
CALIFORNIA COASTAL COMMISSION

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W20c

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-21-0705

Co-Applicants: City of San Clemente; James & Michelle Hawkins

Location: Outlet of Montalvo Creek storm drain within Montalvo Canyon, San Clemente, Orange County

Project Description: Rehabilitate an existing earthen channel by excavating the channel and creating a new soft-bottom channel, install an approximately 55 ft.-long, 7 ft.-wide, 12 ft.-high gabion armoring system south of the channel against the bluff, backfill gravel in space between the proposed gabions and the bluff, install an approximately 12 ft.-long, 10 ft.-wide, 18 in.-high gabion lining at the upper streambed of the construction site, relocate and reconstruct the existing public trail north of the channel with concrete surface and footings that extend approximately 5 ft. below grade on either side of the realigned trail, remove an existing chain-link fence along and north of the existing public trail, implement a new public access signage plan, and revegetate realigned streambed and upstream bank with native riparian and upland vegetation.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

The proposed development is located at the outlet of the Montalvo Creek in the Montalvo Canyon located between 2406 Plaza a La Playa and 268 Avenida Montalvo in the City of San Clemente, Orange County ([Exhibit 1](#)). The canyon provides a critical function for stormwater flow. The Commission certified San Clemente's LUP in 1988 and approved a comprehensive update most recently in 2018. However, the City does not yet have a certified Local Coastal Program (LCP). Therefore, the Chapter 3 policies of the Coastal Act constitute the standard of review for the project, with the certified LUP used as guidance.

There is an existing public beach accessway which consists of a designated walkway from Avenida Montalvo that proceeds through a pedestrian access easement within the private, gated property at 268 Avenida Montalvo. The public accessway then descends vertically through the stairway of the private residential development and down the side of the bluff within the existing City drainage easement over the flood control channel. Once the accessway reaches the channel, a pedestrian bridge provides for the crossing of the channel. The accessway then funnels into a trail that runs along the northerly bank of the flood control channel and then reaches the ocean through a designated underpass that allows the public to reach the beach ([Exhibit 4](#)). The accessway does not extend inland further up the canyon.

The proposed project is to rehabilitate the existing earthen channel by excavating the channel and creating a new realigned soft-bottom channel, install approximately 55 ft.-long, 7 ft.-wide, 12 ft.-high gabion armoring system south of the channel against a 70 ft. high bluff, and backfill gravel in space between the proposed gabion and the bluff. An approximately 12 ft.-long, 10 ft.-wide, 18 in.-high gabion lining will be placed at the upper streambed of the construction site to slow the flow of the conveyance and protect the integrity of the overall gabion armoring system ([Exhibit 2](#)).

The City also proposes to realign and reconstruct the existing earthen public trail north of the channel with a concrete surface and footings that extend approximately 5 ft. below grade on either side of the realigned trail, and remove an existing chain-link fence along and north of the public trail. The trail is designed with concrete surface and subterranean footing to ensure durability of the trail from erosion during canyon flow events, as well as to prevent such erosion from undermining the trail subgrade material.

Lastly, the City proposes to revegetate the realigned streambed and upstream bank with native riparian and upland vegetation as a mitigation measure to offset the impact to environmentally sensitive habitat area, as further described in the "Biological Resources and Stream Alteration" section of this report.

The submitted construction and habitat mitigation area is located within portions of seven private properties (APNs: 060-192-19, 060-142-30, 060-142-13, 060-192-18, 060-142-12, 060-142-11, and 060-192-07), one property of the California State Parks (APN: 060-142-23) and one property of the Orange County Transportation Authority (APN: 000) ([Exhibit 3](#)). The Commission notes that the property owners at 2406 Plaza La

Playa (APN: 060-192-19) joined as co-applicants of this project, while the property owner at 268 Avenida Montalvo (APN: 060-142-30), California State Parks, and OCTA declined to be co-applicants but agreed to comply with the terms and conditions of any CDP issued for the property if any development approved by the permit is undertaken. The City has yet to acquire consent of the remaining five private property owners. Therefore, the Commission imposes **Special Condition 6**, which requires the City to demonstrate its authority to conduct the proposed project prior to issuance of the permit by acquiring consent of the remaining property owners.

Stormwater flow near the outlet of the Montalvo Creek has been eroding the face of the adjacent 70 ft. high bluff to the south of the creek, atop of which sit residential structures ([Exhibit 5](#)). On February 6, 2020, a localized slide of the bluff material into the creek conveyance area occurred and temporarily blocked the safe passage of pedestrians along the existing beach access trail ([Exhibit 6](#)). The purpose of the project is to alter the course of the channel to avoid further erosion of the bluff south of the creek, in order to protect the existing beach access trail. This project is not proposed to protect the condominium structure atop the bluff south of the creek.

The proposed gabion system is a shoreline protective device. Coastal Act Section 30235 provides that shoreline protection devices “shall” be permitted when required to protect coastal-dependent uses or existing structures in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. The Commission has applied Section 30235 as a more specific overriding policy that requires the approval of CDPs for construction intended to protect coastal-dependent uses or existing structures if other Chapter 3 policies are not satisfied. The Commission interprets “existing structure” in Section 30235 as a principal structure developed on or after January 1, 1977, the effective date of the Coastal Act.

In this case, the City identified that stormwater flow near the outlet of the Montalvo Creek has been eroding the face of the adjacent 70 ft. high bluff to the south of the creek, which directly supports a nine-unit condominium development atop the bluff. The nine-unit condominium was approved by the Commission in 1974 (Ref: CDP No. P-12-10-73-2354) but was constructed in 1979 after the enactment of the Coastal Act. The public access trail was constructed at the same time as the condominiums. Therefore, condominiums and the access trail are not considered “existing structures” for purposes of Section 30235 of the Coastal Act and thus are not entitled to a shoreline protective device pursuant to Section 30235.

