

CALIFORNIA COASTAL COMMISSION

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W8c

Filed: 10/15/21
180th Day: 4/15/22
Staff: M.Revell – LB
Staff Report: 2/17/22
Hearing Date: 3/09/22

STAFF REPORT: CONSENT CALENDAR

Application No.: 5-21-0317

Applicant: Jose Lynch

Agent: David York, York Architects

Location: 1602 No. El Camino Real, San Clemente, Orange County (APN No.: 692-371-13)

Project Description: At a single-family residence, removal of a 24-inch high wood retaining wall and 18-inch high brick wall, and construction of a new patio and in-ground spa and a 70-foot long, 42" high concrete retaining wall. Grading consists of approximately 220 cu.yds. of cut.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The applicant proposes to remove the existing 24-inch high wood retaining wall and 18-inch high brick wall that creates a five-foot wide terrace, and construct a new 70-foot long 42-inch high retaining wall and install a new concrete patio and in-ground spa in the back yard of an existing single family residence. The subject site is located within an existing developed area behind the first row of coastal bluff-fronting homes in the private gated community of Cyprus Shores in San Clemente, and is therefore not located between the first public road and the sea. The subject site is located more than 150 feet inland from the coastal bluff face, and approximately 300 feet from the nearest public beach, San Clemente State Beach. Based on the geotechnical information

provided by the applicant, the proposed development will be safe from coastal hazards for the life of the structure.

The proposed project raises issues concerning bluff top development and water quality. Commission staff recommends the Commission impose **Special Condition 1**, requiring two sets of plans approved by an appropriately licensed professional and the City of San Clemente to ensure consistency with all geotechnical recommendations. **Special Condition 2** would require the installation of non-invasive, drought-tolerant vegetation. Staff also recommends construction-related requirements and best management practices under **Special Condition 3** to minimize adverse construction-related impacts upon marine resources and for erosion control. Additionally, **Special Condition 4** would require that the applicant submit a final pool/spa protection plan to prevent geologic instability caused by potential leakage. Given that the applicant has chosen to implement the project on a lot in proximity to a coastal bluff despite risks from, for instance, erosion and slope instability, Staff recommends the imposition of **Special Condition 5**, which requires assumption of risk.

The applicant is in agreement with the staff recommendation. The standard of review is the Chapter 3 policies of the Coastal Act.

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EXHIBITS

Exhibit 1: Vicinity Map

Exhibit 2: Project Location

Exhibit 3: Project Plans

I. MOTION AND RESOLUTION

Motion:

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

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

Resolution:

The Commission hereby approves the Coastal Development Permit No. 5-21-0317 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 or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Submittal of Final Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director, two (2) sets of final plans, including architectural plans, foundation plans and grading plans for the conventional shallow foundation system that substantially conform with the plans submitted to the Commission on September 8, 2021, approved by an appropriately licensed professional and the City of San Clemente to ensure consistency with all geotechnical recommendations. The applicant 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 legally required.

2. Landscaping – Drought Tolerant, Non-Invasive Plants.

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, in a form and content acceptable to the Executive Director, two (2) full size sets of final landscaping plans, which shall include and be consistent with the following:

i. the entirety of the project site disturbed during construction shall be re-vegetated to avoid erosion and shall only consist of drought tolerant and non-invasive plants native to coastal Orange County and appropriate to the habitat type. Native plants shall be from local stock wherever possible. No permanent irrigation system shall be allowed on the subject slope; temporary, above-ground irrigation to allow the establishment of the plantings is allowed.

ii. Vegetated landscaped areas on the remainder of the site are encouraged to use native plant species; however, non-native drought tolerant non-invasive plant species may also be used in that area. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <https://ucanr.edu/sites/WUCOLS/files/183488.pdf> and <http://ucanr.edu/sites/WUCOLS/files/183488.pdf>).

B. The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan 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.

3. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.

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

- (a) No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
- (b) No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers.
- (c) Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
- (d) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- (e) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- (f) The applicants shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- (g) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- (h) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- (i) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- (j) The discharge of any hazardous materials into any receiving waters shall be prohibited.
- (k) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- (l) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity.

(m) The applicants 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.

(n) The applicants shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

(o) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

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

5. Assumption of Risk, Waiver of Liability and Indemnity. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from bluff and slope instability, erosion, landslides, floods, fires, or other natural hazards; (ii) to assume the risks to the applicant 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.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION AND LOCATION

The applicant proposes to remove the existing 24-inch high wood retaining wall and 18-inch high brick wall that creates a five-foot wide terrace, and construct a new 70-foot

long, 42-inch high retaining wall and install a new concrete patio and in-ground spa ([Exhibit 3](#)). The proposed development is located at 3820 Calle Tiara in the private gated community of Cyprus Shores in the City of San Clemente, Orange County ([Exhibits 1 & 2](#)). The subject site is designated RL (Residential Low Density) in the San Clemente certified Land Use Plan (LUP).

