

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
301 E. OCEAN BLVD., SUITE 300
LONG BEACH, CA 90802
(562) 590-5071



W13d

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-22-0599

Applicant: SC Surfside LLC

Agent: James Glover

Location: 3826 Vista Blanca, San Clemente,
Orange County (APN 692-304-07)

Project Description: Demolition of an existing 4,429 sq. ft. single-family residence and construction of a new 4,941 sq. ft. single-family residence with a 681 sq. ft. 3-car garage, pool, and spa on a 12,013 sq. ft. graded blufftop lot. Grading involves 44 cu. yds. of cut and export, and removal of raised planters on bluff/canyon face is proposed.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The applicant proposes demolition of a blufftop two-story, 4,429 sq. ft. single family residence approved by the Commission in 1987 (CDP 5-87-758), and construction of a new two-story, 25-ft. tall, 4,941 sq. ft., single-family residence and attached 681 sq. ft., 3-car garage. Hardscape improvements include a pool and spa (involving 44 cu. yds. of cut and export), concrete rear (seaward) patio with firepit, new driveway, and 6-ft. tall side property line fencing and retaining walls. The project is located at 3826 Vista Blanca in San Clemente, Orange County.

The project, as proposed, is set back at least 55 ft. from the edge of the coastal bluff and at least 25 ft. from the upper canyon edge ([Exhibit 2](#)). Based on a review of the applicant's geotechnical reports and other relevant information, staff evaluated the

present-day bluff stability of the project site, the potential for future bluff erosion, and the adequacy of the proposed minimum 55-ft. bluff edge and 25-ft. canyon edge setbacks over a 75-year project life. Slope stability analyses indicate that the bluff is currently stable against deep-seated landslides and seismic activity but may be vulnerable to future movement during particularly hazardous geologic events, such as during an earthquake, or if future sea level rise (SLR) allows for renewed marine erosion at the bluff toe. The applicant's quantitative slope stability analysis indicates that, on the northern portion of the property, a 1.5 (static) / 1.1 (seismic) factor of safety against bluff failures achieved approximately 20 - 25 ft. inland of the edge of the canyon slope, and 53 - 60 ft. from the coastal bluff edge. The bluff on the southern portion of the property has factors of safety in excess of 1.5/1.1. The proposed new principal development, including both the residence and pool, would be sited at least 55 feet inland of the coastal bluff edge, where the factor of safety exceeds 1.5/1.1, and would be founded on stable engineered fill materials.

Future bluff retreat at the subject bluff top site will depend in part on future decisions to protect or relocate the existing Orange County Transit Authority (OCTA) railroad corridor at the toe of the bluff. The available evidence indicates that substantial erosion at the bluff toe is only a possibility with higher levels of SLR (>3.3 ft) in the latter decades of the project life, and that even with 6+ feet of SLR, future bluff erosion would not threaten the proposed new development, given a geologically satisfactory setback. The Commission's staff geologist has reviewed the available geotechnical information and determined that, with the proposed setback from the bluff edge, the proposed development would be reasonably safe from bluff instability and erosion over a 75-year period.

Finally, the proposed development currently before the Commission includes the removal of the unpermitted path/stairs on the canyon face and replanting with native vegetation; the semicircular retaining wall enclosing the rear patio within 3 to 4 ft. of the canyon edge will also be removed as part of the residential structure's redevelopment. The applicant proposes to remove the unpermitted development and to restore the site using native vegetation, which will serve to resolve the violation on the property. Therefore, **Special Condition 1** requires a revised landscape plan depicting the removal of the unpermitted retaining wall and restoration of the area with vegetation native to Orange County coastal bluffs. 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 resolve the violation described above going forward.

The major Coastal Act issues associated with this project include coastal hazards typically associated with development on a coastal blufftop lot, potential adverse visual impacts, and adverse impacts to water quality and marine resources during the project construction phase and life of the project. To address these potential adverse impacts the Commission staff is recommending Special Condition 1: Submittal of Revised Final Plans; Special Condition 2: Conformance with Geotechnical Recommendations; Special Condition 3: Pool/Spa Protection Plan; Special Condition 4: Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris; Special

5-22-0599 (SC Surfside LLC)

Condition 5: Assumption of Risk and Waiver of Liability; Special Condition 6: No Future Shoreline/Bluff Protection Device; and Special Condition 7: Deed Restriction.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of San Clemente only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The City's certified Land Use Plan serves as guidance.

Staff recommends that the Commission **APPROVE** coastal development permit application 5-22-0599, as conditioned. The motion is on page 6.

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EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – Subdivision Map and Historic Photos](#)

[Exhibit 4 – Unpermitted Development](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 5-22-0599 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 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 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 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

This permit is granted subject to the following special conditions:

1. **Submittal of Revised Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director two (2) full-size sets of the following revised final plans that have been reviewed and approved-in-concept by the City of San Clemente, modified as required below:
 - A. **Bird Strike Prevention.** Revised final architectural plans shall depict the location, design, height and materials of seaward-facing windows, deck railings, fences, screen walls, and gates.
 - i. Coastal bluff top deck railing systems, fences, screen walls and gates subject to this permit shall use materials designed to minimize bird-strikes with the deck railing, fence, or gate. Such materials may consist, all or in part, of wood, wrought iron, frosted or partially-frosted glass, or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas shall not be installed. All materials shall be maintained throughout the life of the development to ensure continued effectiveness at addressing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications.
 - ii. The residence shall be designed to use minimal exterior lighting and minimize light pollution from interior lighting to the maximum extent feasible to minimize nighttime bird-strike hazards.
 - B. **Lighting Plan.** All lighting within the proposed development shall be directed and shielded so that light is directed away from the bluff and canyon slopes. Furthermore, no skyward-casting lighting shall be used. The lowest intensity lighting shall be used that is appropriate for safety purposes. The lighting plan shall serve to protect the sensitive and other bluff/canyon habitat areas from light generated by the project. The lighting plan to be submitted to the Executive Director shall be accompanied by an analysis of the lighting plan prepared by a qualified biologist, which documents that the lighting plan is effective at preventing lighting impacts upon adjacent habitat.
 - C. **Revised Landscape Plan** that conforms with the plans submitted to the Commission titled "Landscape Plan" prepared by James Glover Architects dated 9/13/22, except it shall be modified as required below:
 - i. Provide a 10-foot canyon edge setback for any proposed accessory structures such as decks, patios, and walkways which are at grade and do not require foundations, as depicted on [Exhibit 2](#) of this staff report. A

- safety fence with shallow footings may be allowed, provided it is located 10 ft. or more from the bluff edge;
- ii. All blufftop and canyon areas disturbed/affected by grading and construction activities not occupied by development shall be re-vegetated for habitat enhancement and erosion control purposes;
 - iii. Any areas disturbed/affected by construction activities in the rear yard (coastal bluff-facing) shall be planted and maintained for erosion control and native habitat enhancement purposes. To minimize the need for irrigation and minimize encroachment of non-native plant species into adjacent existing native plant areas, all landscaping adjacent to the coastal bluff shall consist of drought tolerant plants native to coastal Orange County and appropriate to the habitat type. Native plants shall be from local stock wherever possible. Landscaped areas in the front yard (street-facing) area shall consist of native or non-invasive, non-native drought tolerant plant species;
 - iv. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://ucanr.edu/sites/WUCOLS/files/183514.pdf> and <http://ucanr.edu/sites/WUCOLS/files/183488.pdf>);
 - v. No permanent in-ground irrigation systems shall be installed on the coastal bluff-facing portion of the site. Temporary above ground irrigation is allowed to establish plantings. Use of reclaimed water for irrigation is encouraged. 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. Other water conservation measures shall be considered, such as weather based irrigation controllers;
 - vi. All planting shall be completed within 60 days after completion of construction; and
 - vii. All vegetation shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscaping plan.

The permittee shall undertake development in accordance with the approved plans. Any proposed changes to the approved final 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 provides a written determination that no amendment is required.

