

**CALIFORNIA COASTAL COMMISSION**

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# Th11c

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## STAFF REPORT: PERMIT AMENDMENT

**Application No.:** 5-20-0446-A1

**Applicant:** OC Re-Hab 1, LLC, and GC-8, LLC

**Agent:** George Zeber, Western Pacific Construction Services

**Location:** Cascadita Canyon extending between southbound Interstate 5 and 2640 Via Cascadita, and open space areas between Calle Grande Vista and Calle Nuevo, San Clemente, Orange County (APNs: 691-021-01, 691-231-06, 680-041-53, 680-011-63, 680-011-64, 680-011-24)

**Description of Original Project Approved Pursuant to Permit No. 5-20-0446:**  
Landslide remediation constructed pursuant to Emergency Permit G-5-16-0061, to include: construction of new, 2,600-ft. long box culvert; import of 150,000 cu. yds. of fill to reconstruct slope; installation of gravity buttress and drainage network; and restoration of existing habitat both on-site and off-site in San Clemente.

**Description of Pending Permit Amendment No. 5-20-0446-A1:** Amend Special Conditions 6 and 7 (Open Space/Habitat Use Restriction and Deed Restriction) to change "prior to Issuance" to "prior to occupancy" for each condition.

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## SUMMARY OF STAFF RECOMMENDATION

On April 16, 2021, the Commission acted on a coastal development permit (CDP) application by OC Re-Hab 1, LLC and GC-8, LLC consisting of three primary components: 1) authorization of the landslide remediation measures constructed in Cascadita Canyon pursuant to Emergency Permit No. G-5-16-0061; 2) reconstruction of the Shorecliffs Golf Course fifth and sixth golf holes damaged by the landslide; and 3) mitigation for landslide repair impacts to existing riparian habitat and wetlands.

The Commission approved CDP 5-20-0046 with eight special conditions; four of the eight conditions require the Executive Director to review and approve documents prior to issuance of the CDP. Two of the "prior to issuance" (PTI) conditions have been fulfilled, including: the final habitat restoration, mitigation, and monitoring plan (**Special Condition 1**) and the proof of the applicants' legal ability to comply with conditions (**Special Condition 8**). However, the other two PTI conditions remain unfulfilled, and include: Open Space/Habitat Use Restrictions (**Special Condition 6**) and Deed Restriction (**Special Condition 7**). These conditions are necessary to ensure any new future owners of the site are aware of the legal requirement to maintain all new and restored habitat in perpetuity.

The applicants are now proposing to amend **Special Conditions 6 and 7** to change "prior to issuance" requirement to "prior to occupancy" for each condition. The proposed modification would allow for immediate issuance of the CDP and for habitat restoration and golf course reconstruction to proceed prior to completion of the Open Space/Habitat Use Restriction and Deed Restriction, while still restricting use of the two reconstructed golf holes until condition compliance is completed.

The proposed amendment will allow for restoration and maintenance of sensitive habitat area while still ensuring all subject parcels are ultimately bound by the permit conditions. Furthermore, the applicants have been working in good faith with Commission staff on the fulfillment of **Special Conditions 6 and 7**. Therefore, Commission staff recommends the Commission **approve** the proposed changes to the underlying conditions of CDP No. 5-20-0446. The motion is on page 5. The standard of review is Chapter 3 of the Coastal Act.

**PROCEDURAL NOTE:** The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change, or
- 2) Objection is made to the Executive Director's determination of immateriality, and at least three Commissioners object to the executive directors' designation of immateriality at the next Commission meeting, or the Executive Director determines that the objection raises an issue of conformity with the Coastal Act or certified Local Coastal Program.

5-20-0446-A1 (OC Re-Hab 1, LLC and GC-8, LLC)

In this case, the Executive Director has determined that the proposed amendment is a material change that affects conditions required for the purpose of protecting a coastal resource or coastal access.

