

CALIFORNIA COASTAL COMMISSION

SAN DIEGO DISTRICT OFFICE
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
VOICE (619) 767-2370
FAX (619) 767-2384



W16a

Filed: 10/5/2021
180th Day: 4/3/2022
Staff: KC-SD
Staff Report: 2/17/2022
Hearing Date: 3/9/2022

STAFF REPORT: REGULAR CALENDAR

Application No.: 6-21-0551

Applicant: Ewing Elisabeth A Trust 09-18-98 and
Glover Family Trust 05-26-99

Agent: Taal Safdie

Location: 514 Canyon Drive, Solana Beach, San Diego County.
(APN 263-193-04-00)

Project Description: Demolition of an existing, 1-story single-family residence and construction of a new 3,960 sq. ft., 2-story single-family residence with a 400 sq. ft. attached garage with associated grading, landscaping, and fuel modification on a 14,000 sq. ft. lagoon canyon lot.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending approval of the proposed, new residential development project with special conditions. The subject site is a previously developed lot, and the new development will be located in generally the same area as the existing residence. The key Coastal Act issues of concern are the project's potential to adversely impact biological resources, visual quality, and water quality, which arise from the project's location on an inland canyon site adjacent to the San Elijo Lagoon.

Biological resource and water quality issues arise because a portion of the project site contains steep, naturally-vegetated slopes. While the new residence will be sited on the developed portion of the lot and no new direct impacts to biological resources will occur, fuel modification could adversely affect habitat if it involved removal or cutting of significant vegetation within or near the San Elijo Lagoon. However, new adverse impacts to native habitat or vegetation are unlikely to occur as a result of the proposed development given the developed nature of this area, overlap of fuel modification required for surrounding residences, and separation of the subject site from the lagoon itself by additional development and a roadway. To ensure that required fuel modification does not result in a significant reduction in native vegetation beyond that required for fire hazard reduction, **Special Condition #2** limits the fuel modification zone to 100 ft. from the proposed structure, specifies that only removal of non-native and invasive, or dead and dying plant species is permitted in Zone 2, requires annual maintenance of the fuel modified areas, and prohibits fuel modification from occurring during the bird breeding season. To ensure that any potential impacts to biological resources are avoided from the development itself, **Special Conditions #1 and #3** require the submittal of final plans and final landscape plans that include only drought-tolerant, non-invasive, and non-cultivar plant species, as well as a prohibition of clear glass windscreens or deck rails to minimize bird strikes. In addition, **Special Condition #1** requires the removal of a non-conforming structure located on the canyon slope face and restoration of the area with native vegetation and prohibits new accessory structures within the canyon edge setback. Further, **Special Condition #7** requires the placement of all steep slopes on site (i.e., greater than 25% incline) in an open space deed restriction to ensure preservation of native vegetation in perpetuity. The only activities that would be allowed in this area are required fuel modification, removal of non-conforming structures and restoration, and authorized landscaping. **Special Conditions #4 and #5** require the incorporation of drainage and erosion control Best Management Practices (BMPs) into the project to ensure the protection of water quality and avoid any adverse impacts on the nearby San Elijo lagoon.

The proposed structure will be located on top of a coastal canyon overlooking San Elijo Lagoon. While the development will not block public views, it will be partially visible from offsite locations, including public trails. To minimize this visibility, **Special Condition #6** restricts the color palette used on the residence, **Special Condition #3** requires the use of landscaping to partially screen the site, and **Special Condition #7** requires the protection of steep slopes from future development.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 6-21-0551, as conditioned. The motion is on page 4. The standard of review is Chapter 3 of the Coastal Act with the City of Solana Beach certified Land Use Plan (LUP) used as guidance.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION	4
II. STANDARD CONDITIONS	4
III. SPECIAL CONDITIONS.....	5
IV. FINDINGS AND DECLARATIONS.....	13
A. Project Description and Background	13
B. Biological Resources.....	14
C. New Development/Non-Conforming Structures	19
D. Visual Resources	24
E. Water Quality	28
F. Public Access and Recreation.....	29
G. Local Coastal Planning	31
H. California Environmental Quality Act.....	31
APPENDIX A – SUBSTANTIVE FILE DOCUMENTS	33

EXHIBITS

[Exhibit 1 – Location map](#)

[Exhibit 2 – Site plan](#)

[Exhibit 3 – Nonconforming structure](#)

[Exhibit 4 – Revised Bluff Edge](#)

[Exhibit 5 – Open Space Deed Restricted Area](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 6-21-0551 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. 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. 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 of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Revised Final Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for the review and written approval of the Executive Director, revised final plans that are in substantial conformance with the submitted plans by Safdie Rabines Architecture dated 7/27/2021, except that they shall comply with the following:

- a. The abandoned concrete/brick pad on the canyon slope shall be removed and the area restored and revegetated with native plants similar in species and composition as those identified on the site.
- b. All new accessory structures (i.e., fences, walls, decks, patios, walkways) shall be set back a minimum of five feet from the canyon edge as defined herein and depicted on Exhibit 4.

Said plans shall first be approved by the City of Solana Beach, which approval shall be marked on the plans themselves. The permittees shall undertake the development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that non amendment is legally required for any proposed minor deviations.

2. Final Fuel Modification Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, revised final fuel modification plans addressing the area within 100 feet of the proposed home. Said plans shall be in substantial conformance with the plans submitted by Safdie Rabines Architects dated 9/21/2021 but revised as required below. Said plans shall be approved by the Solana Beach Fire Marshal and shall include the following:

- a. The fuel modification zone is limited to 100 ft. from the proposed structure.
- b. The property owner shall be responsible for at least annual maintenance within the designated 100 ft. brush management area to remove any introduced non-native or invasive plant species, as well as any dead or dying plant materials.
- c. In fuel modification Zone 1 (0 to 30 feet from the residence), activities shall consist of thinning, pruning, or removing and replacing vegetation. In fuel modification Zone 2 (30 to 100 feet from the residence) activities shall consist only of removing non-native or invasive plant species, as well as any dead or dying plant materials.
- d. Fuel modification activities are prohibited during the breeding season of the California Gnatcatcher, February 15th through August 30th of any year, unless

the activities are approved in writing by the California Department of Fish and Wildlife or the United States Fish and Wildlife Service.

