

---

**CALIFORNIA COASTAL COMMISSION**

South Coast District Office  
301 E Ocean Blvd., Suite 300  
Long Beach, CA 90802-4302  
(562) 590-5071



# W16a

Filed: 10/25/21  
270<sup>th</sup> Day: 07/22/22  
Staff: V. Lee-LB  
Staff Report: 06/23/22  
Hearing Date: 07/13/22

## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 5-95-230-A3  
**Applicant:** Joshua J. Scaife  
**Agent:** Chandra Slaven  
**Location:** 407 W. Avenida De Los Lobos Marinos, San Clemente, Orange County (APN: 692-312-26)

**Description of Original Project Approved Pursuant to Permit No. 5-95-230:**  
Construction of a two-story 1,783 sq. ft. single-family residence with a 500 sq. ft. garage on a coastal canyon lot. No grading proposed.

**Description of Pending Permit Amendment No. 5-95-230-A3:** Add 893 sq. ft. of living space on the first and second floors of the existing 1,756 sq. ft. single-family residence, install new decks, extended entry, second floor storage area, install a new pool, and restore the canyon slope with native vegetation.

**Staff Recommendation:** Approval with conditions

---

## SUMMARY OF STAFF RECOMMENDATION

The applicant proposes to remodel and expand the existing 1,756 sq. ft., 25 ft. high, 2 story single-family residence, including an addition of 893 sq. ft. of living space on the first and second floors, new decks, an extended entry, second floor storage area, and a new pool ([Exhibit 2](#)). No deepened foundation system currently exists or is proposed. The applicant also proposes to restore the entire canyon slope on the site canyonward of the existing graded pad area with native and drought-tolerant vegetation. The subject property is on the western side of Lobos Marinos Canyon. The existing residence, proposed house additions, and proposed pool are located on near-level ground at the top of the canyon slope. The canyon slope in this area is relatively gentle near the upper portion of the canyon and becomes steeper near the bottom of the canyon. The project site is located between the first public road and the sea, but it is not facing the ocean and thus will not be visible from the shoreline. In addition, the project site is not located within designated significant public view corridors as identified in the certified LUP. The existing home on the site was approved by the Commission in 1995, pursuant to CDP 5-95-230. CDP No. 5-95-230-A1 allowed installation of a 3'6" high fence along the entire 61' length of the side yard. CDP No. 5-95-230-A2 modified that request to allow an approximately 45' long portion of the fence to reach a height of 6'0".

The primary issues raised by the subject development relate to 1) determining the appropriate canyon setback for new development and 2) the Coastal Act violation associated with unpermitted removal of vegetation and placement of hardscape within the canyon, inconsistent with Special Condition 2 of the underlying Coastal Development Permit (CDP).

Pursuant to the City's certified LUP, and consistent with the geologic stability, habitat preservation, and view preservation policies of the Coastal Act, new development adjacent to identified canyons must be setback the greater of 15 ft. from the canyon edge, 15 ft. from native habitat, 30% of the lot depth, and in accordance with house and deck/patio stringlines drawn between the nearest corners of the adjacent structures. As proposed, the new development meets the required setback from native habitat, stringline setbacks, and setback based on lot depth. However, the canyon edge is relatively unique in that it is rounded away from the canyon face and a significant amount of fill was placed on the site to construct the building pad for the existing home. On the subject site, it is appropriate to consider the ultimate purpose of the canyon edge delineation, which is to set a baseline for determining the development setbacks necessary to ensure the safety and stability of new development and to protect coastal resources (e.g., canyon habitats & visual/scenic resources). In this case, due to the relatively gentle canyon slope on the subject site, the canyon edge has little or no bearing on site hazards.

Violations of the Coastal Act exist on the property including, but not necessarily limited to, the unpermitted removal of vegetation and placement of hardscape, including pavers, wood steps, and irrigation lines, within the canyon, inconsistent with Special Condition 2 of the underlying CDP. The violations were discovered by Commission staff when this CDP application was submitted. It appears from aerial photographs that prior

owners of the subject property conducted the unpermitted development ([Exhibit 9](#)). However, this development remains on the subject property. Through discussions between Commission staff and the applicant, the applicant has agreed to restore the area of the canyon that was cleared by revegetating the entire rear yard area within the canyon, with native, drought-tolerant vegetation. In order to memorialize the applicant's proposal, staff recommends **Special Condition 6**, which requires the applicant to submit a final landscaping plan for the review and approval of the Executive Director and to implement the plan within a specific period of time to ensure successful restoration of the area impacted by unpermitted development. **Special Condition 3** also requires the applicant to submit revised plans for the review and approval of the Executive Director to, among other things, remove items of unpermitted development that were placed within the rear yard area, inconsistent with conditions of the original CDP that prohibited such development. In order to ensure that the unpermitted development component of this application is addressed in a timely manner, **Special Condition 3 and 6** require the applicant to remove items of unpermitted development and implement the Landscaping Plan within specific time periods established by those conditions. Only as conditioned is the proposed development consistent with the Coastal Act.

