

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
301 E. OCEAN BLVD, SUITE 300
LONG BEACH, CA 90802-4325
VOICE (562) 590-5071



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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-23-0701

Applicants: Southern California Regional Rail Authority (SCRRA) and Orange County Transportation Authority (OCTA)

Agent: Antonina Delu, HDR, Inc.

Location: Within the railroad right-of-way (ROW) seaward of the Casa Romantica Cultural Center and Garden located at 415 Avenida Granada at Orange Subdivision Mile Post 204.6, San Clemente, Orange County (Latitude: 33.421186; Longitude: 117.620978)

Project Description: Request for continued temporary authorization of development undertaken under an emergency coastal development permit to construct an approximately 250 ft. long, 12 ft. high, soldier pile and timber lagging barrier wall.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

During the storm season of early 2023, a portion of the existing railroad track at Mile Post 204.6 in the City of San Clemente was deemed unstable and unusable due to two

landslides at an adjacent upslope property called the Casa Romantica Cultural Center and Garden, owned by the City of San Clemente (the City). The first landslide occurred on April 27, 2023, and the second major landslide occurred on June 5, 2023. On June 30, 2023, the Coastal Commission issued Emergency Coastal Development Permit (ECDP) No. G-5-23-0056 to Southern California Regional Rail Authority (SCRRA or Metrolink) and Orange County Transportation Authority (OCTA) for the construction of an approximately 250 ft. long, 12 ft. high, temporary soldier pile and timber lagging barrier wall, within the railroad right-of-way (ROW), to prevent slope-side material and debris from falling onto the railroad tracks. The development approved by the ECDP was determined by Commission staff to be the minimum amount necessary to temporarily address the emergency. Construction of the temporary wall was completed on July 13, 2023. In the time since emergency authorization, and in accordance with the ECDP conditions, SCRRA or Metrolink and OCTA have submitted this follow-up coastal development permit (CDP) application for continued temporary authorization of the barrier wall while future plans for the site are prepared and implemented.

SCRRA and OCTA are also proposing to remove the barrier wall (including soldier piles) to 3 ft. below grade after the City of San Clemente finishes its slope stabilization project on the Casa Romantica property above the railroad right-of-way (ROW). The City's stabilization work was temporarily approved via ECDP G-5-23-0060. This ECDP (G-5-23-0060) authorized the removal of soil from the slope, as well as the installation of four rows of grade beams with tiebacks and then ultimately reconstruction of the slope using geogrid reinforcement. The City anticipates completing the project sometime in the fall of 2024. Therefore, **Special Condition 1** requires the applicant to remove the barrier wall within 6 months of the City completing all authorized development for its stabilization project on the slope of Casa Romantica temporarily approved via ECDP G-5-23-0060, or within five years of the date of approval of the subject CDP (April 12, 2029), whichever occurs first, and **Special Condition 2** requires the applicants to conform to the soldier pile removal plan that was submitted and is shown in [Exhibit 3](#).

The primary issue raised by this project application is whether the proposed retaining wall is consistent with the coastal hazards policies of the Coastal Act and the City of San Clemente certified Land Use Plan (LUP). Shoreline and bluff protective devices, by their very nature, tend to conflict with Chapter 3 policies because armoring can have a variety of adverse impacts on coastal resources, including sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site. Section 30235 of the Act authorizes protective devices that are otherwise inconsistent with Chapter 3 policies if necessary to protect existing structures in danger from erosion and where impacts to shoreline sand supply have been eliminated or mitigated. Here, the railroad was originally constructed in this location in the late 1880s, well before the effective date of the Coastal Act (January 1, 1977) and is considered an "existing structure" under section 30235 of the Coastal Act. As an existing structure, the railroad is allowed to be protected in this case because operations of the railroad would be in

danger from the active landslides and because the subject coastal bluff retaining wall has been designed to eliminate any significant adverse impacts on shoreline sand supply since it is landward of the railroad and the applicants are proposing to remove the wall once the City completes its longer-term stabilization project. The proposed project would be the least environmentally damaging feasible alternative consistent with Coastal Act Section 30235.

Staff is recommending that the project be conditioned to avoid or minimize potential impacts to water quality and marine resources, public access, visual resources, and archeological and tribal cultural resources. Given the long history of human habitation on this site and the potential to encounter archeological and tribal cultural resource deposits with any future ground disturbance including the potential removal of the wall, **Special Condition 3** is imposed to require the applicants to invite Tribes with ancestral ties to the area to be present and monitor ground-disturbing activities and retain a qualified archaeologist and any Tribes that accept the invitation to conduct the monitoring. **Special Condition 4** requires the applicants to agree to comply with project-related requirements to provide for the safe storage of project materials, drainage controls, and safe removal of potentially contaminated soils. **Special Condition 5** requires the applicants to submit an application for an amendment to the CDP or for a new CDP to address resource impacts raised should the soldier piles become exposed by erosion in the future. **Special Condition 6** also requires the applicants to agree to the limitations of the staging of construction materials during the summer season, defined as from Memorial Day weekend to Labor Day, of any year. **Special Condition 7** requires the applicants to agree to allow pedestrian access through the project site on the San Clemente Pedestrian Beach Trail, or if certain construction activities result in it being infeasible to keep the trail open, the applicants are required to submit a Public Access Plan for review and approval of the Executive Director, prior to closing the trail, that provides clearly designated detours. **Special Condition 8** requires the applicants to submit written approval from the State Lands Commission for the proposed development. Finally, the applicants are required to assume the risks of developing in an inherently hazardous area, per **Special Condition 9**.

