

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: CONSENT CALENDAR

Application No.: 5-21-0004

Applicant: Justin and Alexandra Kozik

Agent: Rory Foubister, Foubister Architects

Location: 229 Avenida Monterey, City of San Clemente, Orange County (APN: 058-104-03)

Project Description: Construction of a 22-ft. high, 3,953 sq. ft. duplex with a 664 sq. ft. ADU located above a four-car garage; patios and landscaping on a vacant coastal canyon lot.

SUMMARY OF STAFF RECOMMENDATION

The proposed project is the construction of a new 3,953 sq. ft. duplex with an attached 4-car garage and a 664 sq. ft. attached Accessory Dwelling Unit (ADU) located above the garage on the second floor, in addition to new hardscape improvements and landscaping on a vacant coastal canyon lot. The project is located directly adjacent to Trafalgar Canyon, one of seven coastal canyons in San Clemente identified in the certified Land Use Plan (LUP) as containing potentially sensitive habitat. In addition, the proposed development is located adjacent to a drainage feature at the bottom of the canyon associated with Segunda Deshecha Canada, which is one of two main streams that flow through the City of San Clemente. Primary issues associated with this development include geologic hazards and protection of potentially sensitive habitat areas.

As proposed, the residential structure and backyard concrete patio satisfy setback requirements for coastal canyon and riparian development as outlined in the LUP; the development conforms to the minimum 15 ft. setback from the line of native vegetation along the slope, and is setback 50 feet from riparian vegetation. In addition, since the proposed project is located adjacent to a coastal canyon, the applicant has contacted the Orange County Fire Authority (OCFA) for review and approval of the development, and the

5-21-0004 (Kozik)

applicant has provided written evidence from OCFA that the proposed development is in conformance with OCFA fuel modification requirements for canyon sites. Finally, the proposed development is located within an existing developed area and is compatible with the character and scale of the surrounding area. Based on the geotechnical information provided by the applicant, the proposed development will be safe for the anticipated life of the structure.

Staff recommends **APPROVAL** of the proposed project with six special conditions: 1) submittal of revised final plans; 2) conformance with geotechnical recommendations; 3) assumption of risk; 4) landscaping; 5) compliance with construction-related best management practices (BMPs); and 6) Orange County Fire Authority (OCFA) approval.

The standard of review is Chapter 3 of the Coastal Act, and San Clemente's certified LUP may be used as guidance.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION	4
II. STANDARD CONDITIONS.....	4
III. SPECIAL CONDITIONS.....	5
IV. FINDINGS AND DECLARATIONS	8
A. PROJECT DESCRIPTION & LOCATION.....	8
B. COASTAL HAZARDS	11
C. PUBLIC ACCESS & RECREATION.....	11
D. MARINE RESOURCES AND WATER QUALITY.....	12
E. LOCAL COASTAL PROGRAM.....	12
F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)	12

EXHIBITS

- Exhibit 1 – Vicinity Map**
- Exhibit 2 – Site Plan**
- Exhibit 3 – Project Plans**
- Exhibit 4 – Canyon Edge Determination**
- Exhibit 5 – Riparian Setback**

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 of 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 a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following 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 architectural plans, foundation plans, and grading plans that substantially conform with the plans submitted to the Commission on April 14, 2022, but revised to include the following:

A. The “edge of canyon” line shall be shown on the plans consistent with the Commission’s canyon edge determination shown in Exhibit 4.

B. No portion of the residential structure or the deck/patio shall encroach into the 15-foot setback from coastal sage scrub in the rear yard.

The permittee 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. Conformance with Geotechnical Recommendations. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for the Executive Director’s review and approval, along with a set of final plans, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans including foundation and grading/drainage plans and certified that each of those final plans is consistent with all the recommendations contained in the geologic engineering investigations.

The permittee shall undertake development in 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 permit amendment unless the Executive Director determines that no amendment is legally required.

3. Assumption of Risk, Waiver of Liability and Indemnity. By acceptance of this permit, the permittee acknowledges and agrees (i) that the site may be subject to hazards from bluff and slope instability, erosion, and landslides; (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.

4. Landscaping – Drought Tolerant, Non-Invasive Plans.

- 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. Vegetated landscaped areas within the canyon portion 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 within the canyon portion of the project site; temporary, above-ground irrigation to allow the establishment of the plantings is allowed.
 - ii. Vegetated landscaped areas on the street-side of the residence 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 on the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: (<http://ucanr.edu/sites/WUCOLS/files/183514.pdf> and <http://ucanr.edu/sites/WUCOLS/files/183488.pdf>)).
 - iii. Use of reclaimed water for irrigation is encouraged. If using potable water for irrigation, only drip or micro-spray irrigation systems may be used. Other water conservation measures shall be considered, such as weather based irrigation controllers.
- 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-issued amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

5. 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. 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 permittee shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- g. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- h. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- i. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- j. The discharge of any hazardous materials into any receiving waters shall be prohibited.
- k. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- l. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants

associated with demolition or construction activity, shall be implemented prior to the on-set of such activity.