However, as explained in the “Biological Resources and Stream Alteration” section of this report, the project is permissible pursuant to Section 30236 of the Coastal Act, which allows substantial alteration of streams when a project incorporates the best feasible mitigation measures and is limited to flood control projects where such protection is necessary for public safety or to protect existing development. Excavation of the existing channel and installation of gabion protection system will result in permanent impacts to the identified ESHA ([Exhibit 7](#)). Due to the height and mass of the bluff, continued erosion could cause a landslide and therefore poses a threat to public safety for those using the public accessway to the beach. The proposed gabion

protection system will serve to protect public access from flood-induced landslides of the bluff that could occur if stormwater directed through the channel reaches excessive heights. Therefore, the project is consistent with Section 30236, which allows channelizations, dams, or other substantial alterations of rivers or streams for flood control projects where such development is necessary for public safety.

Pursuant to Section 30236, the project must also incorporate the best mitigation measures feasible. Per the Commission's standard practice, impacts to stream/creek ESHA must be mitigated at a ratio of 3:1 for permanent impacts, and 1:1 for temporary impacts. This mitigation ratio is consistent with policy RES-63 of the City's certified LUP, which applies 3:1 mitigation ratio for impacts to ephemeral stream channels. The City's proposal will result in 0.04 acres of permanent impact area to ESHA ([Exhibit 7](#)). No impacts to native vegetation are anticipated within the staging or construction accessway for the project. Therefore, applying the 3:1 mitigation ratio to the riparian habitat, the City would be required to provide a total of 0.12 acres of mitigation for the new impacts to riparian habitat.

The City has submitted a habitat management plan, dated April 2022, that proposes to revegetate a total of 0.135 acres of the realigned streambed and upper bank area with native riparian and upland vegetation within the affected canyon ([Exhibit 7](#)). The Commission's senior ecologist Dr. Engel reviewed the submitted habitat management plan, and concurs that the proposal would meet the required 3:1 mitigation to offset the ESHA impact incurred by the project. The submitted habitat management plan proposes a five-year maintenance and monitoring period following completion of the revegetation, consistent with policy RES-64 of the City's certified LUP which requires a mitigation monitoring plan for a minimum of five years to ensure success of the restored habitat. Therefore, the Commission requires **Special Condition 3** to ensure the project's conformance with the submitted habitat management plan.

Staff recommends the Commission find that the project, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. Therefore, Commission staff recommends that, after a public hearing, the Commission approve this coastal development permit with **nine special conditions** including: 1) revised final plans 2) final coastal access signage plan; 3) conformance with the submitted habitat management plan; 4) resource agency approval; 5) construction BMPs; 6) demonstration of development authority; 7) bird monitoring and avoidance plan; 8) assumption of risk; and 9) reliance on permitted shoreline armoring. The motion and resolution are on **page 6** of this report.

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EXHIBITS

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

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – Project Site Parcel Map](#)

[Exhibit 4 – Montalvo Canyon Public Access Point](#)

[Exhibit 5 – Photos of Eroded Bluff and Trail](#)

[Exhibit 6 – Photos of 2020 Landslide](#)

[Exhibit 7 – Project Site Areas of Impact and Mitigation](#)

[Exhibit 8 – Alternatives Analysis](#)

[Exhibit 9 – Preliminary Coastal Access Signage Plan received on March 16, 2022.](#)

[Exhibit 10 – Site Visit Photos of the Designated Public Accessway](#)

MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 5-21-0705 pursuant to the staff recommendation.

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

Resolution:

The Commission hereby approves the Coastal Development Permit for the proposed project and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. 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.

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 applicants 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 applicants to bind

all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS

1. **Final Revised Plan.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the City of San Clemente shall submit, for review and written approval of the Executive Director, two (2) full-sized sets of final revised project plans for the proposed development. The final plans shall be in substantial conformance with the plans submitted with this application by Stantec dated 12/16/2020, and shall be revised to comply with the following:
 - a) The final project plans shall remove the new chain-link fence.
 - b) The color of the rock fill of the proposed gabion shall be restricted to earth tones including shades of green, brown, and gray, with no white or light shades and no bright tones.

The City shall undertake development in conformance with the approved final revised plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

2. **Final Coastal Access Signage Plan.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the City of San Clemente shall submit a final coastal access signage plan for review and written approval of the Executive Director consistent with the preliminary signage plan received by the Commission on March 16, 2022. Sign details shall include the size, location, materials, design, and text of all public access signs. The signs shall be designed to provide clear information without impacting public views and site character. All directional signs shall include the Commission's access "foot and wave" logo, and shall include the following:
 - A. A coastal access sign including a map identifying the alignment of the trail at the base of the proposed trail.
 - B. A coastal access sign including a map identifying the alignment of the trail at the entrance of the coastal access trail in front of 268 Avenida Montalvo.
 - C. A coastal access sign at the intersection of Avenida Calafia and Avenida Montalvo.