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.

Therefore, staff recommends that the Commission **APPROVE** the CDP with the conditions described above. The motion to carry out the staff recommendation is on page 5 of this report.

Table of Contents

I. MOTION AND RESOLUTION.....5

II. STANDARD CONDITIONS.....5

III. SPECIAL CONDITIONS6

IV. FINDINGS AND DECLARATIONS 10

 A. Project Description and Location..... 10

 B. Hazards 13

 C. Archaeological and Tribal Cultural Resources..... 20

 D. Water Quality and Marine Resources..... 22

 E. Visual Resources..... 23

 F. Public Access and Recreation..... 25

 G. Biological Resources 28

 H. Local Coastal Program 27

 I. California Environmental Quality Act (CEQA)..... 28

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS28

EXHIBITS

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

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – Removal Plan](#)

[Exhibit 4 – Landslide Photos](#)

[Exhibit 5 – LUP Figure 6-2-A Public View Corridors](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit No. 5-23-0701 pursuant to the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of 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 applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind

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

III. SPECIAL CONDITIONS

1. **Length of Development Authorization.** The approved development is authorized for a limited term and should be removed within 6 months of the completion of all authorized development for the City of San Clemente's slope stabilization project at Casa Romantica, temporarily approved via ECDP G-5-23-0060, or within five years of the date of approval [i.e., April 12, 2029], whichever occurs first. By acceptance of this CDP, the applicants acknowledge and agree that the development authorized pursuant to this permit is interim and is permitted for the time frame identified. The expiration date of this CDP may only be altered by the Commission, and only if the permittees submit a CDP amendment request to the Commission prior to the expiration date of this CDP (i.e., before April 12, 2029).

2. **Conformance with the Submitted Removal Plan.** By acceptance of this permit, the applicants agree to comply with the plan submitted to the Commission, titled "Attachment A: OCTA/SCRRA Mile Post 204.6 Temporary Soldier Pile Wall Removal Plan" submitted November 6, 2023 ([Exhibit 3](#)), which details the removal of the soldier piles to 3 ft. below grade. The permittees shall undertake development in conformance with the approved final plan unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

3. **Protection of Archaeological and Tribal Cultural Resources.** The permittees shall undertake development in compliance with the following mitigation measures to protect archaeological, including tribal cultural resources:
 - A. AT LEAST ONE MONTH PRIOR TO COMMENCEMENT OF ANY GROUND-DISTURBING CONSTRUCTION ACTIVITIES, the permittees shall (i) notify the representatives of Juaneño (Acjachemen) and Luiseño-affiliated Native American Tribes listed on an updated Native American Heritage Commission (NAHC) contact list for the area; (ii) invite all affiliated Tribal representatives on that list to be present and to monitor ground-disturbing activities; and (iii) arrange for any invited Tribal representative that requests to monitor and a qualified archaeological monitor to be present to observe project activities with the potential to impact archaeological and/or tribal cultural resources. The monitor(s) shall have experience monitoring for archaeological resources of the local area during excavation projects, be competent to identify significant resource types, and be aware of recommended Tribal procedures for the inadvertent discovery of archaeological resources and human remains. Evidence of written notification shall be made available to the Executive Director upon request.

- B. If an area of archaeological resources is discovered during ground-disturbing activities, all construction shall cease and shall not recommence except as provided in subsection (D) hereof, and the permittees shall retain an archaeologist and/or tribal cultural resource specialist qualified to analyze the significance of the find in consultation with the Juaneño (Acjachemen) and Luiseño-affiliated Native American Tribes listed on the NAHC list. The specialist(s) shall immediately notify the affiliated Tribes on the NAHC list. An “exclusion zone” where unauthorized equipment and personnel are not permitted shall be established (e.g., taped off) around the discovery area that includes a reasonable buffer zone recommended by the monitor(s). Project activities may continue outside of the exclusion zone.
 - C. Should human remains be discovered on-site during the course of the project, immediately after such discovery, the on-site archaeologist and Native American monitor shall notify the County Coroner within 24 hours of such discovery, and all construction activities shall be temporarily halted until the remains can be identified. The Native American group/person deemed acceptable by the NAHC shall participate in the identification process, pursuant to Public Resources Code Section 5097.98. Should the human remains be determined to be that of a Native American, the permittees shall comply with the requirements of Section 5097.98. Within five (5) calendar days of such notification, the permittees shall notify the Executive Director of the discovery of human remains.
 - D. Permittees seeking to recommence construction within the exclusion zone following discovery of the archaeological resources shall submit a Supplementary Archaeological Plan (SAP) prepared by the project archaeologist in consultation with the Juaneño (Acjachemen) and Luiseño-affiliated Native American Tribes listed on the NAHC list for the review and written approval of the Executive Director. If the Executive Director approves the SAP and determines that the SAP’s recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction may recommence after this determination is made by the Executive Director in writing. If the Executive Director approves the SAP but determines that the changes therein are not de minimis, construction may not recommence until after an amendment to this permit is approved by the Commission.
- 4. Storage of Construction Materials, Mechanized Equipment, and Removal of Construction Debris.** The permittees shall comply with the following construction-related requirements:
- a. No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion;
 - b. All debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project;