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

6. Orange County Fire Authority Approval. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall provide to the Executive Director a copy of a permit issued by the Orange County Fire Authority (OCFA), or letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the OCFA. Such changes shall not be incorporated into the project until the applicant obtains a Commission-issued amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION & LOCATION

The applicant proposes to construct a new 22-ft. high, 3,953 sq. ft. duplex and attached 664 sq. ft. ADU above a four-car garage attached to the duplex, new on-grade planters, concrete patio, and landscaping. Project plans are included in [Exhibit 3](#). The proposed development is located on a vacant lot within an existing developed area and is compatible with the character and scale of the surrounding area. No adverse visual impact to public views is anticipated as a result of the proposed two-story residential structure as no significant public coastal views currently exist across the site and the project site is not visible from public vantage areas.

The proposed development is located at 229 Avenida Monterey in the City of San Clemente, Orange County on a canyon-top lot ([Exhibit 1](#)). The canyon-top lot slopes gradually from the street southeasterly down to a rolling slope, followed by a steeper incised slope at the bottom of the canyon where a tributary of the Segunda Deshecha Canada is located along the southeastern property boundary. The site is an approximately 14,339 sq. ft. lot designated Low Density Residential by the City of San Clemente Land Use Plan (LUP); the proposed project adheres to this designation. The project is located on a vacant parcel within an existing developed urban residential area. The site is surrounded by a mix of multi-family and single-family residential development. The site is located approximately half of a mile from the beach, but does not provide public coastal access.

Biological Resources

The proposed development is located along Trafalgar Canyon, one of seven coastal canyons designated as potentially sensitive habitat area in the certified LUP, which could potentially be considered Environmentally Sensitive Habitat (ESHA) as determined on a case-by-case basis. The applicant's property is immediately adjacent to and partially within Trafalgar Canyon with an ephemeral and channelized stream/drainage at the canyon bottom. This section of the Segunda Deshecha Canada tributary has a deeply incised and narrow bed with steep nearly vertical banks. The project site is located on a gentle slope

that begins at the top of the tributary bank and continues to the public road. The vegetation on the canyon slope above the tributary is a thick mix of non-native plants and scattered native species that are indirectly influenced by the stream. The non-native species include a large number of date palms (*Phoenix dactylifera*) and several torch aloe (*Aloe arborescens*) and bird of paradise (*Strelitzia nicolai*) plants and weedy species including fennel (*Foeniculum vulgare*) and European annual grasses. The native species include several large lemonade berry shrubs (*Rhus integrifolia*), one toyon (*Heteromeles arbutifolia*) shrub and a few individual coastal sagebrush (*Artemesia californica*), chamise (*Adenostoma fasciculatum*) and California buckwheat (*Eriogonum fasciculatum*) bushes. Commission senior ecologist Dr. Jonna Engel visited the site with Commission staff on November 29, 2021 and determined that the native vegetation on the project site consisted of scattered coastal sage scrub species intermixed with an assortment of non-native and some invasive species that were indirectly associated with the stream/drainage tributary and did not rise to the level of ESHA. Nevertheless, preservation and enhancement of the City's coastal canyons and remaining streams is a goal supported both by the environmental protection policies of the Coastal Act and the certified LUP.

Coastal Canyon Edge

The project site is a single vacant lot surrounded by residential development. The topography of the site is generally flat with a southern perimeter slope that ranges from 10%–15%. Elevations at the project site range from approximately +155 feet above mean sea level (MSL) at the southeastern edge of the property to approximately +180 feet MSL at the northwestern edge of the project site. The applicant's canyon edge as shown on the site plan submitted with the application varies between the +170-172 feet MSL contour lines which varies in proximity from the proposed structure approximately 17.8 feet to 30 feet from the canyon ([Exhibit 3](#)). The Commission's staff geologist, Dr. Joseph Street, reviewed the plans, aerial photos and geological information submitted with the application and generally agrees with the applicant's canyon edge determination with the exception of the "point" on the southeastern part of the lot. According to Dr. Street, in the southeastern corner there is a minor "step-like feature" that pushes the canyon edge a bit inland toward the house, as it moves slightly uphill as it follows the slope break moving back toward the house as shown in [Exhibit 4](#), where the canyon edge is along the +167 foot MSL contour. On the northern part of the lot where the canyon edge is closer to the proposed structure, the canyon edge varies between the +170 and +172 feet MSL contour lines. To memorialize this discrepancy, **Special Condition 1** requires the applicant to submit a revised site plan indicating the location of the canyon edge as determined by Commission staff.

Canyon Setback for Development

As stated, preservation and enhancement of the City's coastal canyons is a goal supported by both the environmental protection policies of the Coastal Act and the certified LUP. The coastal canyons serve as open space and potential wildlife habitat, as well as corridors for native fauna. Encroachment into the canyon by development increases the potential for the predation of native species by domestic animals, and also contributes to destabilization of the canyon. Encroaching development also adversely impacts visual resources.