The City shall ensure that all approved signs are installed and maintained in perpetuity. Any signs that are damaged or stolen shall be promptly replaced within 90 days. The City shall undertake development in conformance with the approved final revised plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

- 3. Conformance with the Submitted Habitat Management Plan.** By acceptance of this permit, the City of San Clemente agrees to comply with the plan submitted to the Commission, titled "Habitat Management Plan; Montalvo Canyon Erosion Repair San Clemente, Orange County, California," by LSA, dated April 2022, which incorporates a total of 0.135 acres of revegetation of the realigned streambed and upper bank area with native riparian and upland vegetation, and a five-year maintenance and monitoring period immediately following completion of the revegetation. The City shall undertake development in conformance with the approved final plan unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.
- 4. Resource Agency Approval.** By acceptance of this permit, the City agrees to obtain all other State or Federal permits that may be necessary for any aspect of the proposed project. Any proposed changes to the approved final plan that may be required by any other agency shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
- 5. Storage of Construction Materials, Mechanized Equipment, and Removal of Construction Debris.** The permittees 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. All debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project;
 - C. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
 - D. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
 - E. The applicants shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
 - F. 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;

G. The applicant shall use plastic-free netting or no netting in a temporary erosion and sediment control BMPs.

H. The use of temporary erosion and sediment control products (such as fiber rolls, erosion control blankets, mulch control netting, and heavy-duty silt fences) that incorporate plastic netting shall be prohibited, to minimize wildlife entanglement and plastic debris pollution. Only 100% biodegradable (not photodegradable) natural fiber netting shall be allowed.

I. All stockpiles 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;

J. 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;

K. The discharge of any hazardous materials into any receiving waters is prohibited;

L. 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;

M. 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; and

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

6. **Demonstration of Authority to Conduct Proposed Development.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the City shall demonstrate its authority to conduct the proposed development. The demonstration shall take place in the form of written consent by the affected property owners (APNs: 060-142-11, 060-142-12, 060-142-13, 060-192-07 and 060-192-18) stating that they understand they must comply with the terms and conditions of CDP No. 5-21-0705 if any development approved by the permit is undertaken.
7. **Bird Monitoring and Avoidance Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the City of San Clemente shall submit to the Executive Director for review and written approval, a Bird Monitoring and Avoidance Plan and shall include but not be limited to the following provisions:

- A. Outside of bird nesting season (February 1 through August 31) the applicant shall retain the services of a qualified biologist, with qualifications acceptable to the Executive Director, to conduct surveys within 500 feet of the project site, to detect the presence and behavior of any potential sensitive birds, prior to commencement of any development and once weekly thereafter. Project activities shall not occur until any sensitive species (e.g., species listed on state or federal endangered/ threatened species lists, including but not limited to western snowy plovers and California least terns) have left the project area or its vicinity. In the event that any sensitive bird species are nesting, the qualified biologist shall require the permittee to cease work and shall immediately notify the Executive Director and local resource agencies. Project activities shall resume only upon written approval of the Executive Director. The permittee shall cease work should any breach in permit compliance occur or if any unforeseen sensitive habitat issues arise. The permittee shall immediately notify the Executive Director if the qualified biologist determines that any activities outside of the scope of this coastal development permit occur. If significant impacts or damage occur to sensitive wildlife species, the permittee shall submit a revised, or supplemental program to adequately mitigate such impacts. The revised, or supplemental, program shall be processed as an amendment to this coastal development permit.
- B. If project activities must occur during bird nesting season (February 1 through August 31), a qualified biologist, with experience conducting bird surveys, who has been approved by the Executive Director, shall conduct bird foraging, roosting, breeding behavior and nest surveys within fifteen (15) days prior to commencement of project activities, and once a week thereafter during construction, to detect any such activity within 500 feet of the project area. If active roosting, foraging, or breeding behavior of listed species and/or sensitive species is determined to be located within 500 feet of active project activities, all such activities shall cease until the qualified biologist has confirmed that the foraging or roosting bird(s) have left the project area or vicinity and/or listed or sensitive bird breeding behavior has ceased and the respective birds have left the project area or vicinity. If nesting listed or sensitive species are detected within 500 feet of the project area, avoidance measures (e.g., a suitable buffer zone, noise reduction BMPs, or postponing construction until the young have fledged the nest) approved by the Executive director and appropriate resource agency (e.g. CDFW, USFWS), shall be implemented to avoid the nest and associated nesting behaviors. If approved, a buffer zone may be established using temporary fencing, post/rope barrier, or similar. Avoidance buffers may be reduced where appropriate, at the discretion of the qualified biologist and guidance of the Executive Director and appropriate resource agencies.
- 8. Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the permittees acknowledge and agree (i) that the site may be subject to hazards from flooding, sea level rise, erosion and wave uprush; (ii) to assume the risks to the permittees and the properties that are 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.

- 9. Reliance on Permitted Shoreline Armoring.** No development except for the Montalvo Canyon coastal access trail shall rely on the permitted shoreline armoring structure (i.e. gabion protection system) to establish geologic stability or protection from hazards. Any future development and/or redevelopment adjacent to or nearby the project site shall be sited and designed to be safe without reliance on the authorized gabion protection system. In the event the armoring structure (i.e. gabion protection system) is no longer needed to protect the coastal access trail, the City shall apply for a CDP amendment with an alternatives analysis of the feasibility of removal, retention, or alteration of the gabion protection system. If the Commission approves such a CDP amendment, the City shall implement any removal or structural modifications authorized and required.

FINDINGS AND DECLARATIONS

A. Project Description and Background

The proposed development is located at the outlet of the Montalvo Creek in the Montalvo Canyon located between 2406 Plaza a La Playa and 268 Avenida Montalvo in the City of San Clemente, Orange County ([Exhibit 1](#)). The canyon provides a critical function for stormwater flow.

There is an existing public beach accessway which consists of a designated walkway from Avenida Montalvo that proceeds through a pedestrian access easement within the property at 268 Avenida Montalvo ([Exhibit 4](#)). The public accessway then descends vertically through the stairway of the private development and down the side of the bluff within the existing City drainage easement over the flood control channel. Once the accessway reaches the channel, a pedestrian bridge provides for the crossing of the channel. The accessway then funnels into a trail that runs along the northerly bank of the flood control channel and then reaches the ocean through a designated underpass that allows the public to reach the beach ([Exhibit 4](#)). The accessway does not extend inland further up the canyon.

