

**CALIFORNIA COASTAL COMMISSION**

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



# Th6a

Filed: 05/02/22  
 180<sup>th</sup> Day: 09/29/22  
 Staff: S. Amitay – LB  
 Staff Report: 07/28/22  
 Hearing Date: 08/11/22

## STAFF REPORT: CONSENT CALENDAR

**Application No.:** 5-20-0601

**Applicants:** James & Michelle Hawkins

**Agent:** David York

**Location:** 2406 Plaza A La Playa, San Clemente, Orange County  
(APN: 060-192-19)

**Project Description:** Interior and exterior remodel to an existing 3,123 sq. ft., one-story single-family residence, and removal of 80 sq. ft. of living space to an oceanfront coastal canyon lot. Removal of 168 sq. ft. unpermitted rear yard deck portion, four supporting piers and grade beams, and a portion of the front garden wall encroaching into the street right-of-way.

**Staff Recommendation:** Approval with conditions

## SUMMARY OF STAFF RECOMMENDATION

The project site is currently developed with a 3,123 sq. ft., 16-ft. high, one-story single-family residence with a 700 sq. ft., three-car garage on an oceanfront coastal canyon lot in the City of San Clemente. The subject property is a bluff-top *and* canyon-top lot located on the southwestern side of Montalvo Canyon and directly inland of Riviera Beach. The applicants propose to remodel the single-family residence, including removal of 80 sq. ft. of living space ([Exhibit 2](#)). The standard of review for the project is Chapter 3 of the Coastal Act, with the certified San Clemente LUP used as guidance.

The proposed project does not present a “major remodel” or “redevelopment” as defined in the San Clemente certified LUP, which sets a threshold of 50% or more of major structural components including exterior walls, floor and roof structure, and foundation,

or a 50% increase in floor area. The applicants have submitted a coastal hazards analysis and geotechnical investigation, which identify the bluff and canyon edges for the site, as well as the respective required setbacks per the City's LUP, showing that these extend far into the existing development especially along the western and southern portions of the site, and that the existing structure is thus nonconforming with LUP hazard and development policies ([Exhibit 5](#)). Thus, the existing residence and accessory structures do not conform with LUP hazard policies in terms of appropriate setbacks from the natural and reconstructed bluff/canyon faces. However, the LUP allows for improvements to nonconforming structures, so long as the maintenance or repairs do not increase the size or degree of nonconformity.

The existing single-family residence was originally permitted by the Commission in 1977 (Ref: CDP No. P-77-1111) and amended in 1978 (CDP No. P-78-3778). Violations of the Coastal Act exist on the property, including the unpermitted construction of 168 sq. ft. and 27 sq. ft. portions of the upper rear "walking deck," four pier and grade beam foundations supporting the unapproved portion of the walking deck, and construction of a 638 sq. ft. lower patio beneath the walking deck, a 93'10"-long retaining wall along the perimeter of the rear property line, and the rear southern set of stairs seaward of the stipulated stringline setback in non-compliance with CDP No. P-78-3778,<sup>1</sup> and the placement of stepstones in a path leading beyond the seaward property line to the San Clemente Pedestrian Beach Trail, and encroachment of a garden wall upon the street right-of-way at the front of the property ([Exhibit 7](#)). The applicants have agreed to removal of the 168 sq. ft. portion of the unpermitted rear yard walking deck, four piers and grade beams, and the encroaching portion of the front garden wall. However, the applicants have not agreed to the removal and/or modification of the non-compliant 638 sq. ft. lower patio, the 93'10"-long segment of retaining wall, encroaching staircase, 27 sq. ft. portion of the upper rear walking deck, and stepstones in the path leading beyond the seaward property line to the San Clemente Pedestrian Beach Trail.

