, the continued use of non-invasive drought tolerant vegetation to reduce and treat the runoff discharged from the site, and for the use of post-construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

## E. 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.

## F. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit for development in an area with no certified Local Coastal Program ("LCP") only if the project will not prejudice the ability of the local government having jurisdiction to prepare an LCP that conforms with Chapter 3 policies of the Coastal Act. The Commission certified the Land Use Plan (LUP) for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On August 2, 2019, a comprehensive update to the City's LUP was effectively certified by the Coastal Commission. The City is currently also working on submittal of an Implementation Plan to complete the LCP; however, at this time the City has no certified LCP.

As conditioned, the proposed development is consistent with the policies contained in the certified Land Use Plan regarding public access and with the policies in Chapter 3 of

the Coastal Act. Therefore, approval of the proposed development, as conditioned, will not prejudice the City's ability to prepare a Local Coastal Program for San Clemente that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

## **G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the approval, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). In order for the Commission's program to qualify for that certification, Section 21080.5(d)(2)(A) of CEQA required that the program be designed such that it would not approve any development as proposed if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment.

The City of San Clemente is the lead agency for purposes of CEQA compliance. As determined by the City, this project is categorically exempt from CEQA under Class 15301 on September 17, 2020. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the public access and water quality policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

---

## **APPENDIX A- SUBSTANTIVE FILE DOCUMENTS**

1. Wave Runup and Coastal Hazard Study for Proposed Remodel, 2312 Plaza a la Playa, San Clemente, California, by GeoSoils, Inc., dated May 17, 2021.