Approval of this application pursuant to the staff recommendation, issuance of the amended permit, and the applicant's subsequent performance of the work authorized by the amended permit in compliance with all of the terms and conditions of the permit will result in resolution of the violations going forward.

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

Staff recommends **APPROVAL** of the coastal development permit amendment application 5-95-230-A3 as conditioned. The motion and resolution can be found on **Page 6**.

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

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

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

Section 13166(a) of the Commission's Regulations also calls for the Executive Director to reject a permit amendment request if it would lessen or avoid the intended effect of the previously approved permit.

The proposed amendment would not lessen the intended effect of Coastal Development Permit No. 5-95-230 envisioned in the Commission's November 1995 action approving the project with conditions. Therefore, the Executive Director accepted the amendment request.

## **TABLE OF CONTENTS**

MOTION AND RESOLUTION.....	6
CHANGES TO CONDITIONS.....	6
FINDINGS AND DECLARATIONS.....	12
A. Project Description and Background .....	12
B. Coastal Hazards and Biological Resources .....	13
C. Public Access and Visual Resources.....	19
D. Water Quality .....	20
E. Coastal Act Violation .....	22
F. Deed Restriction.....	23
G. Local Coastal Program .....	24
H. California Environmental Quality Act.....	24
APPENDIX A – SUBSTANTIVE FILE DOCUMENTS .....	25
APPENDIX B – STANDARD AND SPECIAL CONDITIONS PURSUANT TO CDP NO. 5-95-230 THROUGH CDP AMENDMENT NO. 5-95-230-A3	

26

## **EXHIBITS**

- Exhibit 1 – Vicinity Map and Project Site
- Exhibit 2 – Project Plans
- Exhibit 3 – Lost Winds Coastal Access Point
- Exhibit 4 – LUP Canyon Edge Based on Topographic Exercise
- Exhibit 5 – Geologic Setback Lines
- Exhibit 6 – 1995 Plot Plan
- Exhibit 7 – 1995 Cross Section
- Exhibit 8 – Site Photograph of Unpermitted Development
- Exhibit 9 – Aerial Photographs Evidencing Clear of Vegetation

## MOTION AND RESOLUTION

### Motion:

I move that the Commission **approve** Coastal Development Permit Amendment No. 5-95-230-A3 pursuant to the staff recommendation.

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

### Resolution:

The Commission hereby approves Coastal Development Permit Amendment No. 5-95-230-A3 on the grounds that the development as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act 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 amendment 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 amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

## CHANGES TO CONDITIONS

**NOTE:** Appendix B, attached, includes all standard and special conditions that apply to this permit, as approved by the Commission in its original action and modified and/or supplemented by all subsequent amendments, including this amendment number 3. All of the Commission's adopted special conditions, and any changes in the project description proposed by the applicant and approved by the Commission in this or previous actions, continue to apply in their most recently approved form unless explicitly changed in this action. New conditions and modifications to existing conditions imposed in this action on Amendment 3 are shown in the following section. Appendix B includes one set of adopted special conditions.

Unless specifically altered by this amendment, all regular and special conditions attached to Coastal Development Permit 5-95-230, as amended, remain in effect. Language to be deleted is shown in ~~strike-out~~ and new language is shown in **bold, underlined**.

## Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit amendment is not valid and development shall not commence until a copy of the permit **amendment**, signed by the applicant or authorized agent, acknowledging receipt of the permit **amendment** and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit **amendment** will expire two years from the date ~~this permit is reported to the Commission~~ **on which the Commission voted on this amendment 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. **Compliance.** All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. **Inspections.** The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. **Assignment.** The permit amendment may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

## Special Conditions

- ~~2.~~ **Future Improvement Condition-Deed Restriction.** Prior to the issuance of the permit **amendment, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicants have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit, as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a**

legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit, shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property. the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that Coastal Commission permit 5-95-230 is for the proposed development only and that any future additions or improvements to the property, including clearing of vegetation and grading, will require a permit from the Coastal Commission or its successor agency. Clearing of vegetation to scrub up to 30 feet around the residence, if required for fire protection, is permitted, as well as landscaping north of the 113 contour line. The document shall run with the land, binding all successors and assigns and shall be recorded free and clear of prior liens.