- c. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
- d. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- e. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- f. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the Coastal Zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;
- g. The applicant shall use plastic-free netting or no netting in a temporary erosion and sediment control BMPs.
- h. The use of temporary erosion and sediment control products (such as fiber rolls, erosion control blankets, mulch control netting, and heavy-duty silt fences) that incorporate plastic netting shall be prohibited, to minimize wildlife entanglement and plastic debris pollution. Only 100% biodegradable (not photodegradable) natural fiber netting shall be allowed.
- i. All stockpiles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
- j. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
- k. The discharge of any hazardous materials into any receiving waters is prohibited;
- l. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;
- m. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and
- n. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

5. Soldier Pile Exposure Plan.

- a. By acceptance of this permit, the applicants agree on behalf of themselves and all successors and assigns that, in the event the soldier piles approved by CDP 5-23-0701 become exposed in the future, the landowner is required to submit an application for an amendment to CDP 5-23-0701 or a new CDP to implement methods to address coastal resource issues raised, including but not limited to issues related to hazards, habitat, and/or public views.
 - b. The landowner shall undertake development in accordance with the approved final plan of the approved CDP amendment or new CDP. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission approved amendment to the CDP, unless the Executive Director determines that no amendment is legally required for any proposed minor deviations.
- 6. **Construction Timing.** By acceptance of this permit, the applicants agree that all construction activity conducted during the summer period between Memorial Day Weekend and Labor Day of any year may only use public beach parking spaces for staging during the weekdays and must be the minimum necessary. No public beach parking spaces shall be used for staging during the weekend of this timeframe unless the Commission amends this permit, or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

7. San Clemente Pedestrian Beach Trail.

- a. By acceptance of this permit, the applicants agree that the San Clemente Pedestrian Beach Trail shall remain open to pedestrian traffic throughout the construction period.
- b. If it is not feasible to keep the trail open to pedestrians during construction, the applicants shall submit a Public Access Plan for the review and approval of the Executive director, prior to closing the trail. The plan shall include a detailed route of where pedestrian traffic will be redirected, including signage and timing of the detour. The route shall be the shortest detour possible for the shortest period of time feasible.

The permittees shall undertake the development in accordance with the approved Public Access Plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the plan shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

- 8. State Lands Commission Approval.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, a written determination from the State Lands Commission that:
- a. No state lands are involved in the development; or
 - b. State lands are involved in the development, and all permits required by the State Lands Commission have been obtained; or
 - c. State lands may be involved in the development, but pending a final determination of state lands involvement, an agreement has been made by the applicants with the State Lands Commission for the project to proceed without prejudice to the determination.
- 9. Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from landslides, flooding, sea level rise, erosion and wave uprush; (ii) to assume the risks to the permittees and the property that are the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Location

The development is located between the sea and the first public road within the railroad right-of-way (ROW) at Mile Post 204.6 at the toe of the bluff below the Casa Romantica Cultural Center and Garden ([Exhibit 1](#)). Casa Romantica is owned by the City of San Clemente and was constructed in 1927. The railroad tracks in this location were constructed in the late 1880s. Metrolink and Amtrak operate passenger rail service through this corridor. The Burlington Northern Santa Fe (BNSF) freight line also operates here. According to the applicants, this corridor is key to interregional travel between San Diego County, Orange County, and Los Angeles County, and is also a strategic rail line for national defense.

On April 27, 2023, a landslide occurred on the bluff seaward of the Casa Romantica building and landward of the subject railroad line. This bluff failure caused portions of the slope to slide towards the railroad tracks and the adjacent Reef Gate condominium complex located at 423 Avenida Granada. This landslide resulted in debris on the tracks, causing passenger rail service to be suspended. On May 12, 2023, the City of

San Clemente (the City) began emergency slope stabilization repair work to abate the continuous movement of the slope, as will be described in more detail below. Rail service ultimately resumed on May 27, 2023, until June 5, 2023, when a second landslide occurred in this same location. After the second landslide, passenger rail service was suspended again, and the BNSF freight line was initially suspended and then resumed service with a slow speed restriction. On June 30, 2023, the Commission issued emergency CDP No. G-5-23-0056 for OCTA and SCRRA to construct an approximately 250 ft. long, 12 ft. high, temporary barrier soldier pile and timber lagging wall between the railroad tracks and the adjacent (uphill) Casa Romantica building, within the railroad right-of-way (ROW), to prevent landslide debris from sliding onto the railroad tracks. Commission staff reviewed project alternatives and determined that the proposed project was the minimum amount of development necessary to temporarily address the threat to the railroad. The applicants assert that the proposed wall is not intended to prevent another slide upslope and that this is the work that the City is completing separate from the applicants' effort, as the slides have occurred on City property. Instead, the wall is intended to protect the track from future slides until the slope grading work can be completed by the City. This emergency work was completed on July 13, 2023, and allowed for passenger and freight rail service to resume.