2. **Conformance with Geotechnical Recommendations.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director’s review and approval, along with a copy of each plan, evidence

that an appropriately licensed professional has reviewed and approved all final design and construction plans, including foundation and grading/drainage plans, and certified that each of those final plans is consistent with all the recommendations contained in the geologic engineering investigations. The permittee shall undertake development in conformance with the approved final plans, unless the Commission amends this permit, or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

- 3. Pool/Spa Protection and Removal Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director, two (2) full size sets of a pool/spa protection plan prepared by an appropriately licensed professional that incorporates mitigation of the potential for geologic instability caused by leakage from the proposed pool/spa. The pool/spa protection plan shall incorporate and identify on the plans the following measures, at a minimum: 1) installation of a leak detection system such as, but not limited to, leak detection system/moisture sensor with alarm and/or a separate water meter for the pool/spa which is separate from the water meter for the house to allow for the monitoring of water usage for these elements; 2) use of materials and design features, such as but not limited to double linings, plastic linings or specially treated cement, to be used to waterproof the undersides of the pool/spa to prevent leakage, along with information regarding the past and/or anticipated success of these materials in preventing leakage; and, where feasible, 3) installation of a sub drain or other equivalent drainage system under the pool/spa that conveys any water leakage to an appropriate drainage outlet.

The permittee shall undertake development in accordance with the approved plans. Any proposed changes to the approved final 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 provides a written determination that no amendment is required.

- 4. 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.
 - C. Any and 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 applicant 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.
- 5. 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, storm conditions, erosion, slope instability and landsliding, which may be exacerbated by 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; 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.

6. No Future Bluff or Shoreline Protective Device.

- A. By acceptance of this permit, the permittee agrees, on behalf of itself and any successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-22-0599 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 permittee hereby waives, on behalf of itself 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 permittee further agrees, on behalf of itself 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, storm conditions, erosion, slope instability and landsliding, sea level rise, or other natural hazards related to coastal and geologic 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 bluff or shoreline protective devices that conflict with applicable LCP policies or Coastal Act policies.
- C. In the event the edge of the bluff recedes to within 10 feet of the foundation of the blufftop residence, the permittee shall submit a geotechnical investigation and report prepared by a licensed geologist with coastal experience or a licensed civil engineer with coastal experience. The report shall address whether any portions of the blufftop residence are threatened by waves, erosion, storm conditions, liquefaction, bluff retreat, landslides or other natural hazards. The report shall identify all immediate or potential measures that could stabilize the blufftop residence without new shoreline armoring (including caissons), including, but not limited to, removal or relocation of portions of the blufftop residence. The report shall be submitted to the Executive Director and the appropriate local government official within 90 days of the bluff edge reaching 10 feet of the foundation of the blufftop residence. If the Executive Director determines based on the geotechnical report that the blufftop residence or any portion of the blufftop residence is no longer safely sited, the permittee shall, within 90 days of submitting the report, apply for a coastal development permit or amendment to this Coastal Development Permit (CDP) to undertake measures required to

remove the blufftop residence or reduce the size of the blufftop residence to eliminate the hazard potential.

- D. Approval of CDP No. 5-22-0599 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.

- 7. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has executed and recorded against the parcel 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 Location and Description

The project site is located at 3826 Vista Blanca 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). The site is surrounded to the north and south by single-family residences, to the east by the frontage street (Vista Blanca) and to the west by a coastal bluff at an elevation of 94 ft. (NAVD88 datum, which is very close to the Mean Lower Low Water (MLLW) level). The bluff rises approximately 75-80 feet above the toe of the bluff, at approximately 20 ft. above sea level. The 12,013 sq. ft. coastal bluff lot site consists of a relatively flat pad that slopes gently towards Vista Blanca with 2 to 3 ft. of topographic relief from the rear of the lot to the front. The subject lot is currently developed with an existing residence. In 1987, the Commission approved the existing two-story, 4,097 sq. ft. single-family residence, after the lot was graded pursuant to an underlying subdivision permit. The foundation of the existing residence was built using conventional shallow footings to address soil settlement caused by placement of engineered fill material during original grading of the site, which sits atop terrace deposits (and ancient landslide debris directly offsite).

The coastal bluff is not currently subject to marine erosion as the San Clemente Coastal Trail and the Orange County Transportation Authority (OCTA) railroad tracks and right-of-way, both of which run parallel to the public beach below, are located between the

toe of the bluff and the ocean. Public access to the beach exists nearby with the nearest vertical access available approximately 1/3-mile north (upcoast) of the subject lot at the San Clemente State Beach public beach access stairway down the bluff face to a protected grade-separated railroad crossing and the public beach beyond ([Exhibit 1](#)).

Project plans for the proposed new structures are included in [Exhibit 2](#). The applicant proposes demolition of the existing two-story, 4,097 sq. ft. single-family residence built in 1987 and construction of a new two-story, 25-ft. tall, 4,941 sq. ft. single-family residence an attached 681 sq. ft., 3-car garage, and hardscape. Hardscape improvements include a pool and spa (involving 44 cu. yds. of cut and export), concrete rear (seaward) patio with firepit, new driveway, and 6-ft. tall side property line fencing and retaining walls.

Unpermitted development occurred beyond the edge of the coastal canyon/bluff in the rear yard of the property. Portions of the seaward rear patio were built into the “restricted use area” during original construction,¹ and at some point in the late 1990s, “raised planters” (railroad ties and a decomposed granite pathway that form stairs), bougainvillea, and a low semicircular retaining wall along the rear patio were installed as erosion control measures without the benefit of a coastal development permit ([Exhibit 4](#)). This unpermitted development is a Coastal Act violation; it is further discussed in the Coastal Act Violation section of this report.

Project History

The proposed development is located in Cypress Cove, a private residential community located seaward of the first public road. Coastal development permit P-3967 was the underlying subdivision approval for the subject site. Permit P-3967 involved the subdivision of 61 acres into 227 lots and was approved by the regional Commission on September 22, 1978, appealed to the State Commission (A-491-78), and remanded back to the Regional Commission where it was approved on February 22, 1979. A grading plan was approved with the subdivision which permitted some fill to be placed on the bluff at the project site ([Exhibit 3](#)). The grading plan also included blufftop setbacks. At the subject site, CDP 5-87-758 (Glover) was approved by the Commission in 1987 for a two-story, 4,097 sq. ft. single-family residence and attached 714 sq. ft., 3-car garage, 1,350 sq. ft. of pavement, and 3,250 sq. ft. of landscaping; the CDP was issued on December 4, 1987, with no special conditions imposed.

¹ CDP 5-87-758 (Glover). Also, the “restricted use area” is shown in prior Commission actions in the vicinity, which include, but are not limited to, coastal development permits 5-85-527 (3818 Vista Blanca), 5-86-751 (3812 Vista Blanca), 5-88-177 & G-5-93-254 (Arnold, 3820 Vista Blanca), 5-89-032 (Weeda, 3830 Vista Blanca), 5-94-243 (3816 Vista Blanca, Gilmour), 5-98-300 (3812 Vista Blanca, Loughnane), 5-98-508 (3824 Vista Blanca, Klein), and 5-99-109 (3814 Vista Blanca, Belardi).

Standard of Review

The project site is in the Commission's permit jurisdiction as the City does not have a certified LCP. Chapter 3 policies of the Coastal Act are the standard of review with the City's certified Land Use Plan (LUP) serving as guidance.

B. Coastal Hazards

Section 30253 of the Coastal Act states, in part:

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Section 13577(h) of the Commission's Regulations, bluff edge definition, in part:

... the upper termination of a bluff, cliff, or seacliff. In cases where the top edge of the cliff is rounded away from the face of the cliff as a result of erosional processes related to the presence of the steep cliff face, the bluff line or edge shall be defined as that point nearest the cliff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff. In a case where there is a steplike feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the cliff edge..." (Title 14, California Code of Regulations, §13577(h)(2)).

City of San Clemente LUP Policies

GEN-7 Setback Requirements. Setback requirements from bluff and canyon edges and biological resources shall have priority over street and rights-of-way setback requirements, while maintaining a minimum five feet setback from the property line.