This deed restriction shall supersede and replace the deed restrictions recorded as Instrument Nos. 94-0399523 and 19950567272, recorded in Orange County on June 15, 1994 and December 20, 1995, respectively.

3. Revised Final Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit, for review and approval of the Executive Director, two (2) sets of final plans that have been reviewed and approved by the City of San Clemente, which include the following:

A. The additions to the home and pool shall be located a minimum of 83 ft. and 73 ft., respectively, from the northern corner of the property line abutting the canyon (Ref: [Exhibit 5](#) of this staff report).

B. Surface runoff shall be directed away from the canyon to the street and filtered prior to exiting the site.

C. A pool leak prevention/detection plan showing prevention of pool overflow onto the canyon.

D. All unpermitted development on the subject property located canyonward of the existing graded pad area, including pavers, irrigation lines, wood steps and any other development, shall be removed.

The permittee shall undertake development in accordance with the approved final plans within 2 years of the date of Commission action, with the exception of the removal of unpermitted development pursuant to subsection (D), above, which shall be undertaken within 60 days of issuance of the amended CDP. 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.

4. Conformance with Geotechnical Recommendations. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicants shall submit, for the Executive Director's review and approval, 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.
  
5. 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.
  
6. Revegetation and Monitoring Plan.
  - a. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit, in a form and content acceptable to the Executive Director, two (2) full size sets of final revegetation and monitoring plans, which shall include and be consistent with the following:
    - i. The entire rear yard beyond the existing graded pad area shall be vegetated to avoid erosion and shall only consist of drought-tolerant plants native to coastal Orange County and appropriate to the specific habitat type in this location of the subject property. Native plants shall be from local stock and not cultivars. 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 authorized for a period of 3 years or until plants are established, whichever occurs first. At the end of the five year monitoring period, as required below, or when the success criteria are met, whichever comes first, the temporary irrigation shall be removed.

- ii. Maintenance and monitoring of the revegetation site shall be conducted for a period of five years from the date of installation of the plants or until success criteria are met, whichever is longer.
  - iii. Final monitoring for success shall take place after at least 3 years with no remediation or maintenance other than weeding.
  - iv. The method by which success will be evaluated shall be provided. If a statistical test is proposed, a statistical power analysis should be completed to estimate the necessary replication.
  - v. If the final report indicates that the restoration project has been unsuccessful, in part, or in whole, based on the approved performance standards, the applicant shall submit, within 90 days of the final report, a revised or supplemental restoration program to compensate for those portions of the original program which did not meet the approved performance standards. The revised restoration program, if necessary, may be processed as an amendment to this coastal development permit.
  - vi. The side and front yard areas shall also be included in the Landscaping Plan. The applicant is encouraged to use native plant species in the vegetated landscaped areas on the street-side of the residence; 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>)).
  - vii. 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 within 120 days of issuance of the amended CDP. 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.**

**7. 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.
8. Orange County Fire Authority Approval. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, 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.

## FINDINGS AND DECLARATIONS

### A. Project Description and Background

The proposed development is located at 407 W. Avenida De Los Lobos Marinos in the City of San Clemente, Orange County ([Exhibit 1](#)). The subject site is designated RL (Residential Low Density) in the San Clemente certified Land Use Plan (LUP). The location is on a coastal canyon and the surrounding development consists of single-family residences.

The 8,000 sq. ft. property consists of a developed residential lot atop a southeasterly slope descending approximately 40 ft. down to the bottom of the coastal canyon. The nearest formalized public access to the California Coastal Trail and public beach is at the Lost Winds beach access trail, approximately 400 ft. south of the site ([Exhibit 3](#)). The project site is currently developed with a 1,783 sq. ft., two-story single-family residence with a 500 sq. ft., two-car garage, which was permitted by the Commission in 1995 (Ref: CDP no. 5-95-230)<sup>1</sup>. In 2002, the Commission issued two immaterial amendments to CDP no. 5-95-230, which allowed installation of a 61' long chain link fence along the northern property line.<sup>2</sup>

The applicant proposes to remodel and expand the single-family residence, including an 893 sq. ft. of living space addition on the first and second floors, new decks, an extended entry, a second floor storage area, and a new pool ([Exhibit 2](#)). A minimum canyon setback of approximately 83 ft. from the property line abutting the canyon for the living space addition and a 73 ft. setback for the pool are proposed. No deepened foundation system currently exists or is proposed. The applicant also proposes to restore the entire canyon slope beyond the existing graded pad area with native, non-invasive, and drought-tolerant vegetation.