The proposed project is to rehabilitate the existing earthen channel by excavating the channel and creating a new realigned soft-bottom channel, install approximately 55 ft.-long, 7 ft.-wide, 12 ft.-high gabion armoring system south of the channel against a 70 ft. high bluff, and backfill gravel in space between the proposed gabion and the bluff. An approximately 12 ft.-long, 10 ft.-wide, 18 in.-high gabion lining will be placed at the

upper streambed of the construction site to slow the flow of the conveyance and protect the integrity of the overall gabion armoring system. The City also proposes to realign and reconstruct the existing earthen public trail north of the channel with concrete surface and footings that extend approximately five ft. below grade on either side of the realigned trail, and remove an existing chain-link fence along and north of the public trail. The trail is designed with concrete surface and subterranean footing to ensure durability of the trail from erosion during canyon flow events, as well as to prevent such erosion from undermining the trail subgrade material ([Exhibit 2](#)).

Lastly, the City proposes to revegetate the realigned streambed and upstream bank with native riparian and upland vegetation as a mitigation measure to offset the impact to environmentally sensitive habitat area, as further described in the “Biological Resources and Stream Alteration” section of this report.

The construction and habitat mitigation area are located within portions of seven private properties (APNs: 060-192-19, 060-142-30, 060-142-13, 060-192-18, 060-142-12, 060-142-11, and 060-192-07), one property of the California State Parks (APN: 060-142-23) and one property of the Orange County Transportation Authority (APN: 000) ([Exhibit 3](#)). The Commission notes that the property owners at 2406 Plaza La Playa (APN: 060-192-19) signed up as co-applicants of this project, while the property owner at 268 Avenida Montalvo (APN: 060-142-30), California State Parks, and OCTA declined to be co-applicants but agreed to comply with the terms and conditions of any CDP issued for the property if any development approved by the permit is undertaken. The City has yet to acquire consent of the remaining five private property owners. Therefore, the Commission imposes **Special Condition 6**, which requires the City to demonstrate its authority to conduct the proposed project prior to issuance of the permit by acquiring written consent of the remaining property owners.

Construction equipment is expected to consist of hand-tools, hand-operated compactors, and a compact excavator. Standard dump trucks will approach the site for the haul-off of export material and the delivery of project materials. A crane will be used to lower material and equipment into the project area and to remove and haul-off material. Construction activities are anticipated to last 60 working days. Construction will take place outside of the rainy season and flow diversions are not anticipated.

Stormwater flow near the outlet of the Montalvo Creek has been eroding the face of the adjacent 70 ft. high bluff to the south of the creek, atop of which supports residential structures ([Exhibit 5](#)). On February 6, 2020, a localized slide of the bluff material into the conveyance area occurred and temporarily blocked the safe passage of pedestrians along the existing beach access trail ([Exhibit 6](#)). The City identified that the purpose of the project is to alter the course of the channel to avoid further erosion of the bluff south of the creek, in order to protect the beach access trail, the railroad, and the sewer and recycled water lines which run parallel to the shoreline near the railroad underpass. However, the City did not provide evidence to support that a potential landslide would pose a threat to the railroad and the utility lines, which lie further away from the bluff and do not directly face the scoured side of the bluff, as opposed to the beach access trail,

which is directly vulnerable. Therefore, the Commission considers the purpose of the project to protect the safety of members of the public using the beach access trail only.

Standard of Review

The Commission certified the City's LUP in 1988, and approved a comprehensive update most recently in 2018. However, the City does not yet have a certified Local Coastal Program (LCP). Therefore, the Chapter 3 policies of the Coastal Act constitute the standard of review for the project, with the certified LUP used as guidance.

B. Biological Resources and Stream Alteration

Section 30107.5 of the Coastal Act states:

"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30236 of the Coastal Act governs flood control projects, stating:

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

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.

City of San Clemente LUP Policies

RES-62 ESHA Mitigation. Require mitigation in the form of habitat creation or substantial restoration for allowable impacts to ESHA and other sensitive resources that cannot be avoided through the implementation of siting and design alternatives. Priority shall be given to on-site mitigation. Off-site mitigation measures shall only be approved when it is not feasible to fully mitigate impacts on-site. Mitigation shall not substitute for implementation of a project alternative that would avoid impacts to ESHA.

RES-63 ESHA Mitigation Ratios. Apply the following mitigation ratios for allowable impacts to upland vegetation: 4:1 for Vernal Pools; 3:1 for Coastal Sage Scrub, California Buckwheat Scrub, and Arroyo Willow Thickets; 3:1 for Ephemeral Stream Channels; and 3:1 for Lemonade Berry Scrub, Quailbush Scrub, Giant Wild Rye Grassland, Maritime Succulent Scrub, Native Grassland, and Southern Mixed Chaparral. The ratios represent the acreage of the area to be restored/created to the acreage impacted.

RES-64 Habitat Mitigation Plan and Monitoring Plan. Development that would result in impacts to ESHA or Significant Biological Resources shall include a Mitigation Plan and a Mitigation Monitoring Plan as a filing requirement for a Coastal Development Permit application. Mitigation Monitoring Plans shall be for a minimum of 5 years of monitoring to ensure success criteria is met.