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-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-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), except when such development is coastal-dependent and there is no feasible alternative that avoids the need for a shoreline protective

device (and in such cases such devices shall be limited to the maximum feasible degree). When consistent with GEN-8, a condition of any CDP issued for new development, including Major Remodels, but excluding coastal-dependent development, in areas subject to coastal hazards, including but not limited to tidal and storm flooding, wave runup, and erosion, as influenced by sea level rise over time, shall require the property owner(s) to record deed restriction(s) on all properties on which proposed development is sited that acknowledges that, pursuant to Section 30235 of the Coastal Act and HAZ-18, the owner has no right to construct shoreline protection to protect the new development approved pursuant to the permit and that expressly waives any right to apply to construct such protection pursuant to Section 30235 of the Coastal Act and HAZ-18.

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-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.

HAZ-37 Removal of Non-conforming, Unpermitted and/or Obsolete Structures and Uses. When a principal structure is removed, all non-conforming accessory development and/or uses shall be removed. Development on the shoreline, canyon, and/or bluff sites must identify and remove all unpermitted and/or obsolete structures that are no longer being used, including but not limited to protective devices, fences, walkways, stairways, etc. which encroach into canyons or bluffs or shoreline or onto public property.

HAZ-41 Blufftop Setback. Proposed development, redevelopment, and accessory structures, if such accessory structures require a foundation on blufftop lots shall be set back by the greater of the following distances: the setback distance recommended as a result of the geotechnical study required by policy HAZ-8 or HAZ-9, at least 25 feet from the bluff edge, or in accordance with a stringline drawn between the nearest corners of adjacent structures on either side of the development. No deepened foundations, such as caissons, shall be located within 25 feet of a bluff edge. Cantilevering into the bluff top setback or geologic setback may be allowed up to a 10-foot seaward projection when necessary to avoid a taking pursuant to Policy GEN-8. In addition, construction within 5-feet of the public right-of-way front yard

setback for all stories shall be allowed as long as adequate architectural relief (e.g., recessed windows or doorways or building articulation) is maintained as determined by the City. No variance or other additional permit shall be required for a reduction in the street side setback to a minimum of 5-feet when this policy is applied, provided the development is consistent with all other applicable LUP policies.

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. Accessory structures such as decks, patios, and walkways, which are at grade and do not require foundations may extend into the setback area and shall be sited in accordance with a stringline, but no closer than 10 feet to the bluff edge, provided such accessory structures:

- a. are consistent with all other applicable LCP policies;
- b. are sited and designed to be easily relocated landward or removed without significant damage to the bluff area;
- c. will be relocated and/or removed and the affected area restored to natural conditions when threatened by erosion, geologic instability, or other coastal hazards
- d. Are removed by the landowner in the event that portions of the development fall to the bluffs, beach or ocean before they are removed/relocated, along with all recoverable debris, and the material lawfully disposed of in an approved disposal site;
- e. Do not require any bluff or shoreline protective device.

HAZ-43 Blufftop Swimming Pool Setback. The minimum setback for swimming pools is the greater of the following distances: 25 feet from the bluff edge or the setback distance recommended as a result of the geotechnical review required by policy HAZ-8 or HAZ-9. All new or substantially reconstructed swimming pools shall incorporate a leak prevention/detection system.

HAZ-45 Blufftop/Coastal Canyon Lot Drainage and Erosion. New development and redevelopment on a blufftop or coastal canyon lot shall provide adequate drainage and erosion control facilities that convey site drainage in a non-erosive manner away from the bluff/canyon edge to minimize hazards, site instability, and erosion. Drainage devices extending over or down the bluff face will not be permitted if the property can be drained away from the bluff face. Drainpipes will be allowed only where no other less environmentally

damaging drain system is feasible, and the drainpipes are designed and placed to minimize impacts to the bluff face, toe, and beach.

HAZ-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-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.
- e. Do not require any bluff or shoreline protective device.

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.

HAZ-48 Canyon Pool Setbacks. The minimum setback for swimming pools adjacent to coastal canyons is 15 ft. from the canyon edge. All new or substantially reconstructed swimming pools shall incorporate a leak prevention/detection system. This minimum setback may be altered to require greater setbacks when required or recommended as a result of geotechnical review required by policy HAZ-8 or HAZ-9.

City of San Clemente LUP Definitions

“BLUFF EDGE” The upper termination of a bluff, cliff, or seacliff: In cases where the top edge of the bluff is rounded away from the face of the bluff as a result of erosional processes related to the presence of the steep bluff face, the bluff line or edge shall be defined as that point nearest the bluff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the bluff. In a case where there is a step like feature at the top of the bluff face, the landward edge of the topmost riser shall be taken to be the bluff edge. Bluff edges typically retreat landward due to coastal erosion, landslides, development of gullies, or by grading (cut). In areas where the bluff top or bluff face has been cut or notched by grading, the bluff edge shall be the most landward position of either the current or historic bluff edge. In areas where fill has been placed near or over the historic bluff edge, the original natural bluff edge, even if buried beneath fill, shall be taken to be the bluff edge.

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

“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.

The site is a generally rectangular-shaped, 12,013 sq. ft. property which fronts 50± ft. along Vista Blanca and extends southwesterly up to 163.12 and 179.4± ft. to the rear property boundary located near the elevation of 57 to 62 ft. (NAVD88) on the face of a coastal bluff.

Topographically, the property extends from the Vista Blanca street frontage across a relatively level pad, which gently slopes down 2 to 3± ft. towards the rear yard improvements, at an average elevation of 94± ft. (NAVD 88). Thereon, the topography descends southwesterly at approximately 3:1 (horizontal : vertical) ratio slope to an elevation of 78± ft.; this increase in slope reflects the presence of two relict natural drainage features (arroyos) on the bluff top that were partially filled during the original development of the site (associated with the underlying grading permit (CDP A-491-78)). In this case, these arroyos can be considered small canyons under the LUP definition. The presence of the canyons creates an irregular bluff edge configuration compared to other lots nearby with a “straight bluff drop” (see CDP 5-98-508); here, there is a canyon edge and coastal bluff edge in close proximity to one another ([Exhibit 2](#)). Below the canyon feature, the bluff face steepens dramatically from 3:1 (h:v) to near vertical, crossing the rear property boundary and further below, until reaching the railroad tracks at a local elevation of 17 to 19± ft. The overall slope height is 75± ft.

The key geologic features at the site include 1) engineered fill placed during the original tract grading, 2) bedrock underlying the site consisting of the San Mateo Formation overlying the Capistrano Formation, and 3) landslide debris deposit along the lower bluff slope below the rear property line. In exploratory borings performed on June 22, 2020, the fill thickness is observed down to 7 ft. below grade. Additionally, the geotechnical report documenting rough grading of Tract 4202 was reviewed for the subject project, and the plans depicting Lot 114 show that the site was over-excavated to provide a uniform fill blanket. This grading resulted in the infilling of two relict canyons that were truncated by the bluff, which at the time flanked the building pad on the lot to the northwest and northeast. Consequently, these features now drain to the southwest and join in the rear of the upper portion of the lot, creating an incidental “canyon” feature. As for the natural earth materials, a basal conglomerate consisting of non-marine terrace deposits sits below the engineered fill, and at a depth of approximately 25 ft. below existing grade, bedrock consisting of San Mateo and Capistrano Formations (marine terrace deposits) can be found. Directly offsite, the lower bluff is mantled with a relatively recent landslide deposit. Based on the geotechnical review of the site, the applicant’s geotechnical consultant identifies the failure as a slump in the surficial soils and relatively shallow bedrock material exposed in the slope face. The failure likely occurred after an irrigation malfunction on the adjoining Lot 113 to the southeast, after which no repair of the landslide was conducted, and the material was left to stay in place.

The subject blufftop lot is currently developed with a two-story, single-family residence with a rear yard (ocean bluff-facing) concrete slab patio. The residence was constructed circa 1987 and conforms to the current minimum 25-ft. bluff edge development setback, as well as the restricted use area requirements pursuant to the underlying grading permit (CDP A-491-78). According to the applicant's geotechnical report (Geofirm, dated May 28, 2021), the existing residence is underlain with standard footings to address soil settlement caused by placement of engineered fill material during original grading of the site.