Violations of the Coastal Act exist on the property including, but not limited to, the clearing of vegetation and placement of pavers, irrigation lines, and wood steps in the rear of the property beyond the existing graded pad area, inconsistent with conditions of the underlying CDP ([Exhibit 8](#)), which will be further explained in the Coastal Act Violation Section of this report.

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. Coastal Hazards and Biological Resources**

Section 30240 of the Coastal Act states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

---

<sup>1</sup> In September 1993, CDP no. 5-93-202 was issued to the previous property owner (Anhorn) for a similar single-family residence development. However, the permit consequently expired and Anhorn applied for and acquired CDP no. 5-95-230 in 1995.

<sup>2</sup> CDP No. 5-95-230-A1 allowed installation of a 3'6" high fence along the entire 61' length of the side yard. CDP No. 5-95-230-A2 modified that request to allow an approximately 45' long portion of the fence to reach a height of 6'0".

(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.

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**

**HAZ-33 Development on Hillside, Canyons and Bluffs.** New development shall be designed and sited to maintain the natural topographic characteristics of the City's natural landforms by minimizing the area and height of cut and fill, minimizing pad sizes, siting and designing structures to reflect natural contours, clustering development on lesser slopes, **restricting development within setbacks consistent with HAZ-41 and HAZ-47**, and/or other techniques. Any landform alteration proposed shall be minimized to the maximum extent feasible. Development partially or wholly located in a coastal canyon or bluff or along the shoreline shall minimize the disturbance to the natural topographic characteristics of the natural landforms [emphasis added].

**HAZ-47 Canyon Setbacks.** New development or redevelopment, including principal structures and accessory structures with foundations, such as guest houses, pools, and detached garages etc., shall not encroach into coastal canyons. When there are two or more setbacks available in the standards below, the City Planner shall determine which of the setbacks shall be applied to a development based on the criteria below. Coastal Canyon Setbacks shall be set back the greater of either:

- a. A minimum of 30% of the depth of the lot, as measured from the property lines that abut the bottom of the coastal canyon, and not less than 15 feet from the canyon edge; or
- b. A minimum of 30% of the depth of the lot, as measured from the property lines that abut the bottom of the coastal canyon, and setback from the line of native vegetation (not less than 15 feet from coastal sage scrub vegetation or not less than 50 feet from riparian vegetation); or
- c. In accordance with house and deck/patio stringlines drawn between the nearest corners of the adjacent structures (rear corner/side of structure closest to coastal canyon). A legally permitted structure developed prior to the Coastal Act may be considered in the stringline setback when it is in character with development along the coastal canyon that has been approved under the Coastal Act with the benefit of Coastal Development Permits.
- d. Ancillary improvements such as decks and patios, which are at grade and do not require structural foundations may extend into the setback area no closer than five (5) feet to the canyon edge (as defined in Chapter 7, Definitions), provided no additional fuel modification is required that may impact native vegetation. No new or redeveloped walkways, stairs or retaining walls shall extend into the canyon beyond the required coastal canyon setback.

When selecting the appropriate setback from the above-referenced options, the City Planner shall consider the following factors: geology, soil, topography, existing vegetation, public views, adjacent development, safety, minimization of potential impacts to visual resources, community character, protection of native vegetation and equity. These additional factors may require increased setbacks depending on the conditions of the site and adjacent coastal resources. **The development setback shall be established depending on site characteristics** and determined after a site visit by a City Planner. If a greater setback is required as a result of the geotechnical review prepared pursuant to policy HAZ-8 or HAZ-9, the greater setback shall apply [emphasis added].

**RES-68 Coastal Canyons.** Development on coastal canyon lots shall maintain or improve the biological value, integrity and corridor function of the coastal canyons through native vegetation restoration, control of non-native species, and landscape buffering of urban uses and development.

**RES-69 Coastal Canyon Areas Protection.** Preserve coastal canyons as undeveloped areas intended to be open space through implementation of appropriate development setbacks.

**RES-70 Coastal Canyon Resources.** Protect and enhance coastal canyon resources by restricting the encroachment of development, incompatible land uses and sensitive habitat disturbance in designated coastal canyon areas. Prohibit development and grading that adversely alters the biological integrity of coastal

canyons, the removal of native vegetation and the introduction of non-native vegetation.

**RES-78 Minimize Fuel Modification.** All new development shall be sited and designed to minimize required fuel modification and brushing to the maximum extent feasible in order to minimize habitat disturbance or destruction, removal or modification of native vegetation, and irrigation of natural areas, while providing for fire safety. No fuel modification required to protect new development should take place in ESHA. Development shall utilize fire-resistant materials.