The permittees shall undertake fuel modification in accordance with the approved plans. Any proposed changes to the approved fuel modification plans should be reported to the Executive Director. No changes to the approved plans shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Revised Final Landscape Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for the review and written approval of the Executive Director, revised final landscaping plans that have been approved by the City of Solana Beach (including the Solana Beach Fire Marshal). Said plans shall be in substantial conformance with the plans submitted with this application by Safdie Rabines Architects and dated 1/27/2021, except that they shall be modified to include the following requirements:

- a. All landscaping shall be drought-tolerant, native, fire-resistant, non-cultivar, and noninvasive plant species that are obtained from local stock, if available. No plant species listed as problematic or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, 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 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized. Specifically, no palm species, ice plant species, Pride of Madeira, Mexican Feather Grass, or any nonnative species are permitted.
- b. A planting schedule that indicates that the planting plan shall be implemented within 60 days of completion of residential construction.
- c. All landscaped areas on the project site shall be maintained in a litter-free, weed-free, and healthy growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements.
- d. A plan showing the type, size, extent and location of all trees to be removed and planted on site and shall include, at a minimum, the planting or retention of three (3) trees (24-inch box or 5-foot trunk height minimum) or three similarly sized plants (which at maturity will exceed the roofline of the structure) to be located along the northern side of the residence in a manner so as to maximize screening and to break up the northern façade of the structure within views from San Elijo Lagoon.
- e. The use of rodenticides containing any anticoagulant compounds is prohibited.
- f. Deck railing systems, fences, screen walls, gates, and windows and the like that are subject to this permit shall use materials designed to minimize bird-

strikes with the deck railing, fence, gate, window or similar feature. Such materials may consist of all or in part of wood, wrought iron, frosted or partially-frosted glass, Plexiglas or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas may be installed only if it contains UV-reflective glazing that is visible to birds or is used with appliques (e.g. stickers/decals) designed to reduce bird-strikes by reducing reflectivity and transparency. Any appliques used shall be installed to provide coverage consistent with manufacturer specifications (e.g. one applique for every 3 foot by 3 foot area). Use of opaque or partially opaque materials is preferred to clear glass or Plexiglas and appliques. All materials and appliques shall be maintained throughout the life of the development to ensure continued effectiveness at minimizing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications.

g. Five years from the date of issuance of the coastal development permit, the applicant shall submit for review and written approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and written approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

h. All irrigation systems shall limit water use to the maximum extent feasible. Use of reclaimed water for irrigation is encouraged. If permanent irrigation systems using potable water are included in the landscape plan, they shall use water conserving emitters (e.g., microspray) and drip irrigation only. Other water conservation measures shall be considered, including use of weather based irrigation controllers.

The permittee shall undertake the development in accordance 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.

4. Construction and Pollution Prevention Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT the applicant shall submit, for the review and

written approval of the Executive Director, a Construction and Pollution Prevention Plan. The Plan shall demonstrate that all construction, including, but not limited to, clearing, grading, staging, storage of equipment and materials, or other activities that involve ground disturbance; building, reconstructing, or demolishing a structure; and creation or replacement of impervious surfaces, complies with the following requirements:

- a. **Minimize Erosion and Sediment Discharge.** During construction, erosion and the discharge of sediment off-site or to coastal waters shall be minimized through the use of appropriate Best Management Practices (BMPs), including:
 - (i) Land disturbance during construction (e.g., clearing, grading, and cut-and-fill) shall be minimized, and grading activities shall be phased, to avoid increased erosion and sedimentation.
 - (ii) Erosion control BMPs (such as mulch, soil binders, geotextile blankets or mats, or temporary seeding) shall be installed as needed to prevent soil from being transported by water or wind. Temporary BMPs shall be implemented to stabilize soil on graded or disturbed areas as soon as feasible during construction, where there is a potential for soil erosion to lead to discharge of sediment off-site or to coastal waters.
 - (iii) Sediment control BMPs (such as silt fences, fiber rolls, sediment basins, inlet protection, sand bag barriers, or straw bale barriers) shall be installed as needed to trap and remove eroded sediment from runoff, to prevent sedimentation of coastal waters.
 - (iv) Tracking control BMPs (such as a stabilized construction entrance/exit, and street sweeping) shall be installed or implemented as needed to prevent tracking sediment off-site by vehicles leaving the construction area.
 - (v) Runoff control BMPs (such as a concrete washout facility, dewatering tank, or dedicated vehicle wash area) that will be implemented during construction to retain, infiltrate, or treat stormwater and non-stormwater runoff.
 - (vi) Grading shall be avoided during the rainy season, from October 15 to April 15.
- b. **Minimize Discharge of Construction Pollutants.** The discharge of other pollutants resulting from construction activities (such as chemicals, paints, vehicle fluids, petroleum products, asphalt and cement compounds, debris, and trash) into runoff or coastal waters shall be minimized through the use of appropriate BMPs, including:
 - (i) Materials management and waste management BMPs (such as stockpile management, spill prevention, and good housekeeping practices) shall be installed or implemented as needed to minimize pollutant discharge and polluted runoff resulting from staging, storage, and disposal of construction chemicals and materials. BMPs shall include, at a minimum:
 - A. Covering stockpiled construction materials, soil, and other excavated materials to prevent contact with rain, and protecting all stockpiles from stormwater runoff using temporary perimeter barriers.

- B. Cleaning up all leaks, drips, and spills immediately; having a written plan for the clean-up of spills and leaks; and maintaining an inventory of products and chemicals used on site.
 - C. Proper disposal of all wastes; providing trash receptacles on site; and covering open trash receptacles during wet weather.
 - D. Prompt removal of all construction debris from the beach.
 - E. Detaining, infiltrating, or treating runoff, if needed, prior to conveyance off-site during construction.
- (ii). Fueling and maintenance of construction equipment and vehicles shall be conducted off site if feasible. Any fueling and maintenance of mobile equipment conducted on site shall take place at a designated area located at least 50 feet from coastal waters, drainage courses, and storm drain inlets, if feasible (unless those inlets are blocked to protect against fuel spills). The fueling and maintenance area shall be designed to fully contain any spills of fuel, oil, or other contaminants. Equipment that cannot be feasibly relocated to a designated fueling and maintenance area (such as cranes) may be fueled and maintained in other areas of the site, provided that procedures are implemented to fully contain any potential spills.
- c. **Minimize Other Impacts of Construction Activities.** Other impacts of construction activities shall be minimized through the use of appropriate BMPs, including:
- (i) The damage or removal of non-invasive vegetation (including trees, native vegetation, and root structures) during construction shall be minimized, to achieve water quality benefits such as transpiration, vegetative interception, pollutant uptake, shading of waterways, and erosion control.
 - (ii) Soil compaction due to construction activities shall be minimized, to retain the natural stormwater infiltration capacity of the soil.
 - (iii) 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 (such as polypropylene, nylon, polyethylene, polyester, or other synthetic fibers) shall be avoided, to minimize wildlife entanglement and plastic debris pollution.
- d. **Manage Construction-Phase BMPs.** Appropriate protocols shall be implemented to manage all construction-phase BMPs (including installation and removal, ongoing operation, inspection, maintenance, and training), to protect coastal water quality.
- e. **Construction Site Map and Narrative Description.** The Construction and Pollution Prevention Plan shall include a construction site map and a narrative description addressing, at a minimum, the following required components:
- (i) A map delineating the construction site, construction phasing boundaries, and the location of all temporary construction-phase BMPs (such as silt fences, inlet protection, and sediment basins).
 - (ii) A description of the BMPs that will be implemented to minimize land disturbance activities, minimize the project footprint, minimize soil

compaction, and minimize damage or removal of non-invasive vegetation. Include a construction phasing schedule, if applicable to the project, with a description and timeline of significant land disturbance activities.