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### EXHIBITS

[Exhibit 1 – Project Location](#)

[Exhibit 2 – Conditions of CDP 5-20-0446](#)

## I. MOTION AND RESOLUTION

### Motion:

I move that the Commission **approve** the proposed amendment to Coastal Development Permit Amendment No. 5-20-0446 pursuant to the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### Resolution:

The Commission hereby approves Coastal Development Permit Amendment No. 5-20-0446-A1 on the grounds that the development as amended and subject to conditions will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit amendment complies with the California Environmental Quality Act because feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment.

## II. CHANGES TO CONDITIONS

Unless specifically altered by this amendment, all regular and special conditions attached to Coastal Development Permit 5-20-0446, as amended up through amendment number 5-20-0446-A1, and reflected in **Appendix B**, remain in effect. Language to be deleted is shown in ~~strike-out~~ and new language is shown in **bold, underlined**.

### Special Condition 6, Open Space/Habitat Use Restrictions.

- A. No development, as defined in Section 30106 of the Coastal Act, shall occur in the open space areas as depicted in Exhibit 3 located along the northern and southern slopes, as well as within the western ravine, of Cascadita Canyon (Project Site); the parcel of land bounded by Calle Grande Vista, Avenida Vaquero, and northbound Interstate 5 (Off-Site Mitigation Site 1); the parcel of land bounded by southbound Interstate 5, Calle Vicente, and Avenida Vaquero (Off-Site Mitigation Site 2); nor the open space area located within the parcel of land bounded by Avenida Vaquero, Camino De Los Mares, and Calle Nuevo (Off-Site Mitigation Site 2), except for:
1. Removal of non-native plant species designated by the California Invasive Plant Council as moderately to highly invasive;
  2. Revegetation with the native plant species specified in tables 1-5 of the applicant's submitted RMMMP dated March 13, 2021; and

3. Installation of an above-ground irrigation system and a connected drainage system

**B. PRIOR TO OPERATION OF ANY PART OF THE GOLF COURSE LOCATED IN CASCADITA CANYON, PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,**

the landowners shall execute and record deed restrictions in a form and content acceptable to the Executive Director, reflecting the above restrictions on development in the designated open space areas. The recorded documents shall include legal descriptions and graphic depictions of the legal parcel(s) subject to this permit and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the designated open space area prepared by a licensed surveyor based on an on-site inspection of the open space area. **“Operation” shall be defined as any form of public or private commercial, recreational, or educational use of golf course holes currently numbered 5 and 6. While this part of the golf course may be restored and rebuilt prior to issuance of CDP 5-20-0046 (as amended), it may not be used in any other way until the CDP has been issued.**

- C. The deed restrictions shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed.

- D. The deed restrictions shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicants or landowners in perpetuity.

**Special Condition 7, Deed Restriction**

**PRIOR TO OPERATION OF ANY PART OF THE GOLF COURSE LOCATED IN CASCADITA CANYON, PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,**

the co-applicants shall submit to the Executive Director for review and approval documentation demonstrating that the co-applicants have executed and recorded against the parcels governed by this permit deed restrictions, 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 properties, 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 Properties. The deed restrictions shall include a legal description of the parcels governed by this permit. The deed restrictions shall also indicate that, in the event of an extinguishment or termination of the deed restrictions for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject properties 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 properties. **“Operation” shall be defined as any form of public or private commercial, recreational, or educational use of golf course holes currently numbered 5 and 6. While this part of the golf course**

**may be restored and rebuilt prior to issuance of CDP 5-20-0046 (as amended), it may not be used in any other way until the CDP has been issued.**

### III. FINDINGS AND DECLARATIONS

#### A. Project Background and Description

The project site is a canyon extending between the southbound I-5 and Via Cascadita, within the Shorecliffs Golf Course in the City of San Clemente, Orange County ([Exhibit 1](#)). The Shorecliffs Golf Course is currently an 18-hole golf course constructed prior to Coastal Act certification in 1976. The Shorecliffs Golf Course fifth and sixth golf holes are currently located within Cascadita Canyon.