**RES-80 Fuel Modification Plan.** Applications for new development near native or sensitive habitat shall include a fuel modification plan for the project site, approved by the Fire Department. Additionally, applications shall include a site plan depicting the brush clearance, if any, that would be required on adjacent properties to provide fire safety for the proposed structures.

**“CANYON EDGE”** The upper termination of a canyon: In cases where the top edge of the canyon is rounded away from the face of the canyon as a result of erosional processes related to the presence of the canyon face, the canyon edge shall be defined as that point nearest the canyon beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the canyon. In a case where there is a step like feature at the top of the canyon face, the landward edge of the topmost riser shall be taken to be the canyon edge.

The proposed development is located adjacent to Lobos Marinos Canyon, one of seven coastal canyons in San Clemente identified in the certified LUP as containing potentially sensitive habitat. 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.

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 the canyon for primary structures and accessory structures with foundations and a minimum 5-foot setback for at-grade decks and patios or requires conformance with the stringline, canyon bottom, and ESHA setbacks, whichever is most protective of the canyon resources. The above-cited 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 certified LUP identifies three canyon setback choices which are to be selected based upon 'site characteristics.' These setback choices exist because conditions from canyon to canyon, and within each canyon, are highly variable. Each canyon has a different shape, width and depth. The degree of existing disturbance within each canyon is also different. 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. The topography of each lot can be highly variable, where in some cases there are canyon-top areas to site development, there are other lots comprised mostly of canyon slope and canyon bottom. The pattern of existing development from place to place along the canyon changes. Another site characteristic that changes is presence or absence of native vegetation and/or a stream on or adjacent to the lot. Considering these site characteristics, a setback must be chosen that achieves habitat protection and/or 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.

The subject property is on the western side of Lobos Marinos Canyon. The existing residence, proposed house additions, and proposed pool are located on near-level ground at the top of the canyon slope. The canyon slope in this area is relatively gentle near the upper portion of the canyon and becomes steeper near the bottom of the canyon.

From a topographic perspective, a strict interpretation of the LUP canyon edge definition puts the canyon edge at approximately the +116 ft elevation contour on the project plans ([Exhibit 4](#)). This is the "point nearest the canyon beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the canyon", per the LUP definition. This is where the flat bluff top transitions to the canyon slope. This transition is fairly gradual moving directly east, but more abrupt moving to the northeast.

However, the Commission recognizes that the LUP canyon edge definition contains language that could lead to differing delineations of the canyon edge. In particular, in discussing situations where the canyon edge is rounded away from the canyon face (such as the project site), the LUP definition specifies that this "rounding away" be the "result of erosional processes related to the presence of the canyon face[.]" This language indicates that the canyon edge determination is not purely a topographic exercise, but may also include geological analysis and judgement in determining where and in what cases the topographic profile has resulted from "erosional processes related to the presence of the canyon face," as opposed to other processes operating independently.

Therefore, the Commission recognizes that the determination of the canyon edge may involve geological analysis and judgement for lots like the subject site where the canyon edge is rounded away from the canyon face. Further, according to the 1995 approved CDP grading plan cross section, 49 cubic yards of fill was placed on the project site to create a flat pad ([Exhibit 7](#)), which further complicates the validity of canyon edge determination based on pure topographic exercise. Given the absence of a single, obvious topographic transition from canyon bluff top to bluff face at this site, it is possible for different evaluators to arrive at different, reasonable interpretations of the LUP canyon edge. In this situation, it is appropriate to consider the ultimate purpose of the canyon edge delineation, which is to set a baseline for determining the development

setbacks necessary to ensure the safety and stability of new development and to protect coastal resources (e.g., canyon habitats & visual/scenic resources). In this case, due to the relatively gentle canyon slope on the subject site, the canyon edge has little or no bearing on site hazards.

With regard to habitat resources, the 1995 CDP found that the area up to the chain link fence (located along the property line at the bottom of the canyon) was composed almost entirely of annuals and invasive, non-native *Carpobrotus* (ice plant), and that there were very few native plants on the site. With regard to visual resources, the project site is located between the first public road and the sea, but it is not facing the ocean and thus is not visible from the shoreline. In addition, the project site is not located within designated significant public view corridors as identified in the certified LUP. Therefore, the Commission finds that the canyon edge determination in this case has little or no bearing on habitat and visual resources.