- (iii) A description of the BMPs that will be implemented to minimize erosion and sedimentation, control runoff and minimize the discharge of other pollutants resulting from construction activities. Include calculations that demonstrate proper sizing of BMPs.
- (iv) A description and schedule for the management of all construction-phase BMPs (including installation and removal, ongoing operation, inspection, maintenance, and training). Identify any temporary BMPs that will be converted to permanent post-development BMPs.

The permittee shall undertake development in accordance with the approved Construction-Phase Pollution Prevention Plan, unless the Commission amends this permit or the Executive Director provides written determination that no amendment is legally required for any proposed minor deviations.

5. Post-Development Runoff Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a Post-Development Runoff Plan that demonstrates that the project complies with the following requirements:

- a. **Low Impact Development Strategies.** The project shall comply with the following Low Impact Development standards:
 - (i) Minimize disturbance of natural drainage features.
 - (ii) Minimize removal of native vegetation, and plant additional non-invasive vegetation, particularly native plants that provide water quality benefits such as transpiration, interception of rainfall, pollutant uptake, shading of waterways to maintain water temperature, and erosion control.
 - (iii) Maintain or enhance appropriate on-site infiltration of runoff to the greatest extent feasible. Use strategies such as avoiding building impervious surfaces on highly permeable soils; amending soil if needed to enhance infiltration; and installing an infiltration Best Management Practice (BMP) (e.g., a vegetated swale, rain garden, or bio retention system).
 - (iv) Minimize the addition of impervious surfaces, and where feasible increase the area of pervious surfaces in re-development. Use strategies such as minimizing the footprint of buildings; minimizing the footprint of impervious pavement; and installing a permeable pavement system where pavement is required.
 - (v) Disconnect impervious surface areas from the storm drain system, by interposing permeable areas between impervious surfaces and the storm drain system. Design curbs, berms, and similar structures to avoid isolation of vegetative landscaping and other permeable areas and allow runoff to flow from impervious pavement to permeable areas for infiltration. Use strategies such as directing roof-top runoff into permeable landscaped areas; directing runoff from impervious pavement into

distributed permeable areas (e.g., turf, medians, or parking islands); installing a vegetated swale or filter strip to intercept runoff sheet flow from impervious surfaces; and installing a rain barrel or cistern to capture and store roof-top runoff for later use in on-site irrigation.

- (vi) Where on-site infiltration is not appropriate or feasible, use alternative BMPs to minimize post-development changes in runoff flows, such as installing an evapotranspiration BMP that does not infiltrate into the ground but uses evapotranspiration to reduce runoff (e.g., a vegetated “green roof,” flow-through planter, or retention pond); directing runoff to an off-site infiltration facility; or implementing BMPs to reduce runoff volume, velocity, and flow rate before directing runoff to the storm drain system.
- b. **Implement Source Control BMPs.** Appropriate and feasible long-term Source Control BMPs, which may be structural features or operational practices, shall be implemented to minimize the transport of pollutants in runoff from the development by controlling pollutant sources and keeping pollutants segregated from runoff. Use strategies such as covering outdoor storage areas; using efficient irrigation; proper application and clean-up of potentially harmful chemicals and fertilizers; and proper disposal of waste.
- c. **Avoid Adverse Impacts from Stormwater and Dry Weather Discharges.** The adverse impacts of discharging stormwater or dry weather runoff flows to coastal waters shall be avoided, to the extent feasible. The project shall comply with the following requirements:
 - (i) Runoff shall be conveyed off-site or to drainage systems in a non-erosive manner.
 - (ii) The discharge of dry weather runoff to coastal waters shall be minimized, to the greatest extent feasible. Use strategies such as efficient irrigation techniques that minimize off-site runoff.
- d. **Manage BMPs for the Life of the Development.** Appropriate protocols shall be implemented to manage BMPs (including ongoing operation, maintenance, inspection, and training) to keep the water quality provisions effective for the life of the development.
- e. **Site Plan and Narrative Description.** The Post-Development Runoff Plan shall include a site plan and a narrative description addressing, at a minimum, the following required components:
 - (i) A site plan, drawn to scale, showing the property boundaries, building footprint, runoff flow directions, relevant drainage features, structural BMPs, impervious surfaces, permeable pavements, and landscaped areas.
 - (ii) An estimate of the proposed changes in (1) impervious surface areas on the site, including pre-project and post-project impervious coverage area and the percentage of the property covered by impervious surfaces; (2) the amount of impervious areas that drain directly into the storm drain system without first flowing across permeable areas; and (3) site coverage with permeable or semi-permeable pavements.

- (iii) A description of the BMPs that will be implemented, and the Low Impact Development approach to stormwater management that will be used. Include a schedule for installation or implementation of all post-development BMPs.

The permittee shall undertake development in accordance with the approved Post-Development Runoff Plan, unless the Commission amends this permit or the Executive Director determines issues a written determination that no amendment is legally required for any proposed minor deviations.

6. Exterior Treatment. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval a color board or other indication of the exterior materials and color scheme to be utilized in the construction of the proposed residence. The color of the structure and roof permitted herein shall be restricted to colors compatible with the surrounding environment (earth tones) including shades of green, brown, and gray, with no white or light shades and no bright tones. All windows on the north side of the residence shall be comprised of non-glare glass.

The permittees, and each subsequent landowner, shall undertake and maintain the development in accordance with the approved color board. Any proposed changes to the approved color board shall be reported to the Executive Director. No changes to the color board shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

7. Open Space Deed Restriction.

- a. No development, as defined in section 30106 of the Coastal Act, shall occur in the open space area generally described as steep slopes of 25% grade or greater located on the northern portion of the subject site as depicted on Exhibit 5, except for:
 - (i) Necessary fuel modification activities consisting of removal of dead and dying vegetation, along with removal of non-native and invasive species, consistent with Special Condition #2, and
 - (ii) Removal of nonconforming structures and site restoration/revegetation consistent with Special Conditions #1 and #3.
- b. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on development in the designated open space area. The recorded document(s) shall include a legal description and corresponding graphic depiction 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.

- c. The deed restriction 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 restriction shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner in perpetuity.

8. Deed Restriction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

The proposed project includes demolition of an existing, approximately 2,150 sq. ft., 1-story single-family residence that was constructed in 1957. The applicant proposes to construct a new 3,960 sq. ft., 2-story single-family residence with a 400 sq. ft. attached garage on a sloping site located on the southern canyon uplands of the San Elijo Lagoon ([Exhibit 1](#)). The proposed residence will be sited on the same portion of the lot as the current residence. Fuel modification on the northern portion of the property is proposed ([Exhibit 2](#)). The project includes some minor grading (175 c.y. cut; 33 c.y fill), with an export of approximately 150 c.y. to a landfill outside of the coastal zone. The project includes new hardscaping and new landscaping adjacent to the proposed residence on the southern portion of the lot. The applicant also proposes to retain two

existing, nonconforming structures that include an abandoned concrete slab and brick wall, and a concrete retaining wall ([Exhibit 3](#)).