Coastal Act Section 30236 authorizes flood protection projects in riverine systems where no other method for protecting existing structures in the flood plain is feasible and if the project is necessary for public safety or to protect existing development, and only where such projects incorporate the best mitigation measures feasible. Other Coastal Act provisions are also applicable to such a determination (e.g., habitat protections, public recreational access, view protections, etc.), and Section 30236 cannot be applied in isolation. The other Coastal Act policies generally require finding the least environmentally damaging feasible alternative, in addition to specific remedies depending on the facts. Also important to that calculation is the protection of coastal waters, including rivers, lagoons, sensitive habitats, and the marine environment by the Coastal Act Sections 30231 and 30240.

ESHA in the Project Area

Applying the definition of ESHA to a specific habitat invokes a three-part test (1a, 1b, and 2):

1a. Is the habitat rare or does the habitat support rare plants or animals?

1b. Is the habitat, or the plant or animal species in the habitat, especially valuable because of its “special nature” or because it plays an “especially valuable” role in a habitat or ecosystem?

2. Lastly, is the habitat, or the rare plant or animal species in the habitat, easily disturbed or degraded?

Montalvo Creek is an ephemeral stream within Montalvo Canyon. The creek section subject to the proposed project is located at the toe of a steep cliff before the creek crosses under the railroad and into the Pacific Ocean. This section of the creek is characterized by a narrow sandy bottom bound on the east by steep cliffs and on the west by a narrow bank and sandy terrace that supports primarily weedy non-native and invasive species. The few scattered native species include quailbush (*Atriplex lentiformis*), lemonade berry (*Rhus integrifolia*) and Menszie's goldenbush (*Isocoma menziesii*). This section of Montalvo Creek does not support associated riparian habitat; however, the Commission's senior ecologist, Dr. Jonna Engel, found that the streambed and bank provide especially valuable linkage and corridor habitat for numerous sensitive species that move among and between marine and terrestrial habitats. In addition, streams and creeks are easily disturbed or degraded by human activities and development such as grading. For these reasons, Dr. Engel found that the streambed and bank of Montalvo Creek in the project area rise to the level of ESHA.

The Coastal Act and San Clemente's LUP establish high standards for protection of areas that are identified as ESHA. Only resource-dependent uses, such as habitat restoration or nature study, are allowed within ESHA, and all development within or adjacent to ESHA must be sited and designed to prevent significant disruption or degradation of the ESHA. Under the Coastal Act, if an ESHA is identified, it cannot be relocated, and impacts to it must be avoided, unless the proposed development is “a use dependent on the resource.”

Allowable Use and Alternatives

As discussed, the purpose of the project is to alter the course of the channel to avoid further erosion of the bluff south of the creek, in order to protect the beach access trail. The City submitted an alternatives analysis dated August 19, 2021, which analyzed seven project alternatives, including a no project alternative, which were screened against seven project constraints ([Exhibit 8](#)). The analysis concluded that all of the considered project alternatives except for the proposed gabion protection system would be infeasible due to various concerns related to public safety, confined construction area, durability of the project design, and bluff instability. In addition, the City identified that the currently proposed location of the realigned trail would be the farthest feasible location from the bluff considering the City's public access and drainage easement with the private property owner and the northern steep slopes that are supported by an existing retaining wall north of the channel. Therefore, the proposed project meets the definition of a flood control project where no other method for protecting public safety in the flood plain is feasible as prescribed in Section 30236 of the Coastal Act.

Excavation of the existing channel and installation of the gabion protection system will result in permanent impacts to the above-identified ESHA ([Exhibit 7](#)). However, stormwater flow at the outlet of Montalvo Creek has been eroding the face of the adjacent 70 ft. high bluff to the south of the creek. Due to the height and mass of the bluff, continued erosion could cause a landslide and therefore poses a threat to public safety for those using the public accessway.

The proposed gabion protection system will serve primarily to protect the public access trail, which is proposed to be relocated as far from the bluff as feasible, from flood-induced landslides of the bluff that could occur if stormwater directed through the channel reaches excessive heights. Therefore, the project meets prong number two under Section 30236, which allows flood control projects where such protection is necessary for public safety.

Mitigation

Pursuant to 30236, the project must also incorporate the best mitigation measures feasible. Per the Commission's standard practice, stream/creek ESHA must be mitigated at a ratio of 3:1 for permanent impacts, and 1:1 for temporary impacts. This mitigation ratio is consistent with policy RES-63 of the City's certified LUP, which applies 3:1 mitigation ratio for impacts to ephemeral stream channels. The City's proposal involves 0.04 acres of permanent impact area to ESHA ([Exhibit 7](#)). No impacts to native vegetation are anticipated within the staging or construction accessway for the project. Therefore, applying the 3:1 mitigation ratio to the riparian habitat, the City would be required to provide a total of 0.12 acres of mitigation for the new impacts to riparian habitat.

The City has submitted a habitat management plan, dated April 2022, that proposes to revegetate a total of 0.135 acres of the realigned streambed and upper bank area with native riparian and upland vegetation within the affected canyon ([Exhibit 7](#)). The Commission's senior ecologist Dr. Engel reviewed the submitted habitat management plan, and concurs that the proposal would meet the required 3:1 mitigation to offset the ESHA impact incurred by the project. The submitted habitat management plan proposes a five-year maintenance and monitoring period following completion of the revegetation, consistent with policy RES-64 of the City's certified LUP which requires a mitigation monitoring plan for a minimum of five years to ensure success of the restored habitat. Therefore, the Commission requires **Special Condition 3** to ensure the project's conformance with the submitted habitat management plan.

Other Necessary Habitat Protection Measures

As an additional measure to ensure that the applicant avoids adverse impacts to all other sensitive species, **Special Condition 4** also requires that the City comply with all permit requirements and mitigation measures required by State and Federal agencies, with respect to preservation and protection of water quality and marine environment. Any change in the approved project that may be required by the above-stated agencies

shall be submitted to the Executive Director in order to determine if the proposed change shall require an amendment to this CDP No. 5-21-0705.