**Special Condition 1** requires the applicants to submit Revised Final Plans, reviewed and approved by the City, incorporating the proposed removal of portions of the unpermitted development. The Condition also requires the applicants to label all of the unpermitted development that they are not proposing to remove on the Revised Final Plans as "not a part of this permit." **Special Condition 3** ensures that any removal of the unpermitted development is consistent with **Special Condition 4**, which requires the applicants to remove the unpermitted piers and grade beams. Given that the applicants will not propose to remove the remaining unpermitted development, and to limit nonconforming development that may exacerbate coastal resource issues, **Special Condition 5** details that the CDP is only for the project described herein, and that any future changes are to be reported to the Executive Director to determine if an

---

<sup>1</sup> The 638 sq. ft. lower patio (including the rear southern set of stairs) extends 10 feet seaward beyond the required deck stringline setback. There is also a triangular 27 ft. portion of the upper rear walking deck located a maximum of 3 ft. seaward beyond the stringline setback. The stepstones are located along a path that encroaches approximately 28 ft. beyond the rear (seaward) property line.

amendment or CDP is required. **Special Condition 6** requires construction best management practices (BMPs).

In terms of hazards, the main concern at this site is the potential for shoreline erosion over the long-term, which may be exacerbated by sea level rise. **Special Condition 2** requires conformance of the final plans with the geotechnical investigations prepared for the subject site by requiring the applicants to submit evidence that a registered professional geotechnical engineer has reviewed and approved all final project plans. Should the site be subject to hazards including but not limited to bluff/canyon and slope instability, erosion, storm conditions, liquefaction, flooding, and sea level rise, **Special Condition 7** requires the applicants to expressly waive any potential claim of liability against the Commission for any damage or economic harm suffered as a result of the applicants' decision to develop the site as proposed. Nevertheless, the Commission's geologist estimates that flooding impacts are not anticipated to emerge until the latter part of the 21<sup>st</sup> century, and only then under higher sea level rise scenarios.

Staff recommends the Commission find that the project, as proposed by the applicants and further conditioned by the Commission, is consistent with the Chapter 3 policies of the Coastal Act. Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicants' subsequent compliance with all terms and conditions of the permit will resolve some of the violations described above.

Therefore, Commission staff recommends that the Commission **APPROVE** coastal development permit application 5-20-0601 with **eight** special conditions. The motion and resolution can be found on **Page 5**.

## TABLE OF CONTENTS

<b>I. MOTION AND RESOLUTION .....</b>	<b>5</b>
<b>II. STANDARD CONDITIONS .....</b>	<b>5</b>
<b>III. SPECIAL CONDITIONS.....</b>	<b>6</b>
<b>IV. FINDINGS AND DECLARATIONS.....</b>	<b>10</b>
A. Project Description and Background .....	10
B. Development.....	15
C. Visual Resources .....	16
D. Biological Resources.....	16
E. Coastal Hazards.....	16
F. Water Quality.....	16
G. Public Access and Recreation .....	16
H. Local Coastal Program.....	17
I. California Environmental Quality Act .....	17
<b>APPENDIX A – SUBSTANTIVE FILE DOCUMENTS .....</b>	<b>18</b>

## EXHIBITS

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

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – LUP Figure 3-22](#)

[Exhibit 4 – Geologic Map and Cross Sections](#)

[Exhibit 5 – Applicant’s Geologic Setback Lines](#)

[Exhibit 6 – Commission’s Delineation of Canyon and Bluff Edges](#)

[Exhibit 7 – Unpermitted Development](#)

[Exhibit 8 – P-6-9-77-1111 and P-7-23-78-3778 Staff Reports/Site Plans](#)

[Exhibit 9 – Commission’s Sea Level Rise Analysis](#)

## I. MOTION AND RESOLUTION

### Motion:

I move that the Commission **approve** the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.

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

### Resolution:

The Commission hereby approves 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

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

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

### III. SPECIAL CONDITIONS

1. **Submittal of Revised Final Plans.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicants shall submit for the review and approval of the Executive Director, two (2) full size sets of Revised Final Plans that have been reviewed and approved by the City of San Clemente, which demonstrate the following:
  - A. No development, including, but not limited to, the residence, decks, garden walls, and accessory structures, shall encroach seaward or canyonward of the existing development's footprint as depicted in [Exhibit 5](#) of this report.
  - B. The unpermitted 168 sq. ft. portion of the upper rear "walking deck" and portion of the garden wall encroaching upon the street front-of-way at the front of the property, as depicted in [Exhibit 7](#) of this report, shall be removed and restored consistent with **Special Condition 3** below.
  - C. A revised foundation plan indicating removal of the four (4) unpermitted piers and grade beams in the rear northern portion of the structure adjacent to the wine cellar, in conformance with **Special Condition 4** below.
  - D. The 27 sq. ft. portion of the upper rear "walking deck," the 638 sq. ft. lower patio beneath the "walking deck," 93'10"-long portion of unpermitted retaining wall along the perimeter of the rear property line, the rear southern set of stairs, and the stepstones in the path leading to the San Clemente Pedestrian Beach Trail, as depicted in [Exhibit 7](#) of this report, shall be labeled, described, and marked with the following statement: "This component of the site is not a part of the approval, and no coastal development permit has been approved or issued to authorize this component."
  - E. Surface runoff will be directed away from the canyon to the street and filtered prior to exiting the site.