The soldier pile and timber lagging wall was installed with 36-in. diameter piers spaced at 8.5 ft. on centers along the alignment ([Exhibit 2](#)). Steel H piles were placed in each pier hole, and the boreholes were backfilled with lean concrete. The timber lagging was then installed between piles with slope monitoring detector devices installed as well. Additionally, the applicants removed landslide soil on the rail side of the temporary barrier wall. It was estimated by the applicants that approximately 268 cubic yards of soil were displaced from the drilling of the piles. These soils were transported to a site outside of the coastal zone.

OCTA and SCRRA are proposing to remove the barrier wall that is proposed to be retained under the subject permit once the City has completed its longer-term stabilization work explained below. The wall was designed with a minimum design life of 1-year and an anticipated 2-year life span before removal. As proposed, the soldier piles will be removed to a depth of 3 ft. below grade ([Exhibit 3](#)) once the City's stabilization project is complete. In the immediate vicinity of each pile, temporary hand excavation or a slot trench would be used to access 3 ft. below grade for the pile cutoff. This will involve approximately 1.5 cubic yards of temporary excavation per pile (approximately 48 cubic yards total). The cutoff process is proposed to consist of minor chipping of upper grout materials, if necessary, and plasma or torch-cutting the steel section to the appropriate depth of 3 ft. below grade. The applicants propose to then backfill with the temporary excavation soils from the trenching after the piles have been removed.

The City's Longer Term Slope Stabilization Project

On October 17, 2023, the Commission issued emergency CDP No. G-5-23-0060 to the City of San Clemente for two phases of separate, but related emergency work, the longer-term Casa Romantica Slope Stabilization project. The first phase involved the removal of the large mound of soil at the north end of the landslide and the placement of soil against the slope nearest Casa Romantica to stabilize the slope. This work occurred in May 2023 after the first landslide occurred on site. The City also removed soil off the Reef Gate Condominium building to relieve any pressure against the building. Additionally, some soil was removed from the site to lighten the weight of the load above the failure plane. All of this work occurred prior to the emergency CDP being issued. For the second phase of emergency work, the City proposed to remove the debris from the two landslides and excavate a buttress key through the basal rupture surface of each landslide and then reconstruct the slope to its approximate original site grade. In order to provide temporary stability during landslide excavation and to contribute to the long-term stability of the site, four rows of grade beams and tiebacks were proposed to be constructed as landslide removals were being performed. Approximately 96, 100-ft.-long tiebacks were proposed to be installed. Once installation of the tiebacks is complete the proposed slope reconstruction would begin. The slope reconstruction will involve the inclusion of geogrid reinforcement at regular intervals (approximately 2 vertical ft.) with the compact fill for slope stability mitigation purposes, due to the height and inclination of the fill slope (~1.65:1). Once the tiebacks are installed and the slope is reconstructed, the City is proposing to revegetate the slope with native plants.

The City began installing the tiebacks the week of September 11, 2023. The City applied for their follow up CDP (5-23-0889) on December 11, 2023, in accordance with the conditions of the ECDP, and as of now this application is currently incomplete, however the work described above was all temporarily approved via ECDP G-5-23-0060. The City estimates that the entire slope stabilization project will take approximately 9-12 months to complete. At the date of publication of this staff report the full stabilization project still has not been completed and the City explained during email correspondence with Commission staff on March 11th that the rainier than normal season has resulted in construction delays. Additionally, during a meeting between Commission Staff and City Staff on March 26, 2024, the City provided an update on the status of the stabilization work. The City explained that it is on row 3 of 4 for the tieback installation and that, while there have been and may continue to be weather-related delays, they currently anticipate completing the project sometime in the fall of 2024.

Other Agency Approvals

The applicants have been working with State Lands Commission (SLC) to obtain a lease for their stabilization projects up and down the San Clemente coast that encroach onto state lands. **Special Condition 8** requires the applicants to provide a determination from SLC that either no state lands are involved in the development, state lands are involved in the development and approval from SLC has been obtained, or state lands may be involved in the development but, pending a final determination of

state lands involvement, an agreement has been made by the applicants with the SLC for the project to proceed without prejudice to the determination.

Standard of Review

The Commission certified the City's Land Use Plan (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. Hazards

Applicable Coastal Act Provisions

The Coastal Act requires that new development minimize risks to life and property, assure stability and structural integrity, not contribute to instability, and not rely on protective devices in order to be safe from hazards. Specifically:

Coastal Act Section 30253 states, in pertinent part:

New Development shall do all of the following:

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

On the other hand, notwithstanding the prohibition on "new" development that would require armoring to protect it, when the Coastal Act was adopted, the Legislature included a provision allowing "existing" development to obtain just such protection, with certain caveats. Specifically,

Coastal Act Section 30235 states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible.