Bluff/Canyon Edge Determination

The City's LUP bluff edge definition (cited in the policies section above) is similar, though not identical to the definition of "bluff edge" contained in the Coastal Commission's regulations (Cal. Code Reg. Title 14, §13577(h)). The Commission's regulations definition does not explicitly address fill at the top of the bluff, nor site-specific conditions such as the relict canyon feature found here. The key consideration for present purposes is that San Clemente's LUP definition does not credit artificial fill placed over the historic bluff edge, and explicitly states that the "original natural bluff edge, even if buried beneath fill" is to be used as the bluff edge in applying the certified policies of the LUP.

At the project site, determining the bluff edge pursuant to the certified LUP definition is complicated by the past placement of a mantle of fill on top of the natural bluff materials, greatly modifying the topography of the site and natural drainage features directly landward of the original natural bluff edge.

Development of the site and surrounding lots in the early to mid-1980s (pursuant to CDP A-491-78) included the placement of up to ~7 feet of fill over the entire lot, which involved partial infilling of drainage features below 93 ft. in elevation in order to create level building pads. Below 84 ft. in elevation and above the natural bluff edge (approximately 78 ft. in elevation), two natural, bisecting gullies or arroyos, likely formed by the drainage of seasonal runoff from the bluff top, but were not completely infilled during the grading process and have thus been preserved as topographic features. These gullies, formed by natural drainage rather than marine processes, are significant enough to be considered canyons under the LUP. An unpermitted walking path extends from the rear of the building pad down the relict canyon to just near the confluence of the two drainages at approximately 79 ft. in elevation, thus distinctively demarcating the canyon from the rest of the bluff face below ([Exhibit 2, Page 5](#)).

On July 1, 2022, the applicant undertook additional extensive subsurface investigation (i.e., drilling of numerous borings across the site) necessary for a clearer understanding of the location of the natural bluff and canyon features buried beneath the fill. Accordingly, the geotechnical consultant's geologic hazards analyses and setback recommendations use both the natural bluff edge and canyon edge for such purposes (see the geologic cross-section provided in [Exhibit 2](#)).

The Commission's staff geologist Dr. Joseph Street reviewed the applicant's geotechnical consultant's delineation of the natural bluff edge position, as defined in the

LUP, using available information from the applicant's geologic reports, including the subsurface investigation, and evidence from historical maps and photographs dating from 1938 and 1980, showing the bluff both prior and after the placement of the artificial fill on the site ([Exhibit 3](#)). Dr. Street confirms that the method used was rigorous, agrees with the Geofirm's review of the natural bluff edge, and further concurs that there is a relict canyon feature that could be easily misidentified as the natural bluff edge (as was mistakenly labeled in CDP 5-87-758). The delineated bluff and canyon edges thus appear consistent with the definitions in the LUP and CCR Section 13577(h), as shown in [Exhibit 2](#).

The bluff edge is relevant in order to establish necessary setbacks to assure the stability of proposed new development and assurance that the placement of new development will neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area as required by Coastal Act Section 30253.

Bluff and Canyon Setbacks for New Development

Coastal bluff and canyon development is inherently hazardous and poses potential adverse impacts to the geologic stability of coastal bluffs and canyons, shoreline processes, and to the stability of residential structures. Bluff and canyon stability has been an issue of historic concern throughout the City of San Clemente. Generally, on blufftop lots in San Clemente, new development must conform to a minimum 25-ft. setback from the bluff edge for primary structures (e.g. the enclosed living area of residential structures) and a minimum 10-ft. setback for secondary structures (e.g., patios, decks, garden walls) or in accordance with a stringline setback. Likewise, for lots with a canyon feature, new development must conform to a minimum 15-ft. setback from the canyon edge for primary structures and 5-ft. setback for secondary structures. However, the distances required for bluff and canyon development setbacks must be increased as needed to protect against slope instability and/or projected erosion.

Certified LUP Policies HAZ-41 and HAZ-47 more specifically require development, redevelopment, and accessory structures (such as pools and accessory structures which require a foundation) on blufftop and canyon-top lots to be set back by the greater of the following distances: the setback distance recommended as a result of the geotechnical study required by policy HAZ-8 or HAZ-9, a minimum of 25 feet from the bluff edge (or 15 feet from the canyon edge), or in accordance with a stringline drawn between the nearest corners of adjacent structures on either side of the development.

No deepened foundations, such as caissons, shall be located within 25 feet of a bluff edge, or within 15 feet of a canyon edge. Cantilevering into the bluff top setback or geologic setback may be allowed up to a 10-ft. seaward projection only when necessary to avoid a taking pursuant to LUP Policy GEN-8. In addition, construction within 5 feet of the public right-of-way front yard setback for all stories shall be allowed as long as adequate architectural relief (e.g., recessed windows or doorways or building articulation) is maintained as determined by the City. No variance or other additional permit shall be required for a reduction in the street side setback to a minimum of 5 feet when this policy is applied, provided the development is consistent with all other applicable LUP policies. LUP Policies HAZ-41 and HAZ-47 make a clear distinction

between the setback that is geologically necessary and the 25-ft. (15-ft.) minimum bluff (canyon) edge setback; they require the development to be setback by the greater of the two in order for the bluff (canyontop) setback to address other non-geological/non-hazard coastal resource protections (i.e., biological resources, visual resources).

Furthermore, certified LUP policies aim to restrict development on the face of coastal bluffs and canyons and to protect coastal bluff and canyons from development encroachments to ensure protection and enhancement of visual and habitat values of the bluff. The Preliminary Landscaping Plan prepared by James Glover Home, Inc. dated October 25, 2022 ([Exhibit 2, Page 8](#)) submitted by the applicant depicts “raised planters,” which in actuality are railroad ties and a decomposed granite pathway that form stairs at approximately the 79’ elevation contour line. At approximately 3 to 4 ft. from the canyon edge, there is also a garden retaining wall enclosing the semicircular rear patio. Based on information from the applicant, these developments were both installed by a previous homeowner.

The path/stairs and garden retaining wall elements are non-conforming to the required minimum 5-ft. bluff canyon setback for accessory structures/development. Certified LUP Policy HAZ-37 requires all non-conforming accessory development and/or uses be removed when the primary structure is removed. The proposed project will include removal of the path/stairs on the canyon face and replanting with native vegetation, and the semicircular retaining wall will be removed as part of the residential structure’s redevelopment.

Geologic Stability

Coastal Act Section 30253(b) requires new development 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. With regard to stability, certified LUP policies (listed above) require new development have an adequate slope stability factor of safety of 1.5 (static) and 1.1 (pseudostatic, or seismic) as determined through geotechnical analysis. The location/setback of proposed new development is also required to maintain these minimum factors of safety over the full project life, and thus must be adequate to accommodate 75 years of estimated bluff/canyon retreat resulting from erosional processes. The intent of the bluff and canyon edge setbacks are to substantially reduce the likelihood of proposed development becoming threatened given the inherent uncertainty in predicting geologic processes in the future, to allow for potential changes in bluff erosion rates as a result of rising sea level, and to avoid the need for future protective devices with the potential to adversely affect coastal resources.

As described in the above section, the development of the subject site and adjoining properties in the early to mid-1980s included the placement of 7± feet of artificial fill over intact terrace deposits, non-terrace material, and landslide debris deposits. Due to localized fill settlement, the existing residential structure was built with shallow footings to underpin and provide support to the slab-on-grade foundation. Also, railroad ties and a decomposed granite pathway, bougainvillea plantings, and a low semicircular

retaining wall along the rear patio were installed as erosion control and geologic stability measures without the benefit of a coastal development permit.

The applicant provided several geologic and coastal hazards analyses by Geofirm² considering aspects of bluff stability and erosion at the subject site. These reports concluded that the presence of bedrock underlying the site results in resistant strata which in turn favor long-term resistance to bluff retreat. It was found that the terrace deposits are crudely layered, near horizontal, and sub-parallel to the terrace-bedrock contact. This orientation results in an obliquely out-of-slope topographic-structural relationship. However, with the crude structure and these shallow inclinations, the structural orientation is essentially neutral to slope. Thus, while the lower bluff is mantled with shallow landslide materials and is surficially unstable, and portions of the bluff face have near vertical slope, the site is considered to be generally stable based on engineering stability analysis and slope history, and no special design criteria are required to achieve adequate stability for the proposed structure at the site.