The proposed project is located at 514 Canyon Drive in the City of Solana Beach. The subject site is just south of the San Elijo Lagoon and in this location, Canyon Drive serves as the first public roadway. This is a lagoon canyon lot in an area of large lots and single-family homes, with much of the area, both private and public, in open space.

The City of Solana Beach has a certified Land Use Plan (LUP), but the City has not yet completed an Implementation Plan (IP) and, therefore, there is currently no certified Local Coastal Program (LCP). Thus, the standard of review for the proposed development is the Chapter 3 policies of the Coastal Act, with the City's LUP used as guidance.

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.

Policy 3.1 of the LUP states:

Areas 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 be easily disturbed or degraded by human activities and developments are ESHAs and are generally shown on the LUP ESHA Maps. The ESHAs in the City of Solana Beach are shown in Exhibits 3-6 through 3-10. Regardless of whether streams and wetlands are designated as ESHA, the policies and standards in the LCP applicable to streams and wetlands shall apply.

Policy 3.15 of the LUP states:

The use of insecticides, herbicides, rodenticides or any toxic chemical substance which has the potential to significantly degrade ESHA, shall be prohibited within and adjacent to ESHAs, except where necessary to protect or enhance the habitat itself, such as eradication of invasive plant species, or habitat restoration or as required for fuel modification. Application of such chemical substances shall not take place during the winter season or when rain is predicted within a week of application.

6-21-0551

Ewing

Policy 3.20 of the LUP states:

Limit redevelopment and development in environmentally sensitive areas, such as upland slopes and watershed areas in and adjacent to, and draining directly to Holmwood Canyon, and San Elijo Lagoon Ecological Reserve to activities supporting its preservation.

Policy 3.21 of the LUP states:

Walls, fences, and gates situated along coastal bluffs and adjacent to the San Elijo Lagoon Reserve should be constructed with materials designed to minimize bird-strikes with the wall, fence, or gate. As feasible, material selection and structural design shall be made in consultation with a qualified biologist, CDFW, or USFWS. Such materials may consist, all or in part, of wood, wrought iron, frosted or partially-frosted glass, plexiglass or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or plexiglass should not be installed unless appliqués (e.g. stickers/decals) designed to reduce bird-strikes by reducing reflectivity and transparency is also used. Use of opaque or partially opaque materials is preferred to clear glass or plexiglass and appliqués. All materials shall be maintained throughout the life of the development to ensure continued effectiveness.

Policy 3.22 of the LUP states:

Development adjacent to ESHAs shall minimize impacts to habitat values or sensitive species to the maximum extent feasible. Native vegetation buffer areas shall be provided around ESHAs to serve as transitional habitat and provide distance and physical barriers to human intrusion. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the ESHA they are designed to protect.

All buffers around (non-wetland) ESHA shall be a minimum of 100 feet in width, or a lesser width may be approved by the Planning Department and Fire Marshal as addressed in Policy 3.65. However, in no case can the buffer size be reduced to less than 50 feet.

Policy 3.29 of the LUP states:

Landscaping adjacent to ESHA must consist entirely of native, non-invasive drought tolerant, salt-tolerant and fire resistant species; however, the use of ornamental species may be allowed provided they are fire-resistant, drought-tolerant, and noninvasive as a small component for single-family residences.

Policy 3.35 of the LUP states:

Utilize the Hillside/Coastal Bluff Overlay (HOZ) requirements to restrict the grading of natural non-coastal bluff slopes with an inclination of 25% or greater in order to preserve the natural topography and scenic qualities of the City; protect

native coastal sage/chaparral and grassland habitat; preserve existing watersheds and reduce the potential for environmental hazards including soil erosion and siltation of coastal wetlands; landslides; adverse impacts due to runoff; and other impacts which could affect public health, safety, and welfare. None of the above shall restrict the ability to construct a bluff retention device which meets the criteria set forth in this LCP.

Policy 4.72 of the LUP states:

All discretionary permit applications for projects shall be reviewed by the City's Fire Marshal to determine if any thinning or clearing of native vegetation is required. The Fire Marshal may reduce the 100' fuel management requirement for existing development, when equivalent methods of wildfire risk abatement are included in project design.

Policy 4.74 of the LUP states:

Within the WUI (Exhibit 4-7), the area within 100 feet of a habitable structure is divided into two zones as follows. Zone 1 is located from 0 - 30 feet from the residence and Zone 2 located from 30 -100 feet from the residence.

Policy 4.75 of the LUP states:

Required fuel modification that may take place in both zones is defined as follows: In Zone 1, thin, prune or remove and replace vegetation and in Zone 2 thinning of non-natives and removal of dead vegetation. Vegetation shall be thinned to a height of 18 inches. Root systems and stumps will be left in place to minimize soil disturbance and soil erosion. All fuel modification work will be done by hand crews only.

Policy 4.81 of the LUP states:

If fuel modification is required by the Fire Marshal, a fuel modification plan will be required to be submitted to the City as part of the application for any development located in WUI Fire Hazard Severity Zones (Exhibit 4-7). Applications shall include a site plan describing and quantifying the potential thinning, pruning or removal of brush, if any, that would be required to provide fire safety for the project or would be needed to accommodate any/all project elements.

Policy 4.82 of the LUP states:

All discretionary permit applications for projects in the City's WUI shall be required to include landscape plan that has been prepared in accordance with the County of San Diego "Suggested Plant List for a Defensible Space" <http://www.sdcounty.ca.gov/pds/docs/DPLU199.pdf> and planting guidelines emphasizing the use of fire-resistant, native, non-invasive, drought-tolerant and salt tolerant species. These plants grow close to the ground, have a low sap or

6-21-0551

Ewing

resin content, grow without accumulating dead branches, needles or leaves, are easily maintained and pruned. Any new vegetation planted must meet Planning Department guidelines.

Policy 4.83 of the LUP states:

Any required thinning of flammable vegetation in the WUI shall be conducted by hand crews between September 15 through February 15. To minimize impacts to habitat, sensitive plant species will not be thinned or removed. Sensitive species such as *Quercus Dumosa* (Coastal Scrub Oak), *Ceanothus Verrucosus* (Coastal White Lilac), *Arcto staphylos Glandulosa* (Del Mar Manzanita) and *Corethrogyne Filaginifolia* var. *Linifolia* (Del Mar Sand-Aster) will not be thinned or disturbed in any way.

The subject property is located in the far northern portion of the City of Solana Beach, west of I-5, on the canyon uplands south of San Elijo Lagoon, and close to the San Elijo Lagoon County Park and Ecological Reserve. It is located on the north side of Canyon Drive. Holmwood Lane, an unimproved road that trends east-west parallel to the lagoon, is just north of the property, between the lagoon and the subject site, but at a lower elevation.