Since construction activities may extend into the bird breeding and nesting season, bird surveys must be conducted. To avoid impacts to listed and sensitive bird species, a qualified biologist shall conduct pre-construction surveys within 500 ft. of the project site, whether during or outside the breeding and nesting bird season, to detect and document roosting, foraging, breeding behavior or nesting of any listed or sensitive bird species within 15 days of the anticipated construction start date. If active roosting, foraging, or breeding behavior of listed or sensitive species is detected, all such activities shall cease until the qualified biologist has confirmed that the foraging or roosting bird (s) have left the project area or vicinity and/or listed or sensitive bird breeding behavior has ceased and the respective birds have left the project area. If an active nest of a listed or sensitive species is found, avoidance measures must be implemented to avoid the nest and associated nesting behaviors, including establishment of a suitable buffer zone or postponing construction until the young have fledged the nest. A buffer zone may be established using temporary fencing, post/rope barrier, or similar materials. Avoidance buffers may be reduced where appropriate, at the discretion of the biologist and guidance of the permitting agencies.

To memorialize the recommended bird monitoring and avoidance requirements, **Special Condition 7** specifies time and operation constraints to avoid adverse impacts on listed and sensitive bird species activities and nesting. As conditioned, the Commission finds that the project is consistent with 30231, 30236, and 30240 of the Coastal Act and Policies RES-62-64 of the City's certified Land Use Plan.

C. Coastal Hazards and Visual Resource

Section 30235 of the Coastal Act states, in pertinent part:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

Section 30251 of the Coastal Act states, in pertinent part:

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

Section 30253 of the Coastal Act states, in pertinent part:

New development shall do all of the following:

- (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.

City of San Clemente LUP Policies

VIS-1 Visual Character and Aesthetic Resources Preservation. New development shall be designed to preserve the visual character and aesthetic resources of the City's coastal zone including preservation of the physical features of coastal bluffs and canyons, and where feasible, enhance and restore scenic and visual qualities of the coastal zone, including to and along the ocean and coastal bluffs, visually significant ridgelines, and coastal canyons, open spaces, prominent, mature trees on public lands, and designated significant public views (as identified on Figure 6-1 Scenic Gateways and Corridors, Figure 6-2-A Public View Corridors and Figure 6-2-B Public View Corridors). Where protection of visual character and aesthetic resources is not feasible, impacts should be mitigated.

HAZ-3 Development Exposure to Hazards. Minimize the exposure of new development to geologic, coastal (including inundation from sea level rise, wave up-rush, storm surge, and stream flooding), and fire hazards. Ensure that new bluff, canyon, or shoreline development will be safe from, and will not contribute to, geologic instability, erosion or other hazards over the life of the development, taking into account the effects of sea level rise on all relevant hazards. Ensure that new development does not contribute to the destruction of the site or the surrounding area.

HAZ-18 Limits on Bluff or Shoreline Protective Devices. Limit the use of protective devices to the minimum required to protect coastal-dependent uses, or existing structures or public beaches in danger of erosion, unless such devices are otherwise consistent with the public access and recreational policies of the Coastal Act and all relevant policies of the LCP. Protective devices shall be permitted when required to serve coastal dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Any approved protective devices shall also be designed to avoid, or mitigate where unavoidable, impacts on public access and recreation, habitat, scenic views, beach width and other coastal resources, and they shall not substantially impair public trust resources.

HAZ-19 No Right to Future Bluff or Shoreline Protective Device for New Development. New development, including Major Remodels, shall be sited and

designed to avoid the need for shoreline protective devices over the life of the structure(s)....

HAZ-21 Restrict Bluff/Canyon/Shoreline Retention Devices. When consistent with Policy GEN-8, the construction, reconstruction, expansion, and/or replacement of a bluff/canyon/ shoreline protective device, (i.e. revetments, breakwaters, groins, seawalls, bluff protective devices, deep piers/caissons, or other artificial structures as defined in Chapter 7 that alter natural landforms or alter bluff/canyon/shoreline processes), for coastal erosion control and hazards protection, are prohibited, except pursuant to a CDP where it can be shown that either the device fully complies with all relevant LCP policies and the coastal access and recreation policies of the Coastal Act, or all of the following are met:

a. The bluff, canyon or shoreline protective device is required for the protection of coastal-dependent uses, existing structure(s) (including a principal structures or residence or public beaches in danger from erosion,...

HAZ-30 Development and Uses in Hazard Areas. New development or re-development and land uses shall:

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

7.2 DEFINITIONS

“SHORELINE PROTECTIVE DEVICE” includes any type of shoreline armoring or protective structures, such as seawalls, revetments, riprap, breakwaters, groins, bluff protective devices, deep piers/caissons, bulkheads, or other structures built for the purpose of protecting land or structures against sea level rise, coastal hazards, and erosional forces.

Coastal Act Section 30253 prohibits development that would “in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.” Coastal Act Section 30251 requires that development minimize alteration of natural landforms (such as coastal bluffs), and also requires that scenic and visual qualities be protected. The Coastal Act limits construction of bluff protective devices because they tend to have a variety of negative impacts on coastal resources including adverse effects on shoreline sand supply, public access, scenic views, and natural landforms. The City’s certified LUP also includes similar policies that require landform alteration be minimized, and that scenic qualities be protected. The LUP only allows for the construction of shoreline protective devices to protect coastal-dependent uses, existing structures, or beaches in danger of erosion (Ref: LUP Policies HAZ-18, and HAZ-21).