On April 16, 2021, the Commission approved a coastal development permit (CDP) application by OC Re-Hab 1, LLC and GC-8, LLC consisting of three primary components: 1) authorization of the landslide remediation measures constructed in Cascadita Canyon pursuant to Emergency Permit No. G-5-16-0061; 2) reconstruction of the Shorecliffs Golf Course fifth and sixth golf holes damaged by the landslide; and 3) mitigation for landslide repair impacts to existing riparian habitat and wetlands.

On April 16, 2021, the Commission approved CDP No. 5-20-0446 subject to eight special conditions ([Exhibit 2](#)). Four of the eight conditions require the Executive Director to review and approve documents prior to issuance of the CDP. Two of the “prior to issuance” conditions have been fulfilled: the final habitat restoration, mitigation, and monitoring plan (**Special Condition 1**) and the proof of the applicants’ legal ability to comply with conditions (**Special Condition 8**). However, the other two PTI conditions remain unfulfilled, and include: Open Space/Habitat Use Restrictions (**Special Condition 6**) and Deed Restriction (**Special Condition 7**). These conditions are necessary to ensure that any future owners of the property are aware of the legal requirements to maintain the restored habitat area in perpetuity.

In July 2021, the applicants submitted preliminary title reports intended to serve as proof of their legal ability to comply with all conditions—however, Commission staff notified the applicants in August 2021 that provision of a Certificate of Compliance for all subject parcels was the only feasible method of satisfying **Special Condition 8**. This staff determination was due in part to uncertainty associated with a parcel included in one of the off-site mitigation sites, as the applicants’ submitted reports did not confirm whether the parcel delineation reflected the legal property lines. At that time, the required Certificate of Compliance was in the process of certification by another applicant for an unrelated project also located on the parcels constituting the off-site mitigation site.<sup>1</sup> The

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<sup>1</sup> ref. [CDP No. 5-19-0228](#), Shorecliffs Senior Housing.

applicants for CDP No. 5-20-0446 were unable to proceed with condition compliance until the document was certified.

On September 14, 2021, the applicants submitted the subject amendment application proposing to revise **Special Conditions 6 through 8**. The applicants proposed to replace the phrase “Prior to issuance of the coastal development permit” with “Prior to occupancy” in order to allow golf course reconstruction and habitat restoration to commence prior to provision of the Certificate of Compliance and recordation of all required restrictions. On October 14, 2021, the Executive Director rejected the application on the basis of a potential to lessen the intent of CDP No. 5-20-0446 conditions; specifically, it remained unclear how the golf course holes could be monitored for occupancy and seemed to raise the risk of **Special Conditions 6 through 8** remaining unsatisfied indefinitely. On October 28, 2021, the applicants submitted a timely appeal of the Executive Director’s determination. On November 19, 2021, following multiple discussions with the applicant regarding the feasibility that occupancy restrictions would be enforceable, the Executive Director rescinded the application rejection and determined the application filed as of the receipt date (September 14, 2021).

On December 16, 2021, the applicants submitted the Certificate of Compliance necessary to satisfy **Special Condition 8**. Within two weeks of Certificate of Compliance receipt, Commission staff sent draft restriction documents to the applicants. As of publication of the subject staff report, the applicants have continued providing the materials necessary for deed restrictions in a timely manner. The applicants have also revised the subject amendment to request changes only to **Special Conditions 6 and 7**, as changes to **Special Condition 8** are no longer required.

## **B. Biological Resources**

Section 30240 of the Coastal Act states:

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

The City’s certified LUP contains the following relevant language and polices:

### **4.3.4 Environmentally Sensitive Habitat Areas (ESHA)**



**RES-51 ESHA Designation.** Environmentally Sensitive Habitat Area (ESHA) means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could easily be disturbed or degraded by human activities and developments as defined in Section 30107.5 of the Coastal Act. Three main elements must be met for an area or habitat to be considered ESHA.