As for the probable erosion at the site, the Geofirm report dated September 14, 2021 concludes that erosion will affect the upper canyon feature, the reclined upper bluff terrace, mid-seacliff, and lower bluff talus slope differently. For the first, the report states that the relict canyon feature was heavily modified as part of the original grading effort, and the drainages have been redirected as to prevent further erosion from concentrated surface water runoff within the remaining drainage portions. As for the upper portion of the bluff, it is mantled with cobble and gravel conglomerate, which while erodible, is weakly cemented and appears relatively resistant. At mid-seacliff, the Capistrano Formation bedrock strata become exposed at the bluff face, and since it consists of weakly lithified and poorly cemented material, erosion of this portion of the bluff due to poorly controlled groundwater seepage and possible seismic shaking is anticipated to episodically contribute to bluff retreat. As for the toe of the slope, the report assumes that the railroad track will remain armored, and thus “erosion of the toe is not considered likely.” However, the Coastal Act and the City of San Clemente’s certified LUP requires that new bluff development be sited to be safe from geologic instability and erosion hazards over a minimum 75-year project life, taking into account the effects of sea level rise, while *avoiding* the need for bluff and shoreline protection structures.

² Geofirm, “Geotechnical Analysis of Coastal Hazards Affecting Shoreline & Bluff Retreat and Design Water Elevations, Proposed New Single-Family Residence, 3826 Vista Blanca, San Clemente, California” Project No. 72497-80, Report No. 21-8918, dated May 6, 2021; Geofirm, “Preliminary Geotechnical Investigation for Proposed New Single-Family Residence, 3826 Vista Blanca, San Clemente, California”, Project No. 72497-00B, Report No. 20-8743r3, dated May 28, 2021; Geofirm, “Geotechnical Analysis of Coastal Hazards Affecting Shoreline & Bluff Retreat and Design Water Elevations,” Project No. 72497-80, Report No. 21-891R, dated June 14, 2021; Geofirm, “Response to California Coastal Commission Notice of Incomplete Application, dated July 21, 2021 and Email Correspondence dated August 11, 2021,” Project No. 72497-01/80, Report No. 21-8982r2, dated September 14, 2021; Geofirm, “Geotechnical Response to California Coastal Commission Notice of Incomplete Application, dated October 28, 2021, 3826 Vista Blanca, San Clemente, California”, Project No. 72497-01, Report No. 21-9036, dated November 12, 2021; Geofirm, “Determination of Bedrock Strength and Re-Evaluation of Bluff Stability” Project No. 72497-02, Report No. 22-9191, dated August 4, 2022.

Thus, it is necessary to evaluate both the present-day stability of the coastal bluff at the site and the potential for instability, erosion and bluff retreat over the next 75 years, including the effects of sea level rise, while discounting the effects of any shoreline or bluff protection devices that currently exist at the site (i.e., the railroad berm at the toe of the bluff). The entire San Clemente coastline, inclusive of the project site, is paralleled by a railroad corridor owned and maintained by the OCTA. Along much of the corridor the railroad tracks are positioned atop a raised earthen berm or step, at elevations between +17.5 – 22.5 ft. MSL, and are protected by a riprap revetment. In the immediate project area, however, Geofirm clarified on September 14, 2021 that there is no riprap seaward of the berm. The railroad has been in place since the 1880s, and despite occasional storm damage and wave overtopping in this location of the railroad, the berm has effectively halted marine erosion at the toe of the bluff for the last 135 years. The City’s LUP anticipates that sea level rise, coupled with coastal storms, will “eventually threaten the revetment, railroad, and development landward of the revetment and railroad such that an adaptive response will be necessary” (LUP Section 5.1.4). However, there remains the possibility that the railroad corridor could be moved to a new alignment by OCTA or a future owner, changing the bluff’s configuration and vulnerability to coastal hazards, including sea level rise.

Geologic Stability – Present Day Conditions

At the time of application, the applicant was proposing a two-tiered caisson foundation supported in bedrock with basement retaining walls and structural slab floors. The caissons were specifically proposed to be widely spaced as to not alter the stability of the bluff, and to mainly provide vertical member support for the basement that was proposed to be placed in artificial fill. However, in light of Coastal Act Section 30253, with the San Clemente certified LUP policies serving as guidance, the Commission has previously taken issue with the use of caissons located seaward of the 1.5 (static)/ 1.1 (seismic) factor of safety for failures within the fill/natural bluff material (ref: [CDP 5-20-0476](#), Tanner). In the original project submittal, the applicant’s geotechnical consultant used a conservatively low shear strength as an input for the slope stability analysis model runs, and as such the model yielded a 1.5/1.1 factor of safety line transecting the proposed development pad. Since the embedded caissons in bedrock as part of the foundation system proved to be a constraint on the home design, Geofirm conducted additional exploratory borings to collect a more complete dataset with representative bedrock shear strengths.

Using the new calculations submitted on August 4, 2022, the applicant’s quantitative slope stability analysis indicates that a 1.5/1.1 factor of safety for failures within the fill/natural bluff material is achieved approximately 20 - 25 ft. inland of the edge of the canyon slope, and 53 - 60 ft. from the natural bluff edge, entirely seaward of the proposed residential structure and pool/spa ([Exhibit 2](#)). The house is proposed to be located landward of the 1.5/1.1 factor of safety line, plus an additional five feet to account for minor bluff erosion related to subaerial processes.

The applicant’s geotechnical consultant recognizes that the bluff is still susceptible to renewed geologic movement along the plane of the recent landslide at the lower bluff talus, which the Geofirm analysis indicates has factors of safety of less than 1.0. This

relatively small landslide feature is limited to the bluff toe does not indicate a significant landslide hazard on the larger bluff, which has been determined to be grossly stable. Based on the relatively shallow inclination of the bluff strata and the current absence of marine erosion at the bluff toe, the consultant's geotechnical analysis concludes that renewed movement of the bluff slope, if it occurs, would most likely consist of slow downhill creep rather than catastrophic failure. The Commission's staff geologist concurs. More substantial movement could occur during a large earthquake or if significant new marine erosion occurred at the bluff toe.

The proposed location of the new residence would be additionally protective in the case of more major seismic activity. The potential for shallow ground cracking to occur during an earthquake is a possibility at any site, but does not pose a significant hazard to the site development as currently proposed. While the bluff face could experience seismic instability in its present condition, the portion of the bluff top on which new development would occur is landward of the 1.5/1.1 factor of safety line and possesses adequate geologic stability under both static and seismic conditions.

Future Bluff Retreat and Future Sea Level Rise Considerations

In addition to minimizing present-day geologic hazards, the Coastal Act and City LUP require that new development assure stability over its full design life (75 years) while considering future bluff erosion and the potential effects of sea level rise, and without relying on shoreline or bluff protection devices.

Two important but uncertain factors influencing the potential for future bluff erosion and instability at the project site are (a) the continued presence of the OCTA railroad and any future measures undertaken to protect the railroad from coastal hazards; and (b) the course of future sea level rise (SLR) related to global climate change. The Commission's analysis of future erosion hazards does not make assumptions about possible future actions to protect the railroad, but rather examines the potential for erosion and bluff retreat under a range of SLR scenarios with the currently unprotected railroad berm and bluff toe.

The applicant's coastal hazards study³ generally concluded that significant bluff toe erosion would not occur in the next 75 years, and that any minor erosion that does occur would have little effect on the upper bluff and the position of the top of the slope. In combination, the two provided studies considered scenarios with up to 6.4 feet of SLR, and evaluated wave runup under 100-year storm conditions or greater. The calculated maximum wave runup (total water level, TWL) with 3-4 feet of SLR was projected to reach elevations of 19 – 20 feet NAVD88, and would not be expected to overtop the railroad berm.. However, with 6.4 feet of SLR, storm wave runup could reach +22 feet NAVD88 and result in modest overtopping of the berm. The applicant's coastal hazards studies also considered the potential for future shoreline retreat, but relied only on observed historical retreat rates (up to 1.09 ft/yr) to project future shoreline retreat of up to 82 feet over the project life. The September 14, 2021 study

³ June 14 2021 Geofirm study.

concluded that “shoreline retreat is not anticipated to impact the property.” However, the applicant’s shoreline retreat estimates did not account for the effects of future SLR, or for recent beach erosion that has greatly reduced the beach widths throughout San Clemente.