In this case, the proposed gabion protection system would substantially alter natural landforms along the mouth of the channel and would prevent natural erosion processes, and would constitute a shoreline protective device, inconsistent with Section 30251 and 30253 of the Coastal Act and the hazard policies cited above.

Coastal Act Section 30235 provides that shoreline protection devices “shall” be permitted when all of the following four criteria are met: (1) there is an existing structure, public beach area, or coastal dependent use; (2) the existing structure, public beach area, or coastal dependent use is in danger from erosion; (3) shoreline-altering construction is required to protect the existing threatened structure or public beach area, or to serve the coastal dependent use; and (4) the required protection is designed to eliminate or mitigate its adverse impacts on shoreline sand supply. The Commission has interpreted Section 30235 as a more specific overriding policy that requires the approval of CDPs for construction intended to protect coastal-dependent uses or existing structures if all other Chapter 3 policies are satisfied.

The first criterion of Section 30235 for determining whether shoreline protection shall be permitted is if there is an existing structure, public beach area, or coastal dependent use. The Commission interprets “existing structure” in Section 30235 as a principal structure developed on or after January 1, 1977, the effective date of the Coastal Act.

In this case, the City identified that stormwater flow near the outlet of the Montalvo Creek has been eroding the face of the adjacent 70 ft. high bluff to the south of the creek, which directly supports a nine-unit condominium development atop the bluff. The nine-unit condominium was approved by the Commission in 1974 (Ref: CDP No. P-12-10-73-2354) but was constructed in 1979 after the enactment of the Coastal Act. The public access trail was constructed at the same time as the condominiums. Therefore, the condominiums and the access trail are not considered “existing structures” for purposes of Section 30235 of the Coastal Act and thus are not entitled to a shoreline protective device pursuant to Section 30235.

The proposed shoreline protective structure (gabion protection system) is designed to protect the coastal access trail from landslide. In other words, this project is not proposed to protect the condominium structure. In addition, this CDP does not obligate the City to maintain the gabion protection system to provide incidental protection of the condominium structure from erosion or other such hazards in the area. Therefore, the Commission imposes **Special Condition 9**, which prohibits any development except for the Montalvo Canyon coastal access trail from relying on the permitted shoreline armoring structure (i.e. gabion protection system) to establish geologic stability or protection from hazards. **Special Condition 9** also provides, in the event the gabion protection system is no longer needed to protect the coastal access trail, the City must apply for a CDP to remove the gabion protection system.

With regard to visual qualities, Coastal Act Section 30251 provides that development shall be visually compatible with the character of surrounding areas and where feasible, restore and enhance visual quality in visually degraded areas. The City provided an alternatives analysis dated August 19, 2021, which analyzed six project alternatives

which were screened against seven project constraints, one of which included natural aesthetics ([Exhibit 8](#)). The analysis concluded that the current proposal, which includes realignment of the existing earthen channel, construction of a gabion armoring system, and reconstruction of the public trail, to minimize the erosive effects of flow in the existing channel, is the most visually superior alternative. To further reduce the amount of visual intrusion, the City considered an alternative to cover the tops of the exposed gabions with soil material and planted vegetation. However, this alternative was determined to be infeasible due to gabion stability concerns. The soil required to support vegetation as well as the vegetation itself would promote the retention of water in and around the metal wires that form the gabion cages, which could result in corrosion of the metal wires ultimately resulting in a failure of the gabions.

Furthermore, the City's initial proposal included removal of the existing chain-link fence and installation of a new chain-link fence along and north of the realigned public trail. However, Section 30251 of the Coastal Act provides, where feasible, to restore and enhance visual quality in visually degraded areas. To enhance the visual quality of the Montalvo Canyon storm drain outlet, the City has eliminated the new chain-link fence from the proposal. The Commission imposes **Special Condition 1** to memorialize the City's commitment and require the City to submit a revised final plan that eliminates the new chain-link fence. **Special Condition 1** also restricts the color of the rock fill of the proposed gabion to earth tones, thereby blending the look of the gabion with the bluff. In addition, as previously discussed, the City proposes revegetation of the realigned conveyance area as well as upstream bank with native riparian and upland vegetation, thereby further mitigating the visual resource impacts of the proposed project within Montalvo Canyon. The proposed and conditioned mitigation measures do reduce the visual resource impacts of the project. However, the proposed shoreline protective device will still degrade the existing natural landscape of the canyon and bluff.

The Coastal Act recognizes that certain types of development, such as the proposed project, may involve risk. The Commission finds that due to the uncertainties associated with future storm waves, surges, and erosion, the co-applicants must assume these risks as a condition of approval. Therefore, **Special Condition 8** requires the permittees to acknowledge these risks and waive any claim of liability against the Commission for damage to life or property that may occur as a result of these hazards. The permittees' assumption of risk will demonstrate that the permittees are aware of and appreciate the nature of the hazards which exist on the site and which may adversely affect the stability or safety of the proposed development.

Therefore, the Commission finds that the proposed project, while inconsistent with Section 30235 and 30253 of the Coastal Act and hazard policies of the LUP, which prohibit construction of shoreline protective devices except under specific circumstances that are not met with this project and require minimization of landform alteration, is nevertheless permissible under Section 30236 of the Coastal Act. Further, the project is not visually compatible with the character of surrounding areas and is inconsistent with Section 30251 of the Coastal Act and the visual resource protection policies of the LUP. However, the project and associated visual resource impacts are permissible under Section 30236 of the Coastal Act.

D. Public Access and Recreation

Section 30210 of the Coastal Act states:

“In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.”

Section 30212 of the Coastal Act states, in part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects...