**RES-63 ESHA Mitigation.** Require mitigation in the form of habitat creation or substantial restoration for allowable impacts to ESHA and other sensitive resources that cannot be avoided through the implementation of siting and design alternatives. Priority shall be given to on-site mitigation. Off-site mitigation measures shall only be approved when it is not feasible to fully mitigate impacts on-site. Mitigation shall not substitute for implementation of a project alternative that would avoid impacts to ESHA.

A U.S. Geologic Survey blueline stream has historically extended through Cascadita Canyon since at least 1992, supporting 0.59 acres of riparian habitat and 0.52 acres of wetlands prior to the 2011 landslide. The riparian habitat functions as a habitat for several special-status wildlife species, including Allan's hummingbird and San Diego desert woodrat, and constitutes Environmentally Sensitive Habitat Area (ESHA).

While the landslide had already impacted habitat in the project area, the subsequent emergency work impacted an additional 0.3 acres of existing ESHA and 0.41 acres of existing wetlands. The applicants proposed to establish 1.18 acres of new riparian habitat, 1.35 acres of wetlands, and 2.09 acres of upland habitat in the project area. Additionally, the applicants proposed restoration of a cumulative 7.27 acres of existing, native riparian habitat and wetlands at two off-site locations near Cascadita Canyon ([Exhibit 1](#)).

Section 30240 of the Coastal Act requires that ESHA, such as the riparian habitat in Cascadita Canyon, be protected against disruption of habitat values. Resolutions 51 and 63 of Section 4.3.4 of the certified LUP also require ESHA protection. In its approval of CDP No. 5-20-0446, the Commission imposed special conditions ensuring that: 1) all mitigation would be conducted pursuant to plans approved by the Executive Director which included native plant palettes, success criteria, and long-term maintenance and monitoring; and 2) deed restrictions would be required to inform any future owners of the site that the areas of habitat restoration must be maintained as open space/habitat use in perpetuity. The Commission found that, as conditioned, the project is consistent with Coastal Act Section 30240.

As previously discussed, the terms of **Special Conditions 6 and 7** require deed restrictions to be recorded against the property prior to issuance of the CDP and, consequently, prior to the commencement of the habitat restoration. The project ecological consultant has submitted a memorandum, dated September 30, 2021, indicating the possibility of further habitat degradation if restoration does not begin expeditiously. The consulting ecologist observed several invasive plant species flowering

in the project area in September 2021, including plants capable of rapid, pervasive expansion.

The process of recording an Open Space/Habitat Use restriction and deed restriction began in late December and is nearly complete as of publication of this staff report. Given the present condition of the site and to avoid further loss of existing ESHA and wetlands in the project area until the legal documents can be recorded, the Commission agrees that modifications to **Special Conditions 6 and 7** are appropriate at this time.

The applicants are proposing the terms of the conditions to be changed to “prior to occupancy” of the golf course in Cascadita Canyon. However, given that golf courses are not “occupied” in conventional terms, such as residential or hotel occupancy, the Commission recommends the terms of the conditions be modified to “prior to operation” of the portion of the golf course in Cascadita Canyon. The changes will allow the applicants to begin restoration of the habitat area upon approval of this amendment and to reconstruct the adjacent portion of the golf course in Cascadita Canyon (currently holes 5 and 6) at the same time, thereby preventing additional impacts to the habitat area if that portion of the golf course were to be reconstructed at a future date. The applicants are in agreement with this modification.

Therefore, as proposed and conditioned, the permit amendment is consistent with Sections 30240 of the Coastal Act and the resource protection policies of the certified LUP.

### **C. Local Coastal Program**

Section 30604 (a) of the Coastal Act states:

Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit for development in an area with no certified Local Coastal Program only if the project will not prejudice the ability of the local government to prepare an LCP that conforms with Chapter 3 policies of the Coastal Act. The Commission certified the 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 LCP. The suggested modifications expired on October 10, 1998. The City resubmitted an IP on June 3, 1999, but withdrew the submittal on October 5, 2000. On August 2, 2019, a comprehensive update to the City’s LUP was effectively certified by the Coastal Commission. The City is currently also working on resubmittal of an IP. There is no certified LCP at this time.