The San Elijo Lagoon is an environmentally sensitive habitat area and Regional Park that is managed jointly by the California Department of Fish and Game and the San Diego County Parks and Recreation Department. The lagoon provides habitat for at least five State or Federal-listed threatened or endangered birds that include the California least tern, the California gnatcatcher, the light-footed clapper rail, Belding's savannah sparrow, the brown pelican and the western snowy plover. As such, potential adverse impacts on sensitive resources as a result of activity surrounding the lagoon could be significant.

The subject site is not mapped as vegetation or environmentally sensitive habitat area (ESHA) in the Solana Beach LUP City-wide Biological Resources maps. However, the maps do depict southern mixed chaparral vegetation immediately adjacent to the site on neighboring parcels to the north. The site-specific biological study conducted by the applicant's biologist identified that the site contains some native southern mixed chaparral vegetation, but no rare, endangered, or endemic plant or animal species were identified.

The proposed residence will be sited within the same developed footprint as the current residence. The new structure will extend very slightly north (approximately two feet in a small portion). Thus, no direct impacts to native vegetation will result from the development itself. The proposed residence will generally follow the pattern of development and stringline of neighboring structures along this section of Canyon Drive and will not encroach any further into the canyon.

The site is located within the Wildland Urban Interface (WUI) and is required to conduct fuel modification, which would occur within the undeveloped northern portion of the property. The proposed residence raises a potential concern that any fuel modification required by the Fire Department could adversely affect habitat if it involved removal or cutting of significant vegetation within San Elijo Lagoon Ecological Park. In such cases, the Commission would typically require that the applicant examine alternatives to the design of the development to avoid impacts from fuel modification.

The applicant has provided a preliminary fuel modification plan; however, they have not provided any indication that it has been reviewed and approved by the fire department. Thus, the Commission assumes that the full extent of fuel modification outlined in the City's LUP will be required on this site, and fuel modification will occur extending 100 ft. from the principal structure. The LUP generally requires clearing of fire prone vegetation within the first 30 ft. surrounding the structure (Zone 1) and thinning or pruning of vegetation in the outer 70 ft (Zone 2).

However, new significant adverse impacts on native habitat or vegetation are unlikely to occur as a result of the proposed development and associated fuel modification. First, given the developed nature of this area, fuel modification likely already occurs on this subject site for the current residence and neighboring residences, and extends throughout the canyon north of the proposed residence to minimize fire hazards to surrounding structures. The adjacent homes may also be required to conform to the 100 ft. fuel modification requirements, and the required 100 ft. perimeter requirements for the subject residence will generally coincide with the requirements of the adjacent residences. In addition, the subject site is not immediately adjacent to the lagoon; Holmwood Lane and the residences along it separate the subject site from the lagoon. Thus, any fuel modification required on the subject site will not extend directly into the lagoon boundaries. Further, the new residence will not extend any further north than the existing residence, therefore, no new fuel modification will be required compared to existing conditions. Thus, the proposed new residence and associated fuel modification will not result in significant adverse impacts on biological resources and native vegetation.

To ensure that required fuel modification does not result in a significant reduction in native vegetation beyond that required for fire hazard reduction, **Special Condition #2** limits the fuel modification zone to 100 ft. from the proposed structure, specifies that only removal of non-native and invasive, or dead and dying plant species is permitted in Zone 2, and requires annual maintenance of the fuel modified areas. While no California Gnatcatchers were identified by the applicant's biologist, they are present in the lagoon. Therefore, **Special Condition #2** also prohibits fuel modification from occurring during the bird breeding season, or from February 15 to August 30.

All native vegetation on site is located within the steep slopes portion of the property, which constitutes roughly the northern half of the property. The subject site is within the City's Hillside/Coastal Bluff Overlay Zone and approximately 58% of the site consists of steep slopes exceeding 25% gradient. No new development is proposed on the steep slope portions of the site. To further protect the native vegetation on the steep slopes, **Special Condition #7** requires the placement of an open space deed restriction on the

steep slope area, as depicted on [Exhibit 5](#). Pursuant to **Special Condition #7**, the only activities that would be allowed in this area are required fuel modification, removal of non-conforming structures and restoration, and authorized landscaping. Therefore, the native vegetation will be maintained in perpetuity and actually improved over current conditions with the removal of a non-conforming structure, described in more detail in Section C.

Because of the sensitive lagoon and reserve areas located north of the subject site, it is critical that all landscaping improvements be fully compatible with lagoon and upland habitats. Therefore, **Special Condition #3** requires that only drought-tolerant, native, fire-resistant, non-cultivar, and non-invasive species be planted on site. **Special Condition #3** also prohibits the use of rodenticides that contain anticoagulant compounds and requires that all plantings be maintained. Because the subject site is on a canyon slope adjacent to the lagoon and ecological reserve, **Special Condition #3** also addresses concerns regarding bird strikes by prohibiting the use of clear glass windscreens or deck rails, consistent with the LUP.

Finally, **Special Condition #8** requires the applicant to record a deed restriction imposing the conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property. This restriction will serve to notify future owners of the terms and conditions of the permit such as the landscaping requirements.

As conditioned, the Commission finds that the development is consistent with Coastal Act/LUP requirements for biological resources.

C. New Development/Non-Conforming Structures

Coastal Act section 30250 states:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

[...]

Coastal Act section 30253 states:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) 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.

Policy 4.2 of the LUP states:

Minimize the exposure of new development to geologic, flood and fire hazards. The Hillside/Coastal Bluff Overlay (HOZ) policies shall apply to all areas designated as within the HOZ on the City of Solana Beach LUP map (Exhibit 5-2) or where site-specific analysis indicates that the parcel contains slopes exceeding 25 percent grade.

Policy 4.3 of the LUP states:

Regulate development in hillside areas to preserve the natural topography and enhance scenic qualities of the City, protect native coastal vegetation, preserve existing watersheds, and reduce the potential for environmental hazards including soil erosion, siltation of coastal wetlands, landslides, adverse impacts due to runoff, and other impacts which may affect general safety and welfare.

Policy 4.4 of the LUP states:

Any projects that propose building within the HOZ, on bluff properties, or inland bluff projects must include a geologic reconnaissance report to determine the geologic stability of the area. When additional information is needed to assess stability, a preliminary engineering geology report must also be prepared identifying the results of subsurface investigation regarding the nature and magnitude of unstable conditions, as well as mitigation measures needed to reduce or avoid such conditions. (HOZ applies to areas with steep slopes greater than 25% as shown in Exhibit 5-2).

Policy 4.14 of the LUP states:

Existing, lawfully established structures that are located between the sea and the first public road paralleling the sea (or lagoon) built prior to the adopted date of the LUP that do not conform to the provisions of the LCP shall be considered legal nonconforming structures. Such structures may be maintained and repaired, as long as the improvements do not increase the size or degree of non-conformity. Additions and improvements to such structures that are not considered Bluff Top Redevelopment, as defined herein, may be permitted provided that such additions or improvements themselves comply with the current policies and standards of the LCP. Complete demolition and reconstruction or Bluff Top Redevelopment is not permitted unless the entire

structure is brought into conformance with the policies and standards of the LCP. See also Policy 5.45 which addresses non-Bluff Properties.