Any proposed changes to the approved Plans shall be reported to the Executive Director. No changes to the approved Revised 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 THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for the review and approval of the Executive Director, written evidence that a registered professional geotechnical engineer and/or registered geologist has reviewed and approved all final design plans including foundation and grading/drainage plans and certified that each of those final plans is consistent with all the recommendations contained in the geotechnical investigations prepared for the subject site.

**3. Removal of Unpermitted Development.** The applicants shall carry out removal of the existing unpermitted development including, but not limited to, the unpermitted 168 sq. ft. portion of the upper rear “walking deck,” the unpermitted four piers and grade beams thereunder, and the encroaching garden wall at the front of the property within 60 days of issuance of the permit. All other unpermitted development that is not in substantial conformance with the 1977 Commission approval (Ref: CDP No. P-77-1111), and as amended in 1978 (CDP No. P-78-3778), and which is not proposed to be removed, must be labeled, described, and marked as detailed in **Special Condition 1**.

**4. Pier and Grade Beam Plan.** PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for the review and approval of the Executive Director, two (2) full size sets of Pier and Grade Beam Plans that have been reviewed and approved by the City of San Clemente, which demonstrate the following:

Removal of the four (4) unpermitted piers and grade beams in the rear northern portion of the structure adjacent to the wine cellar, as depicted on [Exhibit 7, Page 6](#) of this report (“Foundation Plan,” Sheet 6 of the proposed plans). The Plan shall demonstrate whether any of portion of the structure that is supported by the unpermitted piers and grade beams would also need to be removed and/or modified. The demolition of the unpermitted piers and grade beams shall follow construction best management practices (BMPs) and good housekeeping practices (GHPs), as further detailed in **Special Condition 6** of this permit.

Any proposed changes to the approved Pier and Grade Beam Plan shall be reported to the Executive Director. No changes to the approved Plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**5. Future Improvements.** This permit is only for the development described in CDP No. 5-20-0601. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to this development governed by CDP No. 5-20-0601. Accordingly, any future improvements to the structures authorized by this permit, including but not limited to, repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to CDP No. 5-20-0601 from the Commission or shall require an additional CDP from the Commission or from the applicable certified local government, unless the Executive Director determines that no amendment is legally required.

**6. Storage of Construction Materials, Mechanized Equipment, and Removal of Construction Debris.** The applicants shall comply with the following construction-related requirements:

- A.** No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion;
- B.** No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers;
- C.** Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project;
- D.** Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
- E.** All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- F.** The applicants shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- G.** Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the Coastal Zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;
- H.** All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
- I.** Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
- J.** The discharge of any hazardous materials into any receiving waters shall be prohibited;
- K.** Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;



- L. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and
  - M. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.
- 7. Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the permittees acknowledge and agree (i) that the site may be subject to hazards including but not limited to bluff/canyon and slope instability, erosion, storm conditions, liquefaction, flooding, and sea level rise; (ii) to assume the risks to the permittees 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; (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; (v) that sea level rise could render it difficult or impossible to provide services to the site (e.g., maintenance of roadways, utilities, sewage or water systems), thereby constraining allowed uses of the site or rendering it uninhabitable; (vi) that the boundary between public land (tidelands) and private land may shift with rising seas, the structure may eventually be located on public trust lands, and the development approval does not permit encroachment onto public trust land; (vii) any future encroachment must be removed unless the Coastal Commission determines that the encroachment is legally permissible pursuant to the Coastal Act and authorizes it to remain, and any future encroachment would also be subject to the State Lands Commission's (or other trustee agency's) leasing approval; and (viii) that the structure may be required to be removed or relocated and the site restored if it becomes unsafe or if removal is required pursuant to the Coastal Act.
- 8. Deed Restriction.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicants 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.