The applicant’s studies provided evidence that the proposed project is not in acute danger from renewed marine erosion at the bluff toe, and that even occasional wave contact with the bluff toe beyond the railroad is unlikely without a large amount of SLR. However, these studies did not explicitly consider the likelihood that SLR will accelerate shoreline erosion and retreat above historical rates. In contrast, the recent 2019 City of San Clemente Sea Level Rise Vulnerability Assessment (“City VA”) examined future shoreline evolution in the project vicinity using USGS Coastal Storm Modeling System (“CoSMoS”) projections of future flooding, wave runup, and shoreline retreat. The City VA analysis indicated that 3.3 ft (1 m) of SLR could result in 95 feet of shoreline retreat (up to 150 feet under winter eroded conditions), increasing to 165 feet (to 272 ft with winter erosion) with 4.9 ft (1.5 m) of SLR. These projections greatly exceed the magnitudes of shoreline retreat considered in the applicant’s analyses and would place the mean high tide line near or beyond the line of the railroad. Moreover, under the precautionary “medium-high risk aversion” SLR scenario, 3.3 feet of SLR could occur by the late 2060s and 4.9 feet by the 2080s, both within the assumed 75-year economic life of the proposed project. In short, the CoSMoS shoreline retreat projections relied on in the City VA suggest that renewed bluff toe erosion is a possibility under the higher SLR scenarios and needs to be examined more closely in relation to the project site.

In order to probe this issue further, the Commission staff geologist applied CoSMoS shoreline retreat projections and evaluated the potential for future bluff erosion and retreat under a high SLR scenario (6.6 ft. by 2100). Under this scenario, CoSMoS projects that the “winter eroded shoreline” could reach the base of the railroad berm as early as 2064, and that the shoreline would continue to retreat landward at a rapid rate (greater than 3 ft./yr) through 2100.

On the ground, however, further shoreline retreat and bluff toe retreat beyond the railroad berm would have to be accomplished through the erosion of a large amount of increasingly resistant materials, including the railroad berm itself (~50 ft. thick), the landslide materials at the base of the bluff (~20 ft. thick) and, eventually, Capistrano Formation bedrock. In combination, the large horizontal distance and the bluff materials themselves would provide a substantial “buffer” for accommodating shoreline retreat and bluff erosion. Moreover, because the new home would be built on a foundation system embedded in stable (compacted) fill materials on top of intact San Mateo and Capistrano Formation bedrock, the house would be unaffected by new movement on the landslide occurring at the talus at lower elevations near the bluff toe, and would not be threatened until a substantial amount of new erosion and retreat had occurred in the Capistrano Formation bedrock itself.

Dr. Street roughly estimates that at least 50 – 60 horizontal feet of Capistrano Formation bedrock would need to be eroded before the bluff profile would again steep enough for there to be a significant risk of new, major landslides that could threaten the proposed home. Even at an unrealistically high bluff toe erosion rates of 2 - 3 ft./yr, it

would take several decades, tacked on near the end of the 75-year project life, for such erosion to occur. In conclusion, Dr. Street's analysis of potential bluff erosion under a low probability, high SLR scenario (6.6 ft by 2100) supports the applicant's contention that the proposed house would not be threatened by erosion and bluff instability within a 75-year project life.

In summary, the available evidence and analysis supports the conclusion that as conditioned, with the proposed minimum 55-ft. setback from the natural buried bluff edge as depicted on [Exhibit 2](#) along with the location of the foundation system fully behind the 1.5/1.1 factor of safety line and within compacted fill material, the project would assure stability and protect against future bluff retreat over the full 75-year life of the project. Nonetheless, **Special Condition 1** requires final revised plans assuring that all proposed accessory structures (without foundations) maintain at least a 10-foot canyon edge setback. The revised plans required by **Special Condition 1** may result in less allowable hardscape near the upper canyon edge.

Proposed New Foundation

Per the Geofirm report dated May 28, 2021, the existing residence (permitted by the Commission in 1987) is currently supported on conventional footings and slab-on-grade foundation. These foundational elements are shallow and do not act as bluff retention devices. As part of the redevelopment of the site, the existing foundation elements will be removed and replaced with a new conventional foundation system for the proposed residence. The geotechnical consultant concludes that the proposed conventional foundation system ([Exhibit 2](#)) will be embedded into stable fill and sufficiently inland of the erosive material found in the relict canyon feature or the terrace deposits found along the bluff face. The proposed setbacks from the bluff and canyon edges per the LUP definition would protect against bluff instability under present-day and future conditions.

As discussed in the Geofirm reports, the artificial fill on the bluff top provides adequate vertical support for the proposed house and the use of conventional shallow foundations would be sufficient for the new house to avoid risk of differential settlement and structural damage. The proposed foundation would interfere only minimally with natural bluff erosion processes and would not prevent the bluff collapses and landslides that are the main driver of natural bluff retreat in the project area. The shallow footings proposed for the 6-ft. tall side yard fencing and retaining walls will likewise have minimal impact on bluff stability or adjacent properties, and they would mainly serve as privacy screens with the neighboring properties. Thus, the proposed foundation system does not represent a "shoreline protection device" or "bluff protection device" under the definitions contained in the LUP. The applicant has contemplated alternatives to the use of conventional footings, which include (i) other highly engineered deepened foundation options (e.g., shear pier foundations, deep-footed retaining walls, etc.), (ii) installation of a basement level founded in competent materials beneath the fill, or (iii) excavation of the existing fill and replacement with more densely compacted fill. The applicant and Commission both acknowledge that these alternatives would result in (much) greater landform alteration (and other coastal effects), as compared to the standard foundation system and location substantially inland of the bluff and canyon edges.

Regardless, as 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 new development, there is a potential for adverse coastal resource impacts. Therefore, the Commission imposes **Special Condition 6** which prohibits construction of any future bluff or shoreline protective device(s) to protect the development approved pursuant to Coastal Development Permit 5-22-0599 including the proposed new residential structure, garage, foundations, patio, pool/spa, and fencing 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 6** 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. This condition does not preclude the applicant from applying for future coastal development permits for maintenance or future improvements to the site including 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 an application.

Site Drainage

As previously stated, though currently not subject to direct wave attack, the San Clemente coastal bluffs are subject to natural erosion caused by other factors such as wind and rain, soils conducive to erosion, and rodent burrowing. Bluffs are also subject to erosion from human activities, such as irrigation, improper site drainage and grading. Therefore, adequate site drainage and construction phase erosion control measures are also necessary for new bluff top development.

The proposed preliminary grading plan and an erosion control plan prepared by Toal Engineering and included in [Exhibit 2](#) depicts surface water runoff from the rear and side yards directed away from the bluff toward the frontage road, via new drainage inlets that collect water runoff and direct it to existing City storm drains, per City requirements in a manner that would avoid surface run off from the rear/ocean facing portions of the site to sheet flow toward the bluff potentially causing damaging erosion to the bluff.

The proposed project includes construction of a new pool/spa on the subject blufftop lot, which involves 44 cu. yds. of cut and export. If the proposed pool/spa is not properly maintained, there is a potential that water leakage from the pool/spa could adversely impact slope stability on this and adjacent properties. Constant, undetected infiltration of water into the slope could contribute to slope failure. The potential for water infiltration into the slope should be minimized to the greatest extent possible. This can be achieved by various methods, including installation of a pool/spa double liner, appropriate drainage under these various water bodies to capture any water that could leak despite preventative efforts, and/or installation of a pool/spa leak detection system. **Special Condition 3** requires the applicant to submit a pool/spa protection plan for review and approval by the Executive Director prior to permit issuance. The plan must incorporate

adequate mitigation against potential for geologic instability caused by leakage from the proposed pool.