As conditioned to address protection of environmental resources, approval of the proposed permit amendment will not prejudice the City's ability to prepare a local coastal program in conformity with Chapter 3 of the Coastal Act. The Commission, therefore, finds that the proposed project, as conditioned, is consistent with the provisions of Section 30604(a) of the Coastal Act.

#### **D. California Environmental Quality Act**

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available for the habitat restoration proposal that would substantially lessen any significant adverse effect the development may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to allow coastal development permit-approved work to proceed prior to completion of deed restrictions, is the least environmentally damaging feasible alternative, has no remaining significant environmental effects, and complies with the applicable requirements of the Coastal Act to conform to CEQA.

## **Appendix A: Substantive File Documents**

Adopted staff report for CDP No. 5-20-0446 (includes permit conditions).

“Exotics Removal and Planting/Seeding of Natives” published by Dr. Edith Read of E. Read and Associates, Inc., dated September 30, 2021.

## **Appendix B: Standard and Special Conditions Pursuant to CDP No. 5-20-0446 through CDP Amendment No. 5-20-0446-A1**

NOTE: This Appendix B provides a list of all standard and special conditions imposed pursuant to Coastal Development Permit 5-20-0446, as approved by the Commission in its original action and modified and/or supplemented by CDP Amendment No. 5-20-0446-A1. Any additions, pursuant to amendment A1, from the previously approved special conditions are shown in **bold**. Thus, this Appendix B provides an aggregate list of all currently applicable adopted special conditions.

### STANDARD CONDITIONS

This permit is granted subject to the following 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 permittee 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 permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. Submittal of Revised Restoration, Mitigation, Monitoring, and Maintenance Plan, Long-Term Habitat Management Plan, and Project Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for the Executive Director's review and approval, a revised final Restoration, Mitigation, Monitoring, and Maintenance Plan, a revised final Long-Term Habitat Management Plan, and revised project plans in substantial conformance with the "Restoration, Mitigation, Monitoring, and Maintenance Plan" dated March 13, 2021, "Long-Term Habitat Management Plan for the Shorecliffs Wetland Conservation Area" dated July 27, 2020, and the project plans dated June 19, 2018, that have been revised to include, at minimum, the following:

- A. The project shall establish on-site no less than 1.18 acres of new creek/riparian habitat, 1.35 acres of new wetlands, and 2.09 acres of new upland habitat, in addition to off-site restoration of no less than 7.27 acres of existing native habitat.
- B. All monitoring and reporting activity proposed for the project site within the initial five-year period shall also be required for Off-Site Mitigation Sites 1 and 2, including but not limited to: site visits twice a year, establishment of locations for comparative photograph analysis, evaluation using specific performance objectives, and preparation of an annual monitoring report no later than December 31 of each monitoring year.
- C. All performance objectives listed for Zones A, B, and C of the project site shall be adopted for Off-Site Mitigation Sites 1 and 2, including but not limited to: at least 75% native cover by the end of the initial five-year monitoring period, absence of moderately to highly invasive species, and survival in the absence of irrigation.
- D. If the performance objectives for Off-Site Mitigation Sites 1 and 2 are not met, the project restoration ecologist will identify the problems during the scheduled site visits, determine the cause(s) of the problems, and provide the property owner or their representative recommendations that will correct them. The project ecological consultant shall continue the monitoring and reporting measures summarized in the five-year plan until all performance objectives are met. The property owner shall be responsible for ensuring that all remedial action is taken and completed in a timely manner so that the performance standards are met.

The permittees shall undertake development in accordance with the approved final 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 determines that no amendment is required.