Additional relevant Coastal Act policies include:

Section 30270 of the Coastal Act states:

The commission shall take into account the effects of sea level rise in coastal resources planning and management policies and activities in order to identify, assess, and, to the extent feasible, avoid and mitigate the adverse effects of sea level rise.

Relevant San Clemente LUP Hazard Policies:

HAZ-2 Development Near Hazards. New development that is in proximity to a geologic, coastal or fire hazard area shall be sited and designed in ways that avoid and/or mitigate risks to life and property, provide for or maintain existing public access and recreation, protect and enhance scenic resources, avoid and/or mitigate adverse impacts to the quality or quantity of the natural supply of sediment to the coastline, control runoff, and account for sea level rise and coastal storm surge projections.

HAZ-10 Applicant's Assumption of Risk. A Coastal Development Permit (CDP) for development in a hazardous area shall be conditioned when consistent with Policy GEN-8 to require the property owner to record a document (i.e., deed restriction) that waives and indemnifies the approving entity from liability for any personal or property damage caused by geologic, coastal or other hazards on such properties in relation to any development approved by the CDP and acknowledging that future shoreline protective devices to protect structures authorized by such a CDP are prohibited as outlined in HAZ-18.

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

HAZ-21 Restrict Bluff/Canyon/Shoreline Retention Devices. When consistent with Policy GEN-8, the construction, reconstruction, expansion, and/or replacement of a bluff/canyon/ shoreline protective device, (i.e. revetments, breakwaters, groins, seawalls, bluff protective devices, deep piers/caissons, or other artificial structures as defined in Chapter 7 that alter natural landforms or alter bluff/canyon/shoreline

processes), for coastal erosion control and hazards protection, are prohibited, except pursuant to a CDP where it can be shown that either the device fully complies with all relevant LCP policies and the coastal access and recreation policies of the Coastal Act, or all of the following are met:

- a. The bluff, canyon or shoreline protective device is required for the protection of coastal-dependent uses, existing structure(s) (including a principal structures or residence or public beaches in danger from erosion,
- b. Where there is no less environmentally damaging alternative to the bluff, canyon or shoreline protective device,
- c. The device is sited to avoid sensitive resources,
- d. The device is designed to eliminate or mitigate adverse impacts on local shoreline sand supply and public access and to avoid or, where avoidance is infeasible, to minimize and mitigate the encroachment on the public beach, and
- e. The device is designed to minimize adverse visual impacts to the maximum extent feasible.

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

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

Adverse Coastal Resource Impacts Due to Shoreline Protective Devices

The Coastal Act and the certified LUP discourage seawalls, revetments, bluff retaining walls and other forms of hard shoreline and bluff protective devices because they generally cause significant impacts to coastal resources and can constrain the ability of the shoreline to respond to dynamic coastal processes. This is expected to be exacerbated with future sea level rise. Shoreline and bluff protective devices, by their very nature, tend to conflict with Chapter 3 policies because hard forms of armoring can have a variety of adverse impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach. Because protection devices, such as retaining walls, revetments, and groins, can create adverse impacts on coastal processes, Coastal Act Section 30253 specifically prohibits development that could "...create [or] 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." In this case, the protective device is not intended to prevent naturally eroded sediment from reaching the beach since it is on the inland side of the railroad, and therefore likely would not have significant adverse impacts on shoreline sand supply. Applied to this project, the proposed bluff retention device would likely be inconsistent with Coastal Act Section 30253 because it alters natural landforms.

Accordingly, with the exception of coastal-dependent uses, Section 30235 authorizes the construction of armoring that is otherwise inconsistent with the Coastal Act only if the armoring is necessary to protect “existing structures” or public beaches in danger from erosion and where impacts of the armoring are eliminated or mitigated. Therefore, to protect core coastal resources, the Coastal Act has a series of specific criteria that must be met in order to approve a protective device. For example, protective devices compelled by Coastal Act Section 30235 must be supported by substantial evidence demonstrating: (1) there is an existing structure; (2) the existing structure is in danger from erosion; (3) shoreline-altering construction is required to protect the existing threatened structure; and (4) the required protection is designed to eliminate or mitigate its adverse impacts on shoreline sand supply. The first three criteria pertaining to Section 30235 relate to whether the proposed armoring is necessary, while the fourth criterion applies to mitigation for some of the impacts of such armoring.

Existing Structure to be Protected

The first Section 30235 test is whether or not a structure for which armoring is proposed as protection is considered “existing,” if it existed in its current form when the Coastal Act came into effect (i.e., January 1, 1977) and hasn’t been redeveloped since. Under Coastal Act Section 30235, structures in existence when the Coastal Act took effect on January 1, 1977, are potentially allowed armoring if the remaining three criteria identified above are satisfied.

In this case, the railroad was originally constructed in the 1880s, well before CDP requirements associated with the 1976 Coastal Act and is not known to have been significantly redeveloped since; therefore, the structure is considered an existing structure for purposes of Section 30235 of the Coastal Act. Thus, the proposed project meets the first test of Section 30235 of the Coastal Act.