## IV. FINDINGS AND DECLARATIONS

### A. Project Description and Background

The proposed development is located at 2406 Plaza A La Playa in the City of San Clemente on an oceanfront, coastal bluff/canyon lot ([Exhibit 1](#)). The subject site is designated RL (Residential Low Density) in the San Clemente certified Land Use Plan (LUP) and surrounding development consists of single-family residences along Plaza A La Playa and multi-family condominiums across Montalvo Canyon.

The 13,975 sq. ft. property consists of a developed residential lot atop a gentle slope descending seaward to the west and canyonward to the south. The nearest formalized public access to the California Coastal Trail and public beach is at the adjacent Montalvo Canyon, located directly south of the site ([Exhibit 3](#)). A small bridge carrying train tracks and the San Clemente Pedestrian Beach Trail extends over the drainage in the canyon bottom, and a vertical trail connects to the beach via a stairway and below-grade crossing. The project site is currently developed with a 3,123 sq. ft., 16-ft. high, one-story single-family residence with a 700 sq. ft., three-car garage on an oceanfront coastal canyon lot in the City of San Clemente, which was permitted by the Commission in 1977 (Ref: CDP No. P-77-1111) and amended in 1978 (CDP No. P-78-3778).

The applicants propose to remodel the single-family residence, including removal of 80 sq. ft. of living space ([Exhibit 2](#)). 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.

### Development

The City of San Clemente certified LUP defines a "major remodel" as additions or exterior/interior renovations to an existing structure which results in alteration of 50% or more of a major structural component including exterior walls, floor and roof structure, and foundation, or a 50% increase in floor area. Per LUP hazards policy HAZ-36, improvements to nonconforming structures are allowed, so long as the maintenance or repairs do not increase the size or degree of nonconformity or are not considered a "major remodel." If the improvements are found to constitute a "major remodel," then the entire structure must be brought into conformance with all Coastal Act and relevant LUP policies, including all requirements and standards that apply to new development through the CDP process.

In this case, the proposed project is for the removal of 80 sq. ft. on the seaward and canyonward sides of the subject site, which amounts to approximately 2.6% reduction of the living area of the existing 3,123 sq. ft. structure. Moreover, the applicants propose

alterations to the existing structure, including: 1,520 square-foot demolition of the existing 5,425 sq. ft. roof area (approx. 28%), removal of 132 linear ft. of existing 355 linear ft. of exterior walls (approx. 37%) for the main structure and removal of 8 linear ft. of existing 110 linear ft. of exterior walls (approx. 7%) of the detached garage, alteration of 56 sq. ft. of the existing 427 sq. ft. foundation (approx. 13%) through the removal of 40 linear ft. of footing and addition of 27 linear ft. of new footing, alteration of 76 sq. ft. of the existing 3,240 sq. ft. slab grade, and demolition of 170 linear ft. of interior walls including load-bearing and partition (nonstructural walls) of the existing 315 linear ft. of total interior walls.

Therefore, the proposal entails improvements to the existing residence that do not rise to the level of “major remodel,” as defined in the City’s LUP. Thus, the redeveloped residence may retain legal nonconformity with the applicable standards of the Coastal Act and the LUP. Nevertheless, given that there are portions of the site that constitute unpermitted development, as further discussed below, the Commission finds that it is necessary to impose **Special Condition 5** prohibiting the construction of future improvements to the proposed single-family structure without first obtaining an amendment to this permit or a new coastal development permit, which will assure that future improvements are consistent with the Chapter 3 policies of the Coastal Act and/or are legally nonconforming.

### **Visual Resources**

The residence is of similar mass and scale as other structures in the project vicinity, and the height of the structure will remain unchanged. The project site is located within or in close proximity to designated significant public views or designated Public View Corridors as prescribed in policies VIS-1 and VIS-10 and identified on Figures 6-1, 6-2-A, and 6-2-B of the certified San Clemente LUP. However, the scope of the project consists of minor improvements to an existing legally nonconforming structure, and therefore, the proposed development is not anticipated to have any new adverse impact on visual resources in this area.