Landscaping

The Commission also finds that, for the residential bluff top project to ensure stability and avoid contributing significantly to erosion, landscaping on the bluff top should be primarily with native plants to avoid overwatering and possible slope destabilization. City of San Clemente LUP Policy HAZ-46 also requires new development on oceanfront bluff top lots to incorporate drainage improvements, removal of and/or revisions to irrigation systems, and/or use of native or drought-tolerant vegetation into the design to minimize threats to oceanfront bluff recession. Therefore, the Commission imposes **Special Condition 1** requiring a revised landscape plan utilizing native, non-invasive and drought-tolerant vegetation.

Future Development

The proposed development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, simply due to its bluff top location, the proposed project raises concerns that future development at the project site potentially may result in development which is not consistent with the Chapter 3 policies of the Coastal Act.

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 7** requiring that the property owner 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 actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, including the risks of the development and/or geologic and coastal hazards to which the site is subject, and the Commission's immunity from liability.

Conclusion

As conditioned, the project is required to provide an appropriate setback from the bluff edge; to prohibit construction of protective devices (such as blufftop or shoreline protective devices) in the present and future; and to require that the landowner and any successor-in-interest assume the risk of undertaking the development. Only as conditioned does the Commission find that the development conforms to the coastal hazards policies of the Coastal Act and San Clemente certified LUP.

C. Visual Resources

Section 30251 of the Coastal Act states, in 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.

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 City's certified LUP also includes similar policies that require landform alteration be minimized, and that scenic qualities be protected. The proposed development is located on the blufftop and bluff face immediately adjacent to the public beach. The site is highly visible from the shoreline along the public beach below and from the railroad located immediately at the bluff toe. The bluffs along this stretch of shoreline in San Clemente extend about 75 feet above beach level. From the beach, residential developments along the blufftop are visible.

Section 30251 of the Coastal Act protects the scenic and visual qualities of coastal areas as a resource of public importance. Development is required to be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. The proposed residence must be sited and designed to be visually compatible with the relatively undisturbed character of the surrounding natural coastal bluffs, protect views to and along the beach area, and minimize the alteration of existing landforms. As previously discussed, the existing residence conforms to the current certified LUP coastal bluff setback policies. As proposed, the proposed new development would comply with the LUP policy requiring a minimum 25-ft. setback from the bluff edge and 15-ft. setback from the canyon, as defined in the LUP, and would protect visual resources at the site. Additionally, the applicant is proposing to fully remove the shallow footings of the existing residence's foundation system as part of the proposal, which will limit the potential for exposure, adverse visual resource impacts, and changes to the stability of the bluff in the future, should the bluff retreat significantly.

Therefore, the Commission finds that, as conditioned, the proposed project is consistent with Section 30251 of the Coastal Act.

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.

Section 30212 of the Coastal Act states, in 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[.]

PUB-38 Provision of New Public Access. Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

- a. It is inconsistent with public safety, military security needs or the protection of fragile coastal resources;
- b. Adequate public access already exists nearby; or
- c. Agriculture would be adversely affected.

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.

Adequate public access to the beach exists nearby, approximately 1/3-mile north (upcoast) of the subject lot at the San Clemente State Beach public beach access stairway leading down the bluff face to a protected grade-separated (below-grade) railroad crossing and the public beach beyond. The proposed development, which consists of demolition of a single family residence and construction of a new single family residence on a coastal bluff top lot within a private residential community, will not create any new adverse impacts on coastal access and recreation.

Therefore, the Commission finds that the proposed development does not adversely impact public access and recreation and there is adequate, safe public access to the beach in the vicinity, consistent with the public access and recreation policies of the Coastal Act and San Clemente certified LUP.

E. Biological Resources

Section 30240(b) of the Coastal Act states:

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

RES-72 Native Landscaping. Drought-tolerant native landscaping specific to the habitat type/vegetation community is required in coastal canyon and bluff areas, to reduce erosion and maintain natural open space areas. Invasive plant species are

prohibited in all landscaping.

RES-84 Bird-Safe Buildings. All new buildings, and major renovations/remodels of existing buildings, shall be required to provide bird-safe building façade treatments in order to reduce potential for bird-strikes. Landscaping around buildings, including patios and courtyards, shall be designed and sited to avoid or minimize bird-strike hazards caused by reflective surfaces such as glass fencing/railing. Buildings shall be designed to use minimal exterior lighting and minimize light pollution from interior lighting to the maximum extent feasible to minimize nighttime bird-strike hazards.

RES-85 Minimization of Lighting Impacts. Eliminate or shield and direct exterior lighting away from biological resources to minimize adverse impacts to wildlife. There shall be no spillover of light into the identified biological resource. Buildings shall be designed to use minimal exterior lighting (limited to pedestrian safety needs) and to minimize direct upward light, spill light, glare and artificial night sky glow.

The City of San Clemente Certified LUP includes the coastal bluff at the subject site and adjacent vicinity as Potential Sensitive Habitat in Figure 4-2-B of the certified Land Use Plan. The LUP reads,

“Several natural communities designated rare by CDFW occur in the City of San Clemente. Potential areas supporting sensitive habitat are shown on Figures 4-2 (A thru D). Development projects in or adjacent to these potential sensitive habitat areas will require site specific focused surveys to determine if ESHA exists, evaluate potential impacts, and determine appropriate setbacks. In the City, potentially sensitive habitat areas include, but are not limited to, the following:

- a. Coastal scrub communities.
- b. Coastal canyons and bluffs/coastal bluff scrub.
- c. Native grasslands.
- d. Creek/stream and associated riparian habitat.
- e. Monarch butterfly aggregation sites, including autumnal and winter roost sites and related habitat areas.
- f. Wetlands, including vernal pools and emergent wetlands.”

San Clemente’s certified LUP advocates for the preservation of native vegetation and discourages the introduction of non-native vegetation in coastal canyons and along coastal bluffs. Coastal Act policies aim to prevent impacts which would significantly degrade those areas, and ensure that development shall be compatible with the continuance of those habitat areas. Decreases in the amount of native vegetation along the coastal bluffs due to displacement by development or introduction of non-native vegetation have resulted in cumulative adverse impacts upon the habitat value of the coastal bluffs. The LUP coastal bluff setback policies also aim to protect the biological value of bluff habitat and preserve the visual qualities of bluff landforms.

Unpermitted development has occurred on the subject property, consisting of construction of an unpermitted decomposed granite pathway supported with wooden

railroad ties and a retaining wall enclosing a semicircular rear patio, which were constructed on the canyon slope, an area that the Coastal Act and City's certified LUP policies aim to protect, enhance, and prevent significant degradation. From the time of application, the applicant has proposed to include removal of the unpermitted development as part of the complete redevelopment of the site. Since the removal is development that is proposed along and beyond the edge of the coastal canyon where the protection and enhancement of its vegetation and habitat values is sought, the area will need to be restored. Placement of vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org>) and California Native Plant Society (www.CNPS.org/) in their publications. The Commission typically requires that the applicant utilize native plant species, particularly along coastal canyons and bluffs. LUP Policy RES-72 requires drought-tolerant native landscaping specific to the habitat type/vegetation community adjacent to coastal bluff areas.

The Preliminary Landscaping Plan ([Exhibit 2, Page 8](#)) submitted by the applicant proposes use of *Encelia* (aka, brittlebush), *Mimulus* (aka, monkeyflowers), and *Dudleya* (aka, liveforevers) for the rear facing coastal canyon side of the lot; these plants are non-invasive, drought tolerant, and native species native to coastal Orange County bluff plant communities. Elsewhere on the site, the use of native plants is still encouraged but is not required, and the applicant is proposing to plant various non-native plant species that are drought-tolerant and non-invasive in the side and front yards.

In general, deep-rooted, low water use plants (preferably native to coastal Orange County) should be selected for general landscaping purposes mainly in order to minimize irrigation requirements and saturation of underlying soils to decrease the potential for slope instability. Low water use, drought tolerant native plants require less water than other types of vegetation, thereby minimizing the amount of water that may be introduced into the bluff slope due to seepage. Drought resistant plantings and minimal irrigation encourage root penetration that increases slope stability. The term 'drought tolerant' is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" (a.k.a. WUCOLS) prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>.