- 2. Resource Agencies Approval. The permittees shall comply with all requirements, requests and mitigation measures from the Regional Water Quality Control Board and California Department of Fish and Wildlife, with respect to preservation and protection of water quality and the marine and terrestrial environment. Any change in the approved project that may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.
- 3. Construction Timing and Sensitive Bird Species Surveys. For any construction activities occurring between February 15 and September 1, including grading, re-vegetation, and installation of irrigation, the applicants shall retain the services of a qualified biologist or environmental resources specialist (hereinafter, "environmental

resources specialist”) to conduct nesting bird surveys in order to determine the presence of songbird and raptor and owl species including but not limited to the coastal California gnatcatcher (*Polioptila californica californica*). The environmental resources specialist shall also monitor project operations. At least 30 calendar days prior to commencement of any project operations, the applicants shall submit the name and qualifications of the environmental resources specialist, for the review and approval of the Executive Director. The applicants shall ensure that all project construction operations shall be carried out consistent with the following:

- A. A qualified environmental resources specialist with experience in conducting nesting bird surveys shall conduct the surveys 30 calendar days prior to construction activities within 500 feet of the project. A follow-up survey must be conducted 3 calendar days prior to the initiation of construction, and nest surveys must continue on a monthly basis throughout the nesting season or until the project is completed, whichever comes first.
- B. If an active nest of any songbird is found within 300 feet of the project, or an active nest for any raptor species is found within 500 feet of the project, the applicants shall retain the services of an environmental resources specialist with experience conducting bird and noise surveys, to monitor bird behavior and construction noise levels. The nest shall not be removed or disturbed. The environmental resources specialist shall be present at all relevant construction meetings and during all significant construction activities (those with potential noise impacts) to ensure that nesting birds are not disturbed by construction related noise. The environmental resources specialist shall monitor birds and noise every day at the beginning of the project and during all periods of significant construction activities. Construction activities may occur only if construction noise levels are at or below a peak of 65 dB at the nest(s) site(s). If construction noise exceeds a peak level of 65 dB at the nest(s) site(s), sound mitigation measures such as sound shields, blankets around smaller equipment, mixing concrete batches off-site, use of mufflers, and minimizing the use of back-up alarms shall be employed. If these sound mitigation measures do not reduce noise levels, construction shall cease and shall not recommence until either new sound mitigation can be employed or the birds have fledged.
- C. If an active nest of a federally or state-listed threatened or endangered species or bird species of special concern is found within 300 feet of the project, or an active nest for any species of raptor is found within 500 feet of the project, the applicants will notify the appropriate State and Federal Agencies within 24 hours, and appropriate action specific to each incident will be developed. The applicants will notify the California Coastal Commission by e-mail within 24 hours and consult with the Commission regarding determinations of State and Federal agencies.
- D. The environmental resource specialist shall be present during all construction activities during the bird nesting/breeding season if an active nest is identified, until the birds have fledged.

- E. The environmental resource specialist shall require the applicants to cease work should any breach in compliance with this condition occur, or if any unforeseen sensitive habitat issues arise. The environmental resources specialist shall immediately notify the Executive Director if activities outside the scope of the subject CDP occur. If significant impacts or damage occur to sensitive habitats or to wildlife species, the applicants shall be required to submit a revised or supplemental program to adequately mitigate such impacts.

4. Construction Best Management Practices.

- A. The permittees shall comply with the following construction-related requirements and shall do so in a manner that complies with all relevant local, state and federal laws applicable to each requirement:
  - 1. No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, rain, or tidal erosion and dispersion;
  - 2. Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
  - 3. Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;
  - 4. Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMP's shall include but are not limited to the placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and
  - 5. All construction materials, excluding lumber, shall be covered and enclosed on all sides, and stored as far from a storm drain inlet and any receiving waters as possible.
- B. Best Management Practices (BMP's) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the onset of such activity. Selected BMP's shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:
  - 1. The permittees shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These 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. It shall be located as far away from any receiving waters and storm drain inlets as possible;