To preserve and enhance the City's coastal canyons, the Commission typically imposes either a minimum canyon edge setback of 15 feet from the edge of canyon for primary structures and accessory structures with foundations or requires conformance with the stringline, canyon bottom, and ESHA setbacks, whichever is most protective of the canyon. The coastal canyon policies of the LUP were designed for habitat protection and enhancement; to minimize visual impacts and landform alteration; to avoid cumulative adverse impacts of development encroachment into the canyon; and to limit brush management necessary for fire protection.

The lot in question is an elongated, roughly rectangular lot comprised entirely of canyon slope and canyon bottom. The canyon gently slopes from the street to the canyon bottom, and the canyon edge meanders between the 170 -172 ft. contours. The developments on adjacent lots were constructed prior to the Coastal Act and encroach into the canyon. As stated, there is a channelized stream at the bottom of the canyon, known as Segunda Deshecha Canada. The area surrounding the stream and the base of the canyon is densely vegetated with a mix of both native and nonnative vegetation. There is a large stand of lemonade berry that grows beyond the canyon edge toward the area of proposed development.

The certified LUP identifies three canyon setback choices which are to be selected based upon 'site characteristics,' and these setback choices exist because conditions vary from canyon to canyon. Each canyon has a different shape, width and depth, and is disturbed to a differing degree. The land uses, density and intensity of development also vary. Public views of the canyons vary from point to point. The lots along and in these canyons vary with regard to lot size and shape. Another site characteristic that changes is presence or absence of native vegetation and/or a stream on the lot. Considering these site characteristics, a setback must be chosen that achieves habitat protection and enhancement (including siting development to minimize required brush management), minimizes visual impacts and landform alteration, and avoids cumulative adverse impacts of development encroachment into the canyon. Finally, sometimes equity is a consideration (i.e. the size of a development footprint available under each setback scenario compared with adjacent development).

In this case, the proposed new residential structure will be constructed on the portion of the lot that will not encroach into the canyon or impact the coastal canyon slope. In addition, it will be setback 15-feet landward of the lemonade berry (coastal sage scrub), and is outside of the 100-foot riparian buffer from the riverine drainage feature associated with the Segunda Deshecha Canada ([Exhibit 5](#)), and therefore the project would not conflict with the City of San Clemente's coastal canyon and riparian setback requirements outlined in the City's certified Land Use Plan. Commission staff, applying LUP Policy HAZ-47 (b) as the appropriate setback because of the existing coastal sage scrub landward of the canyon edge,, find this setback is the most environmentally protective of the canyon. The applicant submitted a site plan on April 14, 2022 indicating that no portion of the structure or hardscape, including the rear-yard concrete patio, will encroach into the 15-foot setback from the coastal sage scrub vegetation. **Special Condition 1** requires the applicant to submit two sets of plans consistent with that site plan.

Since the project is adjacent to a coastal canyon with a stream that flows along the canyon bottom, the applicant must 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 5 requires the applicant comply with construction related BMPs.

In addition, coastal canyon development is in an area that may 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. The Commission requires the applicant to assume the liability from these associated risks and therefore imposes **Special Condition 3**. Through the assumption of risk condition, the applicant acknowledges the nature of the geologic hazards that exists on the site and that may affect the safety of the proposed development. **Special Condition 2** requires conformance with geotechnical recommendations to also ensure safety of the proposed development.

Because the proposed project is located adjacent to a coastal canyon, the applicant has contacted the Orange County Fire Authority (OCFA) to determine whether their review and approval is required for this development. According to the OCFA code, fuel modification plans are required for new habitable structures. The applicant has provided written evidence from OCFA that the proposed development is in conformance with OCFA fuel modification requirements for canyon sites. Therefore, **Special Condition 6** requires the applicant provide written evidence of OCFA final approval and also requires submittal of a fuel modification plan for the site if required by OCFA. The special conditions of this staff report are designed to protect the remaining habitat value of the Canyon.

B. COASTAL HAZARDS

Development adjacent to the ocean is inherently hazardous. Development which may require a protective device in the future cannot be allowed due to the adverse impacts such devices have upon, among other things, public access, visual resources and shoreline processes. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned to: require an appropriate set-back from the water; require a drainage and runoff control plan to direct, treat, and minimize the flow of water offsite; and to require that the landowner and any successor-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development conforms to the requirements of 30253 of the Coastal Act regarding the siting of development in hazardous locations.

C. PUBLIC ACCESS & RECREATION

The proposed development will not change access to the coast and nearby recreational facilities. Therefore, as proposed the development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

D. MARINE RESOURCES AND WATER QUALITY

The proposed project has been conditioned to minimize any significant adverse effect the project may have on the environment by avoiding or mitigating impacts upon sensitive marine resources. Therefore, the Commission finds that the proposed development, as conditioned, conforms with Sections 30230 and 30231 and of the Coastal Act.

E. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit for development in an area with no certified Local Coastal Program (“LCP”) only if the project will not prejudice the ability of the local government having jurisdiction to prepare an LCP that conforms with Chapter 3 policies of the Coastal Act. The Commission certified the Land Use Plan (LUP) for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On 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 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 (CEQA)

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 that the approval, as conditioned, is consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA disallows Commission approval of any proposed development if there are feasible alternatives or feasible mitigation measures 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 is statutorily exempt from CEQA under Class 1. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the public access and water quality policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.