In Danger from Erosion

The second Section 30235 test is whether the existing structure is in danger from erosion. The Coastal Act allows armoring to be installed to protect existing structures that are in danger from erosion, but it does not define the phrase “in danger.” There is a certain amount of risk involved in maintaining any development along the actively eroding California coastline that also can be directly subject to violent storms, wave attack, flooding, earthquakes, landslides and other hazards.

As previously explained, the bluff at the site has recently been impacted by two major landslides ([Exhibit 4](#)) and the applicants have established that the railroad tracks at the toe of the bluff are in need of protection due to the ongoing erosion of the bluff landward of the project site. Documents provided by the applicants and the City explain that the top portion of the slope in this area consists of geologically-recent, sandy terrace deposits set on top of older, siltstone bedrock known as the Capistrano Formation.

During the heavy rain events of early 2023, the saturated bluff materials began to slide to the west, towards the railroad, along a rupture surface occurring in a thin layer of weak clay within the Capistrano Formation bedrock. As previously explained the City conducted emergency slope stabilization repair work (ECDP No. G-5-23-0060), which involved removing large mounds of soil from the site, to abate the continuous movement of the slope. However, the slope continued to move, resulting in another large landslide. After the second landslide the subject wall was constructed, and it is still needed since larger remediation is not expected to be completed by the City for another year or so. Without adequate protection of the site, the bluff will continue to be susceptible to slope damage and destabilization, which could be further exacerbated by heavy rainfall events and severe El Niño storms, thus posing additional risk to the infrastructure at the site.

Commission geologist Dr. Joseph Street reviewed the relevant materials associated with this project and determined that in the absence of the 250-ft.-long retaining wall, railroad operations would be vulnerable to disruption from further landslides. Therefore, the Commission concludes that the railroad is an existing structure in danger from erosion for purposes of 30235 and that the 250-ft.-long soldier pile and timber lagging wall is necessary to protect the structure.

Feasible Protection Alternatives to a Shoreline Structure

The third test of Section 30235 that must be met is that bluff retaining walls and other construction that alters natural shoreline processes shall be permitted when required to protect existing structures that are in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. In this case, the railroad located at the toe of the bluff is an existing structure and its operations are vulnerable to disruption from further erosion of the bluff and, therefore, entitled to protection under Section 30235. The applicants seek continued authorization for development undertaken under an emergency permit for a soldier pile and timber lagging barrier wall intended to prevent slope side materials from sliding onto the tracks. While the applicants are eligible to construct a retaining wall or other protective device to protect the railroad tracks, section 30235 requires that such device be designed to eliminate or mitigate adverse impacts when such structures are allowed, therefore, the Commission considers the least environmentally damaging alternative that still provides the structural support.

Other alternatives to protective devices typically considered include the “no project” alternative, managed retreat (including abandonment and demolition of threatened structures), relocation of threatened structures and/or portions thereof, slope regrading/reconstruction and vegetation measures, and combinations of each. Additionally, if armoring is determined to be the only feasible alternative, this test also requires that the chosen structural design of the protective device be the least environmentally damaging option, including being the minimum necessary to protect the endangered existing structure in question (here the railroad). The applicants submitted

an analysis of alternatives for the proposed project, which included regrading/shaping the slope, trimming the length of the wall, using gravel piles instead of the proposed concrete piles, and fully removing the piles rather than leaving them 3 ft. below grade.

Alternative 1: Regrading/reshaping the Slope

Re-grading/reshaping of the slope was the initial approach taken by the City of San Clemente after the landslides first occurred (ECDP No. G-5-23-0060). Shortly after the two weeks of re-grading operations were completed by the City, the slope slid again on June 5, 2023. Because the landslides occurred on the City's property, the applicants assert that regrading/reshaping the slope is work that would need to be done by the City rather than themselves. Therefore, it was determined that this was not a feasible alternative for the applicants, although it is an alternative that is being worked on by the City as a longer-term solution (ECDP Application No. G-5-23-0060).

Alternative 2: Using gravel piles instead of concrete soldier piles

It was determined by the applicants that gravel backfill is not a feasible backfill alternative for the proposed auger cast drilling method, because this method requires a fluid pumped backfill material (i.e. cement based material, which is what was proposed). Using a material such as gravel would likely be less effective and would possibly not be able to develop sufficient strength for the wall to retain the loads.

Alternative 3: Fully removing the piles (via over-drilling or some other method) when the wall is no longer needed

The piles are constructed of a steel H-pile section situated inside a concrete/grouted drilled hole. There are 32 piles that are 36-inch diameter, set 32-feet into the ground and within bedrock. The applicants assert that there is no equipment/crane that can pull the weight of these piles out of the ground, due to the soil friction and bedrock embedment. The applicants also state that there is no equipment, drill augers or drill rigs, that are capable of drilling through this concrete and steel section. Additionally, that applicants state that excavation is impractical due to the groundwater, soil type, and bedrock. Therefore, it was determined that pulling the piles out, drilling the piles out, or excavating the piles out is infeasible; removal of the piles is proposed by the applicants where it can be accessed by equipment and cut off just below the ground surface (3 ft. below grade).