Policy 4.14 of the LUP states:

New development shall be set back a safe distance from the bluff edge, with a reasonable margin of safety, to eliminate the need for bluff retention devices to protect the new improvements. All new development, including additions to existing structures, on bluff property shall be landward of the Geologic Setback Line (GSL) as set forth in Policy 4.25. This requirement shall apply to the principal structure and accessory or ancillary structures such as guesthouses, pools, tennis courts, cabanas, and septic systems, etc. Accessory structures such as decks, patios, and walkways, which are at-grade and do not require structural foundations may extend into the setback area no closer than five feet from the bluff edge. [...]

Policy 5.9 of the LUP states:

Manage the location of new development and redevelopment through this LCP, the City's General Plan and the SBMC, which provide both policy and regulations governing the form and location of existing and future development, including:

- Locations of residential, commercial, industrial, public and open space land uses, including visitor serving commercial and recreational development.
- Public works and facilities, such as: (1) roadways, water and sewer systems; and (2) drainage improvements to support existing and planned development, including the Fletcher Cove Master Plan.
- Development standards for each type of land use, such as: (1) density limitations; (2) building setbacks; and (3) height limits.
- Specific regulations associated with coastal zones, such as: (1) coastal and inland bluff setbacks and bluff top development requirements; (2) shoreline and bluff protection measures; (3) hazard area protection; (4) resource protection overlay requirements; and (5) landscaping guidelines

Policy 5.18 of the LUP states:

New development shall conform to the HOZ provisions of the LUP, including measures to minimize potential impacts to scenic and visual resources, and to minimize the risk from hazards. The measures include, but are not limited to limiting grading, retaining walls, restricting development on steep slopes, protecting ridgelines, and applying siting, and design restrictions (scenic and visual policies).

Bluff Top Redevelopment is defined in Chapter 8 of the LUP as:

Bluff Top Redevelopment shall apply to proposed development located between the sea and the first public road paralleling the sea (or lagoon) that consists of alterations including (1) additions to an existing structure, (2) exterior and/or interior renovations, (3) and/or demolition of an existing bluff home or other principal structure, or portions thereof, which results in:

(a) Alteration of 50% or more of major structural components including exterior walls, floor and roof structure, and foundation, or a 50% increase in floor area. Alterations are not additive between individual major structural components; however, changes to individual major structural components are cumulative over time from the date of certification of the LUP.

(b) Demolition, renovation or replacement of less than 50% of a major structural component where the proposed alteration would result in cumulative alterations exceeding 50% or more of a major structural component, taking into consideration previous alterations approved on or after the date of certification of the LUP; or an alteration that constitutes less than 50% increase in floor area where the proposed alteration would result in a cumulative addition of greater than 50% of the floor area taking into consideration previous additions approved on or after the date of certification of the LUP.

The LUP defines Coastal Bluff Edge as:

The coastal bluff edge is 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 the bluff edge shall be defined as that point nearest the bluff face beyond which a downward gradient is maintained continuously to the base of the bluff. In a case where there is a step like feature at the top of the bluff, the landward edge of the topmost riser shall be considered the bluff edge. The bluff edge may change over time as the result of erosional processes, landslide, or artificial cut. Artificial fill placed near the bluff edge, or extending over the bluff edge does not alter the position of the bluff edge. In those cases where irregularities, structures or bluff stabilizing devices exist in a subject property so that a reliable determination of the bluff edge cannot be made by visual or topographic evidence, the Community Development Director, or Commission, on appeal, shall determine the location of the bluff edge after evaluation of a geologic or soils report and physical inspection of the site.

The subject site is located on a lagoon canyon site. The northern portion of the site contains steep slopes greater than 25% incline that support native vegetation. Because the site contains steep slopes it falls within the City's Hillside/Coastal Bluff Overlay Zone (HOZ). The City's LUP requires that any projects that propose building within the HOZ, on bluff properties, or inland bluffs must include a geologic reconnaissance report to determine the geologic stability of the area. The Commission's geologist has reviewed

the project plans and geotechnical report and determined that the location of the canyon edge was not appropriately determined consistent with definitions in the LUP and Coastal Act. While the certified LUP includes a definition for coastal bluff edge, it does not include a definition for canyon edge or inland bluff edge. However, the city's uncertified municipal code contains a definition for canyon rim that states that a canyon rim shall be determined in the same manner as a bluff edge. Thus, according to that ordinance, the canyon edge on this site should be determined using the LUP definition for coastal bluff edge. Based on the definition of coastal bluff edge contained in the City's LUP, as well as the definition of coastal bluff contained in the Commission's regulations, the Commission's geologist has determined that the location of the canyon edge is located further south than was identified by the applicant's consultant and accepted by the city ([Exhibit 4](#)).

In addition to lacking a definition for canyon edge, the city's certified LUP does not prescribe a required setback distance for development adjacent to a canyon edge. Inland bluff setbacks are specifically identified in Policy 5.9 as an approach to manage the location of new development and redevelopment, but specific setback requirements have not been prescribed in the City's LUP to date. In this case, the Commission's geologist has reviewed the project and slope stability analysis and determined that the home has been safely sited to assure stability and withstand anticipated erosion over the next 75 years, and with the proposed setback of approximately 12-15 feet from the revised canyon edge, the residence should be safe for its anticipated lifespan.

While the proposed principal structure has been sited safely, the project as approved by the city includes the retention of two non-conforming structures, including an abandoned concrete/brick pad located on the canyon slope face and a retaining wall extending east to west across the entire site located immediately inland of the canyon edge, as determined by the Commission's geologist ([Exhibits 3 and 4](#)). The project also proposes two new approximately 6-foot-high concrete retaining walls with an open fence on top located parallel to the eastern and western property lines and extending north to the canyon edge, and a concrete patio adjacent to the existing retaining wall ([Exhibit 3](#)).

Typically, the Commission prohibits development on a bluff face or canyon slope and prohibits accessory or principal structures within five feet of a canyon edge (Ref: CDP#'s 5-21-0079/Viloria, 5-18-0880/Voigt, 5-17-0607/Worthington). Thus the two existing structures would be considered non-conforming according to current standards for canyon setbacks, and the newly proposed walls and patio would be inconsistent with the LUP as well. The city's LUP requires that when properties are redeveloped (i.e., complete demolition and reconstruction) the entire site must be brought into conformance with the policies and standards of the LUP.