### **Biological Resources**

The applicants have submitted a site-specific vegetation survey study (prepared by Glenn Lukos Associates, dated January 11, 2018) based on field visits conducted on December 27, 2017 and January 8, 2018 to map and identify the presence and extent of existing vegetation on, and adjacent to, the project site. The applicants’ biological consultant has determined that nine vegetation covers were mapped based on the dominant species. No coastal sage scrub was found within 15 ft. of the subject property, and no native riparian habitat was found within 50 ft. of the property. All nine vegetation cover types were non-native, including some invasive species. The proposed project will not include changes to existing landscaping and is not anticipated to adversely affect the quality of canyon habitat nor impact the existing biological resources. Thus, the subject development, as conditioned, is in conformance with the relevant Coastal Act and LUP biological resource policies.

## Hazards

The subject property is a bluff-top *and* canyon-top lot located on the southwestern side of Montalvo Canyon and directly inland of Riviera Beach. The canyon slope behind the site descends just over 16 ft. from the canyon edge (at about +24 ft. above mean sea level, MSL) to the floor of the canyon (~+8 ft. MSL), and more gradually descends along the bluff slope, to the point that a distinct bluff edge/face is no longer discernible. The property is underlain near surface to relatively shallow depths by competent siltstone and sandstone bedrock of the Capistrano Formation. Bedrock is overlain by up to 3 ft. of artificial fill deposits. The basic geologic structure of the site is shown in [Exhibit 4](#), pages 1-3.

The applicants have submitted a coastal hazards analysis and geotechnical investigation, which identify the bluff and canyon edges for the site, as well as the respective required setbacks per the City's LUP, showing that these extend far into the existing development especially along the western and southern portions of the site, and that the existing structure is thus nonconforming with LUP hazard and development policies ([Exhibit 5](#)). Furthermore, based on the underlying grading plans for the lot from 1956, the Commission's geologist determined that the natural bluff and canyon edges are likely even further landward than currently determined by the applicants' geotechnical consultants, as fill was placed beyond the natural bluff and canyon edges to the expand the flat area for the building pad ([Exhibit 6](#)). Given the substantial alteration of the bluff and canyon faces at this site, it is possible for different evaluators to arrive at different, reasonable interpretations of the bluff and canyon edges in accordance with the LUP definition.

Nonetheless, to ensure that the project does not further encroach upon the bluff and canyon in the future, the Commission imposes **Special Condition 1**, which requires that no development, including, but not limited to, the residence, decks, garden walls, and accessory structures, shall encroach seaward or canyonward of the existing development's footprint. Implementation of effective site drainage and erosion control measures in the rear yard to prevent runoff over the canyon edge will be important for ensuring erosion rates remain low. Therefore, **Special Condition 1** also requires the applicants to submit a revised drainage plan to minimize canyon erosion. **Special Condition 2** requires the applicants to submit evidence that a registered professional geotechnical engineer has reviewed and approved all final plans consistent with the recommendations contained in the geotechnical investigations prepared for the subject site. To ensure that all impacts (pre- and post-construction) to water quality are minimized and to reduce the potential for construction related impacts on water quality, the Commission imposes **Special Condition 6**, which requires, but is not limited to, appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants entering coastal waters and the continued use and maintenance of post construction BMPs.

Sea level rise may exacerbate erosion at this flood-prone, low-lying site. GeoFirm's Coastal Hazards Analysis<sup>2</sup> estimates the development's expected life will be approximately 75 years and found that the home is not expected to be subject to coastal hazards such as coastal erosion, flooding, or wave uprush during the expected life.

The Commission's staff geologist found that the applicants' Coastal Hazards Analysis, which uses the Coastal Storm Modeling System (CoSMoS), generally underestimates the project site's vulnerability to sea level rise impacts ([Exhibit 9](#)). The CoSMoS tool is based on a model simulation that may change as more accurate data is compiled and input into the model, and it draws an artificial "stop" line for erosion wherever there is a slope or line of development." The tool also does not account for all variables that could impact the extent and depth of coastal hazards, including potential shoreline migration and beach loss that could occur with higher sea level rise projections. Moreover, coastal areas are dynamic environments, and it is difficult to predict with certainty how any project site will be impacted. Currently, the Commission's geologist estimates that flooding impacts are not anticipated to emerge until the latter part of the 21<sup>st</sup> century, and only then under higher sea level rise scenarios (e.g., 5 to 6.6 ft. in 2100). However, the proposed development, as a beachfront property, may be threatened by sea level rise at some point in the future if the rate of erosion and wave uprush accelerates faster than projected or if there are changes in the frequency or effectiveness of beach nourishment activities or changes to sediment management in the area, which has been the general trend in sea level rise.