Alternative 4: No Project Alternative

Although the applicant did not analyze the "no project alternative", Dr. Street determined during the ECDP process that the on-the-ground observations provided by the applicant's and the City's technical and construction experts provided clear evidence of on-going instability in the landslide deposits on the bluff that, if left unchecked, could lead to further ground movement that would result in deposition of debris on the tracks and/or disruption to the railroad operations.

Alternative 5: Trimming the downcoast portion of the wall

The applicants were originally proposing to construct a 300 ft. long wall, however after discussions with Commission staff regarding possible alternatives that would minimize the development to the necessary amount to address the emergency, they revised the design to a 250 ft. long wall. It was determined by the applicants and agreed upon by Dr. Street and Commission engineer Jeremy Smith that this revised design would be the minimum necessary to cover the area most at risk for future motion/falling debris. This was ultimately the design that was approved via the ECDP, constructed, and currently proposed to be maintained until a longer-term stabilization effort can be implemented.

In short, the proposed project alternative would be the least environmentally damaging feasible alternative and is consistent with Coastal Act Section 30235. Thus, the project meets the third test of Section 30235 of the Coastal Act.

Shoreline Sand Supply Impacts

As cited above, Section 30235 of the Coastal Act requires that any required protection device only be approved if it is designed to eliminate or mitigate adverse impacts on local shoreline sand supply. In this case, the retaining wall will not have a significant adverse impact on the beach's supply of sand because the retaining wall is located landward of the railroad tracks, which largely prevents sediment from reaching the beach as designed, and the wall is proposed to be removed when the City completes their slope stabilization project. Therefore, **Special Condition 1** requires the applicants to remove the barrier wall within 6 months of the City completing all authorized development associated with their stabilization project on the slope of Casa Romantica, temporarily approved via ECDP G-5-23-0060, or within five years of the date of approval (April 12, 2029), whichever occurs first, and **Special Condition 2** requires the applicants to conform to the soldier pile removal plan that was submitted and shown in [Exhibit 3](#). The Commission finds that only as conditioned and described above can the proposed development be found consistent with Sections 30253 and 30235 of the Coastal Act.

Sea Level Rise (SLR) Considerations

The applicants did not rely on a site-specific wave runup or coastal hazards report to analyze the effects of sea level rise (SLR) on the subject development. The applicants and their geotechnical consultant have communicated to Commission staff that the wall's anticipated lifespan is only one to two years, depending on the timing of completion of the City's slope stabilization project. Therefore, due to the temporary nature of the wall, it is not expected to be impacted by coastal hazards from SLR throughout the anticipated life of the development.

In terms of recognizing and assuming the hazards risks for shoreline development, the Commission's experience in evaluating proposed development in areas subject to hazards has been that permittees continue to pursue development despite periodic episodes of heavy storm damage and other such occurrences. Development in such dynamic environments is susceptible to damage due to such long-term and episodic processes. Past occurrences statewide have resulted in public costs (through low-interest loans, grants, subsidies, direct assistance, etc.) in the multiple millions of dollars. As a means of allowing continued development in areas subject to these hazards while avoiding placing the economic burden for damages onto the people of the State of California, applicants are regularly required to acknowledge site hazards and agree to waive any claims of liability on the part of the Commission for allowing the development to proceed. Accordingly, consistent with LUP Policy HAZ-10, this approval is conditioned for the applicants to assume all risks and indemnify the Commission against all liability due to such hazards associated with developing at this location (see **Special Condition 9**).

Only as conditioned, does the Commission find that the development conforms to the requirements of Section 30253 of the Coastal Act and the relevant policies of the City's certified LUP regarding the siting of development in a hazardous location.

C. Archaeological and Tribal Cultural Resources

Section 30244 of the Coastal Act states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

Relevant San Clemente LUP Cultural Resource Policies:

CUL-1 Cultural Resources. Protect cultural resources, including historical, archaeological, and paleontological features in the Coastal Zone. Where necessary to protect cultural resources, new development shall include an appropriate pre-development investigation to determine, in the least destructive manner, whether cultural resources are present. The pre-development investigation shall include recommendations as to how the site can be developed and designed to avoid or minimize significant impacts to cultural resources. In situ preservation and avoidance are the preferred alternative over recovery and/or relocation in the protection of paleontological and archaeological resources. When in situ preservation or site capping is not feasible, recovery and/or relocation may be considered. Native American tribal groups with cultural affiliation to the project site area as identified by the Native American Heritage Commission shall have the opportunity to review and comment on the predevelopment plan as required by AB52 (2014). Archaeologists and representatives from Native American tribal groups shall provide monitoring during grading/excavation and construction activities of any approved development that has the potential to adversely impact any on-site significant cultural resources.

CUL-4 Architectural, Historical, and Cultural Resource Preservation and Restoration. Provide for the identification, preservation and restoration of the sites, structures, districts and cultural landscapes which have architectural, historical, and/or cultural significance.