Apart from the minimum 15 ft. canyon edge setback, HAZ-47 of the certified LUP provides for three other options of canyon setback for new development: 1) A minimum of 30% of the depth of the lot as measured from the property lines that abut the bottom of the coastal canyon, 2) setback from the line of native vegetation (not less than 15 feet from coastal sage scrub vegetation or not less than 50 feet from riparian vegetation), or 3) in accordance with house and deck/patio stringlines drawn between the nearest corners of the adjacent structures. The proposed development (a minimum of approximately 83 ft. setback from the northern corner of the property line abutting the canyon for the addition and 73 ft. setback for the pool) does conform to the above three options of canyon setback ([Exhibit 5](#)). In addition, the underlying CDP No. 5-95-230 approved the existing residential structure and associated landscaping up to the 113 ft. elevation contour, which corresponds to the canyonmost line of development that the applicant proposes ([Exhibit 6](#)). Therefore, approving the project will be consistent with the 1995 CDP with regards to canyon setback.

In this unique case, the Commission finds that the applicant's proposal for a minimum of approximately 83 ft. setback from the northern corner of the property line abutting the canyon for the addition and 73 ft. setback for the pool, rather than the typically required 15 ft. setback from the canyon edge, is appropriate. The applicant had initially proposed 83 ft. setback for the house addition and 40 ft. setback for the pool. However, after coordinating with Commission staff, the applicant revised the project proposal for a smaller pool. The applicant's revised proposal is yet to receive an Approval-in-Concept from the City of San Clemente. The Commission imposes **Special Condition 3**, which requires the applicant to submit final plans that have been reviewed and approved by the City and that conform with the identified canyon setback line.

In addition, development on a coastal canyon is inherently hazardous and 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 5**. 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 4** requires conformance with geotechnical recommendations to also ensure safety of the proposed development.

As previously discussed, violations of the Coastal Act occurred on the property which involves unpermitted removal of vegetation and placement of hardscape. To resolve the violations on the property, the applicant proposes to revegetate the entire rear yard beyond the existing graded pad area with native, drought-tolerant landscape. The Commission finds that, since the canyon slope of the project site prior to the violation was composed almost entirely of invasive and non-native vegetation per the 1995 CDP finding, the canyon slope is not considered an ESHA and thus a 1:1 restoration ratio is adequate. In order to memorialize the applicant's proposal, the Commission imposes **Special Condition 6** requiring the applicants to submit a final landscaping plan that has been reviewed and approved by the City.

Because the proposed project is located adjacent to a coastal canyon, the applicant has contacted the Orange County Fire Authority (OCFA) to determine whether its review and approval is required for this development. The OCFA's preliminary response was that, since the project is a remodel and not a new construction, there is no fuel modification necessary. Therefore, **Special Condition 8** 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.

As conditioned, the Commission finds that the project is consistent with Section 30240, 30251 and 30253 of the Coastal Act and HAZ-33, HAZ-47, RES-68, RES-69, RES-70, and RES-80 of the certified LUP regarding the siting of development for protection of coastal canyon resources.

### **C. Public Access and Visual Resources**

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 except where:

(2) Adequate access exists nearby[.]

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.

### **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.

**VIS-10 Development Review.** Review and require changes to development proposals, as needed, to minimize obstructions of designated significant public views and designated Public View Corridors, and to ensure public and private development projects in the Coastal Zone use high-quality materials and are designed to be attractive and aesthetically compatible with adjacent structures, site improvements, utilities and landscape features.

Although the project site is located between the first public road and the ocean, it is not facing the sea and thus will not be visible from the shoreline. In addition, the project site is not located within designated significant public view corridors as identified in the certified LUP. Public access to the beach exists in the project vicinity at Lost Winds access point, which is located 400 ft. southwest of the project site ([Exhibit 3](#)). The proposed development will not change access to the coast and nearby recreational facilities. The development is located within an existing developed area and will be compatible with the character and scale of the surrounding area. The Commission finds that the proposed development does not pose significant adverse impacts to existing public access and recreation, that there is adequate, safe public access in the vicinity, and that the project will not have new adverse impacts to visual resources. Therefore, the Commission finds that the development, as conditioned, conforms to Section 30210, 30212 and 30251 of the Coastal Act, and VIS-1 and VIS-10 of the certified LUP.

### **D. 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-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.

**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.

### **Construction Impacts to Water Quality**

The above policies of the Coastal Act 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.

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 7** requires the applicant comply with construction related BMPs.