Additionally, LUP Policies RES-84 and RES-85 aim to minimize adverse impacts to wildlife by requiring that new buildings provide bird-safe building façade treatments in order to reduce potential for bird-strikes, landscaping around buildings, including patios and courtyards be designed and sited to avoid or minimize bird-strike hazards caused by reflective surfaces such as glass fencing/railing; and for new structures to be designed to use minimal exterior lighting and minimize light pollution from interior lighting to the maximum extent feasible, and eliminate or shield and direct exterior lighting away from biological resources (i.e., minimize direct upward light, spill light, glare and artificial night sky glow). Glass walls are known to have adverse impacts upon a variety of bird species. Birds are known to strike glass walls causing their death or stunning them which exposes them to predation. Some authors report that such birds

strikes cause between 100 million to 1 billion bird deaths per year in North America alone. Birds strike the glass because they either don't see the glass, or there is some type of reflection in the glass which attracts them (such as the reflection of bushes or trees that the bird might use for habitat).

For these reasons, **Special Condition 1** requires the greater of all possible bluff and canyon setbacks (per the LUP definitions) and submittal of a revised landscaping plan depicting the use of native plants appropriate to the habitat type adjacent to the bluff and canyon areas. The landscaping plan must be revised to include the areas within 10 ft. of the upper canyon edge using non-invasive, drought tolerant plants to minimize the use of water throughout the rest of the site. Temporary above ground irrigation shall be permitted to establish plantings; but no permanent in-ground irrigation system shall be permitted on the rear bluff and canyon facing side of the lot. The applicant is proposing matte-tinted windows and muted (non-reflective) aluminum siding on the seaward-facing façade of the main residence, but to provide further protection to coastal avian species, **Special Condition 1** requires the applicant submit final revised plans that ensure minimization of bird strike issues, necessary to protect against significant disruption of habitat values. Moreover, **Special Condition 1** ensures further protection of the biological resources within the bluff and canyon open space area through the minimization of light pollution impacts generated by the project and the shielding of direct exterior lighting away from the bluff and canyon slope, where the protection and enhancement of its vegetation and habitat values is sought.

The special conditions of this staff report are designed to protect the existing and potential habitat value of the coastal bluff. Therefore, the Commission finds that the development, as conditioned, does not pose significant adverse impacts which would significantly degrade habitat, and is compatible with the continuance of those areas consistent with the habitat protection policies of the Coastal Act and San Clemente certified LUP.

F. 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.

Construction Phase Impacts to Water Quality

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal waters via rain or wind could 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.

In order to avoid adverse construction-related impacts upon marine resources, the Commission imposes **Special Condition 4**, which outlines construction-related best management practices (BMPs) to provide for the safe storage of construction materials and the safe disposal of construction debris. During construction, the applicant will be required to implement BMPs designed to minimize erosion, loss of soil materials, and prevent debris and soil from entering the storm drain system.

Post-Construction Impacts to Water Quality

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 provided a Grading/Drainage Plan ([Exhibit 2](#)). To minimize adverse impacts to water quality the proposed project may have after construction, site runoff is proposed to be collected into area drains and piped directly to the frontage road, away from the coastal bluff edge to existing City storm drains, per City requirements. Sources of additional polluted runoff could include runoff from the large amount of impervious surface in the proposed project and over-watering, which sometimes occurs from installation of landscaping with a high water demand (i.e., sod lawn). Plants with a high-water demand are typically not well-suited to the Mediterranean climate of southern California, and therefore often require intense fertilization and application of pesticides/herbicides as a maintenance regime, in addition to regular irrigation. Thus, this type of landscaping can add pollutants to both dry weather and stormwater runoff. Therefore, the use of drought tolerant plants or low-maintenance landscaping is a preferred alternative.

Therefore, the Commission imposes **Special Condition 1** requiring the applicant to submit a revised landscaping plan which includes non-invasive, drought tolerant and native vegetation in areas adjacent to the coastal bluff and non-invasive, drought

tolerant vegetation on the side yards and street-facing portion of the lot. Native, drought tolerant plants are required because they require little to no watering once they are established (1-3 years), they have deep root systems that tend to stabilize the soil, and are spreading plants that tend to minimize erosion impacts of rain and water run-off while continuing to maintain the natural plant communities.

Combined with the proposed use of non-invasive drought tolerant vegetation to reduce water runoff discharged from the site, the project will minimize the project's adverse impact on coastal waters and will not have a significant impact on marine resources, biological productivity or coastal water quality. Therefore, the Commission finds that the proposed development, as conditioned, conforms to Sections 30230 and 30231 of the Coastal Act and the water quality policies of the LUP regarding the protection of water quality to protect marine resources, promote the biological productivity of coastal waters and to protect human health.

G. Coastal Act Violation

At the subject site, CDP 5-87-758 (Glover) was approved by the Commission in 1987 for a two-story, 4,097 sq. ft. single-family residence and attached 714 sq. ft., 3-car garage, 1,350 sq. ft. of pavement, and 3,250 sq. ft. of landscaping; the CDP was issued on December 4, 1987, with no special conditions imposed. [Exhibit 4](#) shows that the seaward line of the existing residential structure does not currently encroach into the "restricted use area" designated in CDP A-491-78, although it appears that portions of the seaward rear patio were built into the restricted use area during original construction. Also, at some point in the late 1990s, bougainvillea was planted on the canyon face, and a low wall was installed as erosion control measures without the benefit of a coastal development permit ([Exhibit 4](#)). This unpermitted development is a Coastal Act violation.

Violations of the Coastal Act have occurred on the subject site, including encroachment of the seaward rear patio into the restricted use area, construction of "raised planters" (railroad ties and a decomposed granite pathway that form stairs) on the canyon face and of a low semicircular retaining wall along the rear patio perimeter, and planting of non-native vegetation and use of irrigation on the canyon face. Any nonexempt 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. The proposed development currently before the Commission includes the complete demolition of a single-family residence and construction of a new single-family residence, new landscape and hardscape, and the proposed removal of the unpermitted development beyond the canyon edge and restricted use area limits and restoration of the rear yard of the property using native vegetation (with temporary low-water irrigation for establishment only). In accordance with the applicant's proposal, the Commission imposes **Special Condition 1** requiring the applicant submit final revised plans, reviewed and approved by the City, clearly depicting the removal of the unpermitted development and restoration of the footprint of unpermitted development beyond the canyon edge. The applicant is not currently proposing to replace the bougainvillea on the canyon face. The staff recommendation

for the proposed project is based on protection of all coastal resources present on the site and consideration of those that would be present on site if unpermitted development had not occurred.

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 the consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. The certified San Clemente Land Use Plan was used as guidance by the Commission in reaching its decision. 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 above-described violations going forward.

H. 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 April 10, 1998, the Commission certified with suggested modifications the Implementation Plan (IP) portion of the Local Coastal Program. Approval of the IP with suggested modifications expired on October 10, 1998 without City adoption. The City re-submitted an IP on June 3, 1999, but withdrew the submittal on October 5, 2000. The Commission certified a comprehensive LUP update amendment on August 2, 2018. The City published a draft IP in February 2022 for public review. At this time, the City of San Clemente does not have a certified LCP.

As conditioned, the proposed development is consistent with the Chapter 3 policies of the Coastal Act and the policies contained in the certified 2018 Land Use Plan regarding public access, recreation, and environmental protection. Approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for San Clemente that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

I. California Environmental Quality Act

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The City of San Clemente is the lead agency for purposes of CEQA compliance. As determined by the City on April 9, 2021, this project is statutorily exempt from CEQA. As

such, the project is exempt for CEQA's requirements regarding consideration of mitigation measures and alternatives.

The Commission, however, has conditioned the proposed project in order to ensure its consistency with Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing: Special Condition 1: Submittal of Revised Final Plans in conformance with geotechnical recommendations; Special Condition 2: Conformance with Geotechnical Recommendations; Special Condition 3: Pool/Spa Protection Plan; Special Condition 4: Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris; Special Condition 5: Assumption of Risk and Waiver of Liability; Special Condition 6: No Future Shoreline/Bluff Protection Device, and; Special Condition 7: Deed Restriction will minimize all adverse environmental impacts. 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, 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

- 1) City of San Clemente LUP
- 2) City of San Clemente Sea Level Rise Vulnerability Study, 2019
- 3) City of San Clemente Approval in Concept dated 10/25/22