In this case, retention of the nonconforming brick retaining wall adjacent to the residence is unlikely to result in significant impacts to coastal resources. This is a stable bluff and this portion of the canyon slope is not likely to be visible from public vantage points given that it is a relatively short wall. In addition, the area immediately surrounding the retaining wall consists of non-native, ornamental vegetation and when considering fuel modification requirements, is unlikely to provide extensive habitat value. Therefore, the retention of this retaining wall will not result in significant adverse

impacts on coastal resources. Nevertheless, any significant modifications or additions to this retaining wall in the future should require that the wall to be brought into conformance with the canyon setback requirements. In contrast, removal of the abandoned concrete/brick pad on the canyon slope face would improve biological conditions on the site through removal of the abandoned structure and restoration of the area with native vegetation. Therefore, **Special Condition #1** requires the applicant to remove the nonconforming abandoned concrete/brick pad and restore the area with native vegetation similar in species and composition to that found in the surrounding area (i.e. southern maritime chaparral). Finally, the newly proposed retaining walls along the eastern and western property lines would extend within five feet of the canyon edge, inconsistent with current standards. Therefore, **Special Condition #1** requires the submittal of revised final plans that do not include any new structures (i.e., fences, walls decks, patios, walkways) within five feet of the canyon edge, as determined by the Commission's geologist and depicted on [Exhibit 4](#).

In summary, the Commission's geologist has determined that the location of the canyon edge was not delineated consistent with the City's LUP and Coastal Act definitions. Nevertheless, even with the revised canyon edge, the proposed principal structure has been sited to assure structural stability. However, the proposal to retain a non-conforming structure on the canyon slope face, as well as construct new retaining walls within five feet of the canyon edge, is not consistent with Coastal Act/LUP policies and prior Commission action. Removal of this non-conforming structure is required by the LUP and will improve the habitat value of the slope and avoid any potential for adverse visual resources. The coastal canyons serve as open space and potential wildlife habitat, as well as corridors for native fauna. Encroachment into the canyon by development increases the potential for the predation of native species by domestic animals and destabilization of the canyon habitat. Encroaching development also threatens the visual qualities of the canyons. Therefore, special conditions require the removal of this nonconforming structure and prohibit new structures within required setbacks. As conditioned, the Commission finds that the development is consistent with Coastal Act and LUP policies for new development.

D. Visual Resources

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. [...]

6-21-0551

Ewing

Policy 6.1 of the City's LUP states:

The City of Solana Beach contains scenic resources of local, regional and national importance. The scenic and visual qualities of these areas shall be protected and where feasible enhanced.

Policy 6.5 of the City's LUP states:

Regulate development in areas with high scenic value to preserve and enhance the scenic resources within and adjacent to such areas to the extent feasible, as well as, to assure exclusion of incompatible uses and structures.

Policy 6.6 of the City's LUP states:

New development on properties visible from public trails in and around San Elijo Lagoon and the San Dieguito River Valley shall be sited and designed to protect public views of the ridgelines and natural features of the area through measures including, but not limited to, providing setbacks from the slope edge, restricting the building maximum size, reducing maximum height limits, incorporating landscape elements and screening, incorporating earthen colors and exterior materials that are compatible with the surrounding natural landscape (avoiding bright whites and other colors except as minor accents). The use of highly reflective materials shall be prohibited.

Policy 6.8 of the City's LUP states:

Proposed development that unreasonably interferes with or degrades natural or man-made visual features of sites, or adjacent sites, which contribute to the City's scenic attractiveness, as viewed from either a scenic road, or scenic resources, including the San Elijo Lagoon Ecological Reserve and its watershed, shall be prohibited.

Policy 6.11 of the City's LUP states:

Avoidance of impacts to scenic resources through site selection and design alternatives is the preferred method over landscape screening. Landscape screening, as mitigation of visual impacts shall not substitute for project alternatives including resiting, or reducing the height, or bulk of structures.

Policy 6.13 of the City's LUP states:

New development, including a building pad, if provided, shall be sited on the flattest area of the project site, except where there is an alternative location that would be more protective of scenic resources or ESHA.

Policy 6.14 of the City's LUP states:

All new structures shall be sited and designed to minimize impacts to scenic

resources by:

- Ensuring visual compatibility with the character of surrounding areas.
- Avoiding large cantilevers or under stories.
- Setting back higher elements of the structure toward the center or uphill portion of the building.

Policy 6.15 of the City's LUP states:

The general criterion of development review [for the Scenic Overlay Area] is that the proposed development shall not, to the maximum extent feasible, interfere with or degrade those visual features, natural or manmade, of the site or adjacent sites which contribute to its scenic attractiveness, as viewed from either the scenic highway or the adjacent scenic, historic, or recreational resource. In applying this general criterion, the following policies 6.16 through 6.23 shall be evaluated when they are applicable as listed below:

Policy 6.16 of the City's LUP states:

All development shall be compatible with the topography, vegetation, and colors of the natural environment, and with the scenic, historic, and recreation resources of the designated areas.

Policy 6.17 of the City's LUP states:

The placement of buildings and structures shall not detract from the visual setting or obstruct significant views and shall be compatible with the topography of the site and adjacent areas.

Policy 6.18 of the City's LUP states:

New buildings and structures should not be placed along inland and coastal bluff-top silhouette lines or on the adjacent slopes within view from a lagoon area, but should be clustered along the bases of the inland bluffs and on the bluff tops set back from the bluff edge. Buildings and structures should be sited to provide unobstructed view corridors from the nearest scenic highway or view corridor road. These criteria may be modified when necessary to mitigate other overriding environmental considerations such as protection of habitat or wildlife corridors.

Policy 6.19 of the City's LUP states:

The removal of native vegetation shall be minimized and the replacement vegetation and landscaping shall be compatible with the vegetation of the designated area. Landscaping and plantings shall be used to the maximum extent practicable to screen roads and utilities. Landscaping and plantings shall be designed so that they do not obstruct significant views, either when installed, or when they reach mature growth.

Policy 6.22 of the City's LUP states:

The alteration of the natural topography of the site shall be minimized and shall avoid adverse effects to the visual setting of the designated area and the existing natural drainage system. Alterations of the natural topography shall be screened from view from either the scenic highway or the adjacent scenic, historic, or recreational resource by landscaping, and plantings which harmonize with the natural landscape of the designated area, except when such alterations add variety to or otherwise enhance the visual setting of the designated area. However, design emphasis shall be placed on preserving the existing quality of scenic resources rather than concealment of disturbances or replacement in kind. In portions of the Scenic Area Overlay, containing sensitive lands grading may be severely restricted or prohibited.

The proposed structure will be located on top of a coastal canyon overlooking San Elijo Lagoon Ecological Reserve and will be visible from public trails within the Reserve. Thus, public views from the lagoon are significant and deserve protection pursuant to the policies cited above.

The proposed development is located in an established residential neighborhood consisting of both one and two-story residences similar in size and character to the proposed development. The subject site is within the City's Citywide Scenic Overlay. However, the subject property is located on the southern uplands of San Elijo Lagoon and is visible from the lagoon and from public trails and areas north of the lagoon. From the public trails, it would be a distant view of a home located roughly at the top of the slope, and surrounded by other developed sites, including several homes that are actually closer to the lagoon than the subject site. Based on visual simulations provided by the applicant, the new residence will be slightly more visible than the existing residence due to its new second story. Therefore, because of its visibility from offsite public areas, it is important that the proposed residence be screened and softened in appearance.