The 7,713 square-foot lot is currently developed with a 3,191 square-foot, 2-story, 20-foot high single-family residence with an attached 778-square foot 3-car garage that was approved by the Commission via a de minimis waiver, Coastal Development Permit No. 5-19-1510-W. It is located behind the first row of coastal bluff-fronting homes and a residential street and is not located between the first public road and the sea. The subject site is located more than 150 feet inland from the coastal bluff face, and approximately 300 feet from the nearest public beach, San Clemente State Beach.

The coastal bluffs in this part of San Clemente are not subject to direct wave attack because they are separated from the beach by the railroad tracks and railroad right-of-way. The railroad tracks have a rip-rap revetment which protects the tracks from erosion and wave overtopping. Though not subject to direct wave attack, the bluffs are subject to erosion caused by natural factors such as wind and rain, adverse bedding orientations, soils conducive to erosion and rodent burrowing. Bluffs are also subject to erosion from human activities, such as irrigation, improper site drainage, and grading.

Although the City of San Clemente has a certified Land Use Plan (LUP), an Implementation Plan has not yet been certified. The Commission's standard of review for the proposed development is the Chapter 3 policies of the Coastal Act, and the City of San Clemente's certified LUP may be used for guidance.

Hazards – Geology

The subject property is elevated slightly above the street, and an approximately 16-foot high, 2:1 (horizontal: vertical) slope descends from the rear of the property to Calle Ariana, which is the road below the rear yard. The applicant submitted a geotechnical engineering report prepared by Nova dated November 21, 2019 prepared in anticipation of the construction of the demolition and rebuild of the single family residence which was approved by the Commission in 2020 (Coastal Development Permit No. 5-19-1510-W), and addenda to that report specific to the construction of the backyard retaining wall and spa installation dated December 8, 2020, December 16, 2020, August 31, 2020, June 22, 2021, and September 8, 2021 in response to Commission staff's request for more information. Collectively, the reports presented findings and conclusions relevant to installation of a retaining wall and new spa in the rear of the property. The report findings noted that the site is underlain with Older Marine Terrace Deposits located approximately 8 feet beneath artificial fill likely placed previously during tract development in circa 1961, and that the existing retaining wall is deteriorated, failing, and needs to be replaced. The Commission geologist concurs with the findings of the applicant's geotechnical report.

Special Condition 1 requires the applicant to submit final design and construction plans including grading/drainage plans in substantial conformance with the preliminary plans submitted with evidence that an appropriately licensed professional and the City of San Clemente has approved all final design and construction plans and found them consistent with all the recommendations contained in the geologic engineering investigation and addenda. **Special Condition 2** requires the installation of non-invasive, drought-tolerant vegetation.

In order to minimize erosion and ensure stability of the project site, the project must also include adequate drainage and erosion control measures to address site drainage issues that could otherwise contribute to erosion and geologic instability. The applicant has indicated that best management practices including the use of gravel bag berms, silt fences, drain inlet protection, and other measures will be implemented during construction to control erosion. To ensure the proposed project incorporates and implements these measures to address erosion, water quality, and pollution, **Special Condition 3** requires that the applicant comply with construction-related best management practices (BMPs) to prevent construction materials, debris and waste from entering receiving waters, prevent spillage and/or runoff of demolition or construction related materials, and to contain sediment or contaminants associated with demolition or construction activities. **Special Condition 4** requires a spa protection plan prepared by an appropriately licensed professional that incorporates mitigation of the potential for geologic instability caused by potential leakage from the proposed spa.

Although the proposed project is located approximately 150 feet inland from a coastal bluff, this area could potentially be subject to potential damage or destruction from natural hazards, including slope instability, erosion, landslides, and earth movement given the general nature of coastal canyons in certain parts of the California coast and seismic activity of nearby faults. Thus, the Commission requires the applicant to assume the liability from these associated risks and therefore imposes **Special Condition 5**. Through the assumption of risk condition, the applicant acknowledges the nature of the geologic hazards that exist on the site and that may affect the safety of the proposed development.

B. DEVELOPMENT

As proposed, the development is located within an existing developed area and is compatible with the character and scale of the surrounding area. Therefore, the Commission finds that the development conforms with Sections 30250, 30251, and 30252 of the Coastal Act.

C. ACCESS

As conditioned, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Thus, as conditioned, the proposed development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

D. WATER QUALITY

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

E. LOCAL COASTAL PROGRAM

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The Commission certified the Land Use Plan (LUP) for the City of San Clemente on May 11, 1988. On August 2, 2019, a comprehensive update to the City's LUP was effectively certified by the Coastal Commission. The city is currently also working on submittal of an Implementation Plan to complete the LCP; however, at this time the city has no certified LCP.

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

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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

The City of San Clemente is the lead agency for purposes of CEQA compliance. As determined by the city, this project qualified for a statutory exemption as a ministerial project from CEQA under Section 15628. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the priority of use and public policies of the Coastal Act. As conditioned, there are

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no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA

APPENDIX A- SUBSTANTIVE FILE DOCUMENTS

1. City of San Clemente LUP
2. CDP 5-19-1510-W File
3. CDP Application 5-21-0129 File