2. The permittees shall develop and implement spill prevention and control measures;
  3. The permittees shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50 feet away from a storm drain, open ditch or surface water; and
  4. The permittees shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.
  5. The use of temporary erosion and sediment control products (such as fiber rolls, erosion control blankets, mulch control netting, and silt fences) that incorporate plastic netting shall be prohibited, to minimize wildlife entanglement and plastic debris pollution. Only 100% biodegradable (not photodegradable) natural fiber netting shall be allowed.
  6. The permittees shall not spray landscaping chemicals in or within 25 feet of any drainage swale, and will minimize the use of landscaping chemicals within the project to the extent feasible.
  7. The permittees shall implement Integrated Pest Management (IPM) for the project to the extent feasible, to minimize the use of landscaping chemicals and to prevent the degradation of coastal water quality
5. Assumption of Risk, Waiver of Liability and Indemnity. By acceptance of this permit, the applicants acknowledge and agrees (i) that the site may be subject to hazards including but not limited to bluff and slope instability, sea level rise, erosion, landslides and wave uprush or other tidal induced erosion; (ii) to assume the risks to the applicants 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. Open Space/Habitat Use Restrictions.
- A. No development, as defined in Section 30106 of the Coastal Act, shall occur in the open space areas as depicted in Exhibit 3 located along the northern and southern slopes, as well as within the western ravine, of Cascadita Canyon (Project Site); the parcel of land bounded by Calle Grande Vista, Avenida Vaquero, and northbound Interstate 5 (Off-Site Mitigation Site 1); the parcel of

land bounded by southbound Interstate 5, Calle Vicente, and Avenida Vaquero (Off-Site Mitigation Site 2); nor the open space area located within the parcel of land bounded by Avenida Vaquero, Camino De Los Mares, and Calle Nuevo (Off-Site Mitigation Site 2), except for:

1. Removal of non-native plant species designated by the California Invasive Plant Council as moderately to highly invasive;
2. Revegetation with the native plant species specified in tables 1-5 of the applicant's submitted RMMMP dated March 13, 2021; and
3. Installation of an above-ground irrigation system and a connected drainage system

**B. PRIOR TO OPERATION OF ANY PART OF THE GOLF COURSE LOCATED IN CASCADITA CANYON**, the landowners shall execute and record deed restrictions in a form and content acceptable to the Executive Director, reflecting the above restrictions on development in the designated open space areas. The recorded documents shall include legal descriptions and graphic depictions of the legal parcel(s) subject to this permit and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the designated open space area prepared by a licensed surveyor based on an on-site inspection of the open space area. **“Operation” shall be defined as any form of public or private commercial, recreational, or educational use of golf course holes currently numbered 5 and 6. While this part of the golf course may be restored and rebuilt prior to issuance of CDP 5-20-0046 (as amended), it may not be used in any other way until the CDP has been issued.**

C. The deed restrictions shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed.

D. The deed restrictions shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicants or landowners in perpetuity

7. Deed Restriction. **PRIOR TO OPERATION OF ANY PART OF THE GOLF COURSE LOCATED IN CASCADITA CANYON**, the co-applicants shall submit to the Executive Director for review and approval documentation demonstrating that the co-applicants have executed and recorded against the parcels governed by this permit deed restrictions, 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 properties, 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 Properties. The deed restrictions shall include a legal description of the parcels governed by this permit. The deed restrictions shall also indicate that, in

the event of an extinguishment or termination of the deed restrictions for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject properties 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 properties. **“Operation” shall be defined as any form of public or private commercial, recreational, or educational use of golf course holes currently numbered 5 and 6. While this part of the golf course may be restored and rebuilt prior to issuance of CDP 5-20-0046 (as amended), it may not be used in any other way until the CDP has been issued.**

8. Proof of Legal Ability to Comply with Conditions. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall demonstrate their legal ability or authority to comply with all of the terms and conditions of this coastal development permit by submitting, for the Executive Director’s review and approval, information indicating approval from the record title property owners that (a) authorizes the applicants to proceed with the approved development and (b) permits the applicants to comply with the terms and conditions of this coastal development permit.