### **Post-Construction Impacts to Water Quality**

The proposed project has the potential to adversely impact the water quality of the nearby Pacific Ocean. Much of the pollutants entering the ocean come from land-based development. The Commission finds that it is necessary to minimize to the extent feasible within its jurisdiction the cumulative adverse impacts on water quality resulting from incremental increases in impervious surface associated with new development. In order to address post construction water quality impacts, the Commission imposes **Special Condition 3**, which requires the applicant to submit a drainage plan that manage on-site percolation of runoff. As conditioned, the project will minimize the project's adverse impact on coastal waters to such an extent that it will not have a significant impact on marine resources, biological productivity or coastal water quality, consistent with Section 30230 and 30231 of the Coastal Act and HAZ-45 and 46 of the certified LUP.

### **E. Coastal Act Violation**

Violations of the Coastal Act exist on the property including, but not limited to, the clearing of vegetation and placement of pavers, irrigation lines, and wood steps in the rear of the property within the canyon beyond the existing graded pad area ([Exhibit 8](#)). As previously discussed, the existing single-family residence was approved by the Commission in 1995 (Ref: CDP no. 5-95-230). Special Condition 2 of the 1995 CDP required the property owner to record a deed restriction that prohibited any future additions or improvements to the property, including clearing of vegetation, placement of development, and grading, without the benefit of a coastal development permit. No CDP was issued for such development. Any non-exempt development activity conducted in the Coastal Zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act. Therefore, the removal of vegetation and placement of hardscaping and other materials within an area deed restricted to prohibit such development constitutes unpermitted development.

The violations were discovered by Commission staff when this CDP application was submitted. It appears from research of aerial photographs that prior owners of the subject property conducted the unpermitted development ([Exhibit 9](#)). However, this development remains on the subject property. Through discussions between

Commission staff and the applicant, the applicant has agreed to restore the area of the canyon that was cleared by revegetating the entire rear yard area within the canyon, with native, drought-tolerant vegetation.

The conditions of approval of this application require the applicant to, among other things, remove physical items of unpermitted development from the rear yard area and restore the rear yard area with native, drought tolerant vegetation. In order to memorialize the applicant's proposal, staff recommends **Special Condition 6**, which requires the applicant to submit a final landscaping plan for the review and approval of the Executive Director and to implement the plan within a specific period of time to ensure successful restoration of the area impacted by unpermitted development. **Special Condition 3** also requires the applicant to submit revised plans for the review and approval of the Executive Director to, among other things, remove items of unpermitted development that were placed within the rear yard area, inconsistent with conditions of the original CDP that prohibited such development. Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act

Upon issuance of the permit, the subsequent performance of the work authorized by the permit in compliance with all of the terms and conditions of the permit will result in resolution of the violations described above going forward. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations), nor does it constitute an implied statement of the Commission's position regarding the legality of the development undertaken on the subject site without a coastal permit, or of any other development, other than the development approved herein, or as otherwise expressed herein. In fact, approval of this permit is possible only because of the conditions included herein, and the applicant's presumed subsequent compliance with said conditions, and failure to comply with these conditions in conjunction with the exercise of this permit would also constitute a violation of this permit and of the Coastal Act. Accordingly, the applicant remains subject to enforcement action just as it was prior to this permit approval for engaging in unpermitted development.

In order to ensure that the unpermitted development component of this application is addressed in a timely manner, **Special Condition 3 and 6** require the applicant to remove items of unpermitted development and implement the Landscaping Plan within specific time periods established by those conditions. Only as conditioned is the proposed development consistent with the Coastal Act.

## **F. Deed Restriction**

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit amendment, the Commission imposes **Special Condition 2**, which requires that the property owners record a deed restriction against the property, referencing all of the above Special Conditions of this permit amendment and imposing them as covenants, conditions and restrictions on the use



and enjoyment of the property. This deed restriction shall supersede and replace the deed restrictions pursuant to the previous two CDPs (Ref: CDP nos. 5-93-202 and 5-95-230) recorded in Orange County as Instrument Nos. 94-0399523 and 19950567272, recorded on June 15, 1994 and December 20, 1995, respectively.

Thus, as conditioned, this permit amendment ensures that any prospective future owner will receive notice of the restrictions and/or obligations imposed on the use and enjoyment of the land, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

## **G. 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).

## **H. California Environmental Quality Act**

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing 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 3. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the policies of the Coastal Act. 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



5-95-230-A3 (Scaife)

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. 5-95-230-A3 and associated file documents.
- Coastal Development Permit Nos. 5-93-202, 5-95-230, 5-95-230-A1, and 5-95-230-A2, and associated file documents.
- Soil Pacific, Inc., “Soil and Foundation Evaluation Report Proposed Room Addition 407 W. Avenida De Los Lobos Marinos, San Clemente, CA 92672”, dated April 28, 2020.