Therefore, **Special Condition 7** requires the applicants to acknowledge the risks associated with the proposed development. The applicants are noticed that the proposed development is built in an area that is potentially subject to bluff and slope instability, sea level rise, erosion, landslides and wave uprush or other tidally induced erosion that can damage the subject property. The applicants are also notified that the Commission is not liable for such damage as a result of approving the permit for development. The condition requires the applicants to waive claims against the Commission and indemnify the Commission in the event of any third-party claims. Finally, **Special Condition 7** notifies the applicants that the structure may be required to be removed or relocated and the site restored if it the structures encroach upon Public Trust Lands as they migrate landward in the future, or if the site becomes unsafe and removal is required pursuant to the Coastal Act. **Special Condition 8** requires that the property owners record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property.

## Coastal Act Violations

The existing single-family residence onsite was originally permitted by the Commission in 1977 (Ref: CDP No. P-77-1111) and amended in 1978 (CDP No. P-78-3778), and the development was undertaken by the previous property owner. The approval was for a

---

<sup>2</sup> The Analysis assumed the absence of the Orange County Transit Authority railroad tracks that run parallel to the coastline seaward of the project.

3,073 sq. ft., one-story single-family residence, 227 sq. ft. unheated corridor leading to a courtyard, 750 sq. ft. three-car garage, 224 sq. ft. wine cellar approximately 8 ft. below grade, 666 sq. ft. “walking deck” along rear elevation at grade, and 85 ft. patio abutting the kitchen ([Exhibit 8](#)).

Violations of the Coastal Act have occurred on the property including, but not limited to, the unpermitted construction of 168 sq. ft. and 27 sq. ft. portions of the upper rear walking deck, four unpermitted pier and grade beam foundations supporting the unapproved portion of the walking deck, placement of stepstones in a path leading beyond the seaward property line to the San Clemente Pedestrian Beach Trail, and encroachment of a garden wall upon the street right-of-way at the front of the property ([Exhibit 7](#)). In addition, a 638 sq. ft. lower patio seaward of the “walking deck,” 93’10”-long retaining wall along the perimeter of the rear property line, and a rear southern set of stairs were constructed in substantial difference from the 1978 site plans, and in contradiction to the rear stringline setback requirements stipulated in CDP No. P-77-1111. The condition of approval specifically stipulated that no part of the proposed structure shall be built seaward of the stringline drawn between the corners of neighboring properties and follow the existing pattern of development (i.e., 20 ft. rear setback for the structure and 10 ft. rear setback for any decks/patios) ([Exhibit 8](#)).

As part of the project, the applicants propose removal of the 168 sq. ft. unpermitted rear yard walking deck portion, four piers and grade beams, and the encroaching portion of the front garden wall. The applicants, however, are not addressing the 27 sq. ft. non-compliant portion of the upper rear walking deck, the encroachment of the lower patio, the non-compliant retaining wall along the rear property line, and the stepstones in the path encroaching beyond the seaward property line. As discussed previously, the Commission thus imposes **Special Condition 1**, requiring the applicants to submit Revised Final Plans, reviewed and approved by the City, incorporating removal of portions of the unpermitted development. The Condition also specifically requires the applicants to label portions of the unpermitted development that remain on the Revised Final Plans as “not a part of this permit.” The applicants are required to undertake the removal of portions of unpermitted development within 60 days of issuance of the permit. **Special Condition 3** is imposed to ensure that any removal of the unpermitted development is consistent with **Special Condition 4**, which requires the applicants to remove the unpermitted piers and grade beams supporting the upper rear walking deck.