To break up the facade of the structure and soften views of the residence from public areas, **Special Condition #3** requires that the applicant submit a final landscape plan indicating that the applicant will plant or retain at least three trees (24-inch box or 5-foot trunk height minimum) or three similarly-sized plants that at maturity will exceed the roofline of the residence along the northern side of the proposed residence. This required landscaping will reduce the visual prominence of the development. Given the vegetated nature of the adjacent San Elijo Ecological Reserve, which consists of dark green and brown landscape, if the exterior of the proposed residence was white or brightly colored, the house would contrast significantly with the surrounding natural park, causing the house to be visually prominent on the hillside. Therefore, the Commission finds that in order for the proposed development to be consistent with the visual resource protection policies of the Coastal Act, the color of the house must be restricted to colors that will blend in with the surrounding hillside. Accordingly, **Special Condition #6** requires the applicant to submit a color board indicating that the exterior colors of the proposed residence will be earthen tones (greens, browns, tans, grays or other dark colors) compatible with the surrounding natural environment. In this way, the

proposed home as viewed from surrounding public vantage areas will not stand out prominently, but will blend in with the adjacent natural hillside. The Commission has a long history of requiring landscaping and color restrictions on new development around San Elijo Ecological Reserve and Park to preserve the scenic quality of the Reserve and surrounding hillsides (ref. CDP Nos. 6-88-193/Morrison; #6-93-176/Dougherty; #6-98-1/Skerrett; #6-99-68/Roskowski; #6-99-76/Burger; #6-00-11/Macleod; #6-04-37-A1/Dudek, #6-05-129/Thomas, #6-06-40/Hoover, #6-07-85/Yee, #6-08-086/Gautsch & Matsui).

The northern portion of the property is located within the City's Hillside Overlay Zone, which restricts development in areas in excess of 25% slopes and seeks to preserve natural topography and scenic qualities. Consistent with these requirements, the project will occur on the existing flat section of the lot and no new development will occur within the steep slope areas. To preserve the natural topography and scenic qualities of the steep slopes on the site in perpetuity, **Special Condition #7** requires the recordation of an open space deed restriction that prohibits development on all slopes with an inclination of 25% or greater. Only fuel modification as required by the Fire Department, removal of the nonconforming structure, and landscaping authorized through this approval is allowed within the steep slope open space area.

In summary, the proposed development will be partially visible from offsite locations, including public trails. To minimize this visibility, special conditions address the colors used on the residence, the use of landscaping to partially screen the site, and protection of steep slopes from future development. With these conditions, the Commission finds the proposed development consistent with Coastal Act and LUP requirements for protection of visual resources.

E. Water Quality

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 wastewater discharges and entrapment, controlling runoff, [...]

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.

Policy 4.7 of the LUP states:

New development shall provide adequate drainage and erosion control facilities that convey site drainage in a non-erosive manner in order to minimize hazards resulting from increased runoff, erosion, and other hydrologic impacts to streams.

The proposed development is located at the top of a canyon hillside above the San Elijo Lagoon Ecological Reserve. As such, drainage and run-off from the development could potentially affect water quality within San Elijo Lagoon. To reduce the potential for adverse impacts to water quality resulting from drainage runoff from the proposed development, special conditions have been attached. **Special Condition #3** requires the maintenance and planting of drought tolerant landscaping on the site consisting of trees and ground cover, which will minimize irrigation used on site. The plans submitted with the application did not include any erosion control measures for the construction phase of development. Therefore, **Special Condition #4** requires submittal of a Construction Control & Pollution Prevention Plan that provides construction BMPs adequate to protect downstream resources (San Elijo Lagoon and the associated Ecological Reserve) from erosion and sedimentation. The condition advises what specific components need to be part of the plan. In addition, **Special Condition #5** requires the project to implement low impact development strategies and permanent water quality BMPs, such as enhancement of on-site filtration, minimizing runoff, and directing runoff into the landscaped areas on the site for infiltration and/or percolation, prior to being collected and conveyed off-site. Directing on-site runoff through landscaping for filtration of on-site runoff in this fashion is a well-established Best Management Practice for treating runoff from small developments such as the subject proposal. Therefore, the Commission finds the proposed project consistent with water quality provisions of the Coastal Act and LUP.

F. 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 30211 states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the

use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212 states:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) Adequate access exists nearby, or, (3) Agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30604(c) states:

(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

Policy 2.3 of the City's LUP states:

The shoreline, parklands, beaches and trails located within the City provide coastal access and a wide range of recreational opportunities in natural settings which include hiking, bird watching, walking, bicycling, educational study and picnicking. These recreational opportunities should be protected, and where feasible, expanded or enhanced as resources of regional, state and national importance.

Policy 2.9 of the City's LUP states:

Public recreational facilities throughout the City, including parking areas or facilities, shall be distributed, as feasible, to prevent overcrowding and to protect ESHA.

The subject site is just south of the San Elijo Lagoon and in this location, Canyon Drive serves as the first public roadway. Any development located between the nearest public road and the sea must be in conformity with the public access and public recreation policies of Chapter 3.

The project site is located between the first public road and the sea; in this case, the "sea" is San Elijo Lagoon. North of the subject site is the Ecological Reserve and, further north, the open waters of the lagoon itself. There are approximately five miles of public hiking trails throughout the lagoon and reserve, but, due to the sensitive nature of the lagoon and upland resources, public access to the trail system is limited to only a few street ends. Trail access is available near the subject property, approximately 500 ft. to the west along Holmwood Lane and approximately 1,500 ft. further to the east

along Canyon Drive. Thus, adequate access exists nearby consistent with Coastal Act Section 30212.

Providing additional public access from this site directly to the trail system would require extensive impacts to upland habitat. Moreover, no public access across through the site from areas to the south is possible as the site is surrounded by other developed sites, as well as steep slopes to the north. Therefore, the Commission finds it would be inappropriate to require vertical public access from the subject site to the trail system because of adverse impacts on habitat. The limited access to the lagoon helps minimize disturbance to habitat, consistent with Coastal Act Section 30212 and the City's LUP. The Commission finds the proposed development consistent with the cited access policies of the Coastal Act and with all other public access and recreation policies as well.

G. Local Coastal Planning

Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

The site is zoned and designated for low residential development at a maximum allowable density of three dwelling units per acre in the City of Solana Beach Zoning Ordinance. The subject development, as conditioned, is consistent with all applicable Chapter 3 policies of the Coastal Act and no adverse impacts to coastal resources are anticipated. Therefore, the Commission finds that the proposed development, as conditioned, will not prejudice the ability of the City of Solana Beach to prepare a certifiable Local Coastal Program.

H. 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 Solana Beach found that the development, as construction of a small structure, is categorically exempt from CEQA pursuant to Section 15303 of CEQA Guidelines (Cal. Code of Regs., tit. 14).

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing biological resources and water quality 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 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

- City of Solana Beach certified Land Use Plan
- Biological Survey by Blue Consulting Group dated April 29, 2020.
- Geotechnical survey by Geotechnical Exploration, Inc. dated May 8, 2019 and geotechnical survey addendum by Geotechnical Exploration, Inc. dated April 19, 2021