The Commission recognizes that the entirety of the State's Coastal Zone was originally indigenous territory that continues to have cultural significance to Native American tribes. The Commission's Tribal Consultation Policy (adopted on August 8, 2018)¹ recognizes the importance of State efforts to protect Tribal Cultural Resources and improve communication and coordination with Tribes, and it sets out a tribal consultation process that is fully consistent with, and complementary to the nature of, the Commission's goals, policies (including Section 30244), and mission statement. Tribal Cultural Resources can be sites, features, cultural landscapes, sacred places, and objects with cultural value and can also qualify as archaeological, paleontological, visual, biological, or other resources that the Commission is tasked with protecting pursuant to the Coastal Act.

A majority of the proposed site is currently developed and has been disturbed in the past. Grading of the area took place in the 1880's when the railroad was constructed. More recently in 2023, grading and disturbance of the site occurred for the construction of the wall pursuant to the ECDP. However, there is no evidence that those initial grading activities were monitored by archaeological or Native American monitors. Additionally, for the ECDP, due to its emergency nature and lack of specific knowledge or timely requested consultation for projects in this project area, monitors were not present during those ground disturbing activities. However, through consultation our staff have learned that even disturbed soils have the potential to contain tribal cultural resources, and additional ground disturbance is proposed in order to remove the barrier wall should the larger slope stabilization effort be complete prior to the expiration of this permit.

In order to better understand the cultural significance of the project site and the surrounding project area, Commission staff engaged in tribal consultation, consistent with the Coastal Commission's Tribal Consultation Policy. Staff reached out to Native American tribal representatives with ancestral ties to the area, shortly after the emergency permit process, via email on July 11, 2023 to request consultation. The Juaneño Band of Mission Indians, Acjachemen Nation, responded to staff on July 26, 2023 to consult on the project. Through email communication with the Acjachemen Nation, the Tribe indicated that the project site is located within a known culturally sensitive area.

According to the Acjachemen Nation, the project is located within the core of their

¹ <https://documents.coastal.ca.gov/assets/env-justice/tribal-consultation/Adopted-Tribal-ConsultationPolicy.pdf>

Ancestral territory and is extremely sensitive. According to the ethnographic evidence, this area of San Clemente was inhabited by the Acjachemen since time immemorial or for thousands of years. Also, according to the ethnographic evidence, the native nation consisted of permanent villages concentrated near watercourses, and the coast. Particularly because this site is at the toe of a coastal bluff, monitoring during ground disturbance is critical for the preservation of any archaeological deposits. After reviewing the proposed project and extent of ground disturbance, the tribal representative recommended that Native American and archaeological monitors be present during ground-disturbing activities, such as removal of the wall.

As evidenced by the concerns raised by the Acjachemen Nation, there is a potential for ground disturbance activities to impact tribal cultural resources that may still be present within the soil. In past permit actions near or adjacent to known tribal cultural resource sites, the Commission has required the applicants to monitor all grading and construction activities with both archeologists and monitors from affected Native American tribes onsite. If cultural resources are discovered, as conditioned, the appropriate Native American representative(s) will decide as to the appropriate treatment method; preservation in-situ is the preferred mitigation method as stated in the certified LUP.

To ensure that the project minimizes and mitigates potential impacts to archaeological and/or tribal cultural resources and is consistent with past Commission action, the Commission imposes **Special Condition 3**, requiring the applicants to notify the representatives of Juaneño (Acjachemen) and Luiseño-affiliated Native American Tribes listed on an updated Native American Heritage Commission (NAHC) contact list for the area; invite all affiliated Tribal representatives on that list to monitor ground-disturbing activities; and arrange for a representative of any invited Tribe that requests to monitor and a qualified archaeological monitor to be present to observe project activities with the potential to impact archaeological and/or tribal cultural resources. The monitor(s) shall have experience monitoring for archaeological resources of the local area during excavation projects, be competent to identify significant resource types, and be aware of recommended Tribal procedures for the inadvertent discovery of archaeological resources and human remains. The Commission finds, therefore, that as conditioned, the proposed project is consistent with Section 30244 of the Coastal Act and the cultural resource protection policies of the certified LUP.

D. Water Quality and Marine Resources

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 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 waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Relevant San Clemente LUP Coastal Resource Policies:

RES-39 BMP Maintenance. As part of the Coastal Development Permit process, the City shall require all development to implement appropriate protocols to manage all design features used to mitigate stormwater runoff (including installation and removal, ongoing operation, maintenance, inspection, and training), to protect coastal resources and water quality for the life of the development.

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

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species' ability to see food in the water column. To ensure that construction material, debris, or other waste associated with the project activities does not enter the water, **Special Condition 4** outlines construction-related requirements to provide for the safe storage of construction materials and removal of debris from the area.

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

E. Visual Resources

Section 30251 of the Coastal Act states, in 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 landforms, to be visually compatible with the

character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

Relevant San Clemente LUP Visual Resource Policy:

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.

Section 30251 of the Coastal Act and the LUP