Given that unpermitted development persists on the site, and to limit nonconforming development that may exacerbate coastal resource issues, **Special Condition 5** acknowledges that the CDP is only for the project described herein, and that any future changes are to be reported to the Executive Director to determine if an amendment or CDP is required. By placing restrictions on the construction of future improvements to the proposed single-family structure without first obtaining an amendment to this permit or a new coastal development permit, the Commission ensures that future improvements are consistent with 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 the terms and conditions of the permit, will resolve, going

forward, the violations that consist of the unpermitted development that is to be removed, as described above. Although unpermitted development has taken place prior to submission of this amendment application, consideration of this permit request by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act, with the San Clemente certified LUP providing guidance. 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 CDP, 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 applicants' 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.

## **Conclusion**

The project, as conditioned to require conformance with geotechnical recommendations, remove some of the unpermitted development, to assume the risk of development at a hazardous location, and to impose limits on future improvements at the site, can be found consistent with the hazards policies of the Coastal Act and the LUP. Additionally, the Commission imposes **Special Condition 1** (Revised Final Plans) and **Special Condition 3** (Removal of Unpermitted Development) to ensure that the applicants undertake development in a manner that minimizes nonconformities, and to identify remaining unpermitted development on the site. To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, **Special Condition 8** requires that the property owner record a deed restriction against the property, referencing the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that any prospective future owner will receive notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, including the risks of the development and/or hazards to which the site is subject, the remaining unpermitted development onsite, and the Commission's immunity from liability.

## **B. Development**

As proposed, the development is located within an existing developed area and is compatible with the character and scale of the surrounding area. Therefore, the Commission finds that the development conforms with Sections 30250, 30251, and 30252 of the Coastal Act. In addition, the scope of development consists of minor improvements to an existing legally nonconforming structure, and therefore, the proposed development is not anticipated to have any new adverse environmental impact.



### **C. Visual Resources**

The development is located within an existing developed area, will be compatible with the character and scale of the surrounding area, and will not result in any new adverse impact on visual resources in this area. Therefore, the Commission finds that the development, as conditioned, conforms to Section 30251 of the Coastal Act.

### **D. Biological Resources**

As conditioned, the development will not result in significant degradation of adjacent habitat, recreation areas, or parks and is compatible with the continuance of those habitat, recreation, or park areas. Therefore, the Commission finds that the project, as conditioned, conforms with Section 30240(b) of the Coastal Act.

### **E. Coastal Hazards**

Development adjacent to the beach, coastal bluffs, or canyon canyons 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 public access, and visual resources. To minimize risks to life and property the development has been conditioned to prohibit seaward and canyonward encroachment of the development, require a drainage and runoff control plan to minimize percolation of water into the ocean or canyon slope, and to ensure that the landowner or and any successor-in-interest assumes the risk of undertaking the development. As conditioned, the Commission finds that the development conforms to the requirements of Section 30253 of the Coastal Act regarding the siting of development in hazardous locations.

### **F. Water Quality**

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. Furthermore, uncontrolled runoff from the project site and the percolation of water could also affect the structural stability of bluffs and hillsides. To address these concerns, the development, as proposed and as conditioned, incorporates design features to minimize the infiltration of water and the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, the use of non-invasive drought tolerant vegetation, and the use of post-construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

### **G. Public Access and Recreation**

As conditioned, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Thus, as conditioned, the



proposed development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

## **H. Local Coastal Program**

Coastal Act Section 30604(a) states that, prior to certification of a local coastal program (“LCP”), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The Commission certified the Land Use Plan (LUP) for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan (IP) portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City re-submitted an IP on June 3, 1999, but withdrew the submittal on October 5, 2000. Most recently in 2018, the City certified an LUP amendment for a comprehensive update of the LUP. The City is currently also working on resubmittal of an IP; however, there is no certified LCP at this time.

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

## **I. California Environmental Quality Act**

Section 13096 of the Commission’s administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (“CEQA”). Section 21080.5(d)(2)(A) of CEQA prohibits approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment, either individually or cumulatively with other past, present, or reasonably foreseeable probable future projects. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

## **APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

- Coastal Development Permit Application No. 5-20-0601 and associated file documents.
- Coastal Development Permit Application No. P-77-1111 and associated file documents.
- Coastal Development Permit Application No. P-78-3778 and associated file documents.