City of San Clemente LUP Policies

PUB-36 Coastal Public Access. Establish, protect, maintain, and, where feasible, expand and enhance a system of public coastal access to the shoreline, beaches, tidelands, and recreational facilities...

PUB-39 New Development Public Access Requirements. New development proposed on property lying between the first public roadway and the shoreline shall provide both physical and visual public access to the shoreline and along the coast in proportion to the public access impact resulting from the new development...

As discussed previously, the proposed project includes realignment and reconstruction of an existing public beach access trail that leads to a designated railroad underpass that allows the public to reach the beach ([Exhibit 2](#)). The proposed project would improve the durability of the trail with concrete surface and footing, as opposed to the existing dirt path that experienced severe erosion ([Exhibit 5](#)). The project would also alter the course of the storm drain outflow to avoid further erosion and collapse of the bluff south of the creek and the trail, thereby ensuring the safety of the public trail users. Construction activities are anticipated to last 60 working days.

The subject trail is one of the principal beach access points in San Clemente, as identified in the certified LUP ([Exhibit 4](#)). The access point was created as a result of the nine-unit condominium development at 268 Avenida Montalvo (Ref: CDP No. P-12-10-73-2354), which dedicated an easement for a public accessway over the driveway and down the bluff side stairs of the condominium to the canyon pathway to the beach. However, this public accessway is very difficult to find because there is no existing signage to identify the accessway and the accessway goes through the private condominium development that does not look public whatsoever. Without any signage, it is nearly impossible for members of the public to perceive that they can go through the unsigned, seemingly private pedestrian-door beside the vehicle gate, the designated crosswalk-like pathway that only says private property on either side of the pathway, and the stairway down the canyon that is shared as rear access to individual condominium units ([Exhibit 10](#)). Even though there are nearby beach access points

available at Riviera (railroad underpass, 500 ft. upcoast) and Calafia State Park (at grade railroad crossing, 100 ft. downcoast), this Montalvo Canyon accessway is an important public access point that has been effectively privatized since the creation of the accessway in 1979.

In an effort to address this issue, the City proposes to implement a new public access signage plan for the Montalvo Canyon beach access trail. Through cooperation with Commission staff, the City has provided a preliminary signage plan indicating two new plain coastal access signs at the entrance of 268 Avenida Montalvo and at Lobeiro Overlook Park ([Exhibit 9](#)), and agreed to install additional signs, including two coastal access signs at the base of the proposed trail and at the entrance of 268 Avenida Montalvo that visualize the map of the trail for clear wayfinding and another plain coastal access sign at the intersection of Avenida Calafia and Avenida Montalvo. The City has not yet supplied a final signage plan. In order to memorialize the City's commitment, the Commission requires **Special Condition 2** requiring the City to submit a final signage plan that achieves the purpose of improving public accessibility of the Montalvo Canyon access point.

The Commission finds the proposed development will not create any new adverse impact on coastal access and recreation. The proposed development does not pose significant adverse impacts to existing public access and recreation. In addition, the Commission finds that the project would improve the safety and accessibility of the beach access trail and will contribute to enhancement of public access and recreation opportunities in the area. Therefore, the project is consistent with Section 30210 and 30212 of the Coastal Act and the LUP policies regarding public access and recreation.

E. Water Quality

Section 30230 of the Coastal Act states:

“Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.”

Section 30231 of the Coastal Act states:

“The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.”

City of San Clemente certified LUP states:

HAZ-46 Bluff, Canyon and Shoreline Landscaping. All landscaping for new bluff, canyon or shoreline development or redevelopment shall consist of native, non-invasive, drought-tolerant, and fire-resistant species. Any permanent irrigation system shall be low volume (drip, micro jet, etc.) and shall only be permitted on the street facing portion of the lot. Irrigation systems along the bluff, canyon or shoreline portion of a lot shall only be allowed on a temporary basis for initial plant establishment and shall be removed after vegetation has established. Excessive irrigation on bluff and canyon lots is prohibited.

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

The above policies of the Coastal Act and the LUP require protection of marine resources, including the protection of coastal waters by controlling runoff and preventing spillage of hazardous materials.

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species' ability to see food in the water column.

The City identified that construction equipment is expected to consist of hand-tools, hand-operated compactors, and a compact excavator. Standard dump trucks will approach the site for the haul-off of export material and the delivery of project materials, and a crane will be used to lower material and equipment into the project area and to remove haul-off material. The Commission finds there is possibility that the ephemeral stream and upland environment surrounding Montalvo Canyon could be adversely impacted as a result of the project activities by unintentional introduction of sediment or debris. To ensure that construction material, debris, or other waste associated with the project activities does not enter the water, **Special Condition 5** outlines construction-related requirements to provide for the safe storage of construction materials and removal of debris from the area.

The Commission finds that the proposed project, as conditioned, is consistent with Coastal Act and LUP policies related to protection and enhancement of water quality.

F. 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, and certified an amendment approved in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan (IP) portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City re-submitted an IP on June 3, 1999, but withdrew the submittal on October 5, 2000. Most recently in 2018, the City certified an LUP amendment for a comprehensive update of the LUP. The City is currently also working on resubmittal of an IP, however, there is no certified LCP at this time.

As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified LUP for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

G. California Environmental Quality Act

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by findings showing the approval, 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 Commission’s regulatory program for reviewing and granting CDPs has been certified by the Resources Secretary to be the functional equivalent of CEQA. (14 CCR § 15251(c).)

In this case, the City of San Clemente is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of San Clemente determined that the proposed development is exempt under Section 15302, Class 2, which exempts from CEQA requirements the replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment, either individually or cumulatively with other past, present, or reasonably foreseeable probable future projects. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Coastal Development Permit Application No. 5-21-0705 and associated file documents.