## **APPENDIX B – STANDARD AND SPECIAL CONDITIONS PURSUANT TO CDP NO. 5-95-230 THROUGH CDP AMENDMENT NO. 5-95-230-A3**

**NOTE:** This Appendix B provides a list of all standard and special conditions imposed pursuant to Coastal Development Permit 5-95-230, as approved by the Commission in its original action and modified and/or supplemented by CDP Amendment No. 5-95-230-A3. Thus, this Appendix B provides an aggregate list of all currently applicable adopted special conditions.

### **Standard Conditions**

- 1. Notice of Receipt and Acknowledgment.** The permit amendment is not valid and development shall not commence until a copy of the permit amendment, signed by the applicant or authorized agent, acknowledging receipt of the permit amendment and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit amendment will expire two years from the date on which the Commission voted on this amendment 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. Compliance.** All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
- 4. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 5. Inspections.** The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
- 6. Assignment.** The permit amendment may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 7. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

## Special Conditions

- 1. Conformance with Geologic Recommendations.** All recommendations contained in the Geologic Report by Coastal Geotechnical dated January 6, 1993, shall be incorporated into all final design and construction plans, including drainage. Prior to the issuance of the coastal development permit the applicant shall submit, for review and approval of the Executive Director, final design plans signed by the consultant incorporating the recommendations made in the referenced report.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, and drainage. Any substantial changes in the proposed development approved by the Commission which may be required by the consultant shall require an amendment to the permit or a new coastal permit.

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

This deed restriction shall supersede and replace the deed restrictions recorded in Orange County as Instrument Nos. 94-0399523 and 19950567272, recorded on June 15, 1994 and December 20, 1995, respectively.

- 3. Revised Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit, for review and approval of the Executive Director, two (2) sets of final plans that have been reviewed and approved by the City of San Clemente, which include the following:

A. The additions to the home and pool shall be located a minimum of 83 ft. and 73 ft., respectively, from the northern corner of the property line abutting the canyon (Ref: [Exhibit 5](#) of this staff report).

B. Surface runoff shall be directed away from the canyon to the street and filtered prior to exiting the site.

C. A pool leak prevention/detection plan showing prevention of pool overflow onto the canyon.

D. All unpermitted development on the subject property located canyonward of the existing graded pad area, including pavers, irrigation lines, wood steps and any other development, shall be removed.

The permittee shall undertake development in accordance with the approved final plans within 2 years of the date of Commission action, with the exception of the removal of unpermitted development pursuant to subsection (D), above, which shall be undertaken within 60 days of issuance of the amended CDP. 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.

4. **Conformance with Geotechnical Recommendations.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicants shall submit, for the Executive Director's review and approval, 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.
5. **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.
6. **Revegetation and Monitoring Plan.**
  - a. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit, in a form and content acceptable to the Executive Director, two (2) full size sets of final revegetation and monitoring plans, which shall include and be consistent with the following:
    - i. The entire rear yard beyond the existing graded pad area shall be vegetated to avoid erosion and shall only consist of drought-tolerant plants native to coastal Orange County and appropriate to the specific habitat type in this location of the subject property. Native

- plants shall be from local stock and not cultivars. 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 authorized for a period of 3 years or until plants are established, whichever occurs first. At the end of the five year monitoring period, as required below, or when the success criteria are met, whichever comes first, the temporary irrigation shall be removed.
- ii. Maintenance and monitoring of the revegetation site shall be conducted for a period of five years from the date of installation of the plants or until success criteria are met, whichever is longer.
  - iii. Final monitoring for success shall take place after at least 3 years with no remediation or maintenance other than weeding.
  - iv. The method by which success will be evaluated shall be provided. If a statistical test is proposed, a statistical power analysis should be completed to estimate the necessary replication.
  - v. If the final report indicates that the restoration project has been unsuccessful, in part, or in whole, based on the approved performance standards, the applicant shall submit, within 90 days of the final report, a revised or supplemental restoration program to compensate for those portions of the original program which did not meet the approved performance standards. The revised restoration program, if necessary, may be processed as an amendment to this coastal development permit.
  - vi. The side and front yard areas shall also be included in the Landscaping Plan. The applicant is encouraged to use native plant species in the vegetated landscaped areas on the street-side of the residence; 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>).
  - vii. 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 within 120 days of issuance of the amended CDP. 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.

## **7. 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.

5-95-230-A3 (Scaife)

- 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.

**8. Orange County Fire Authority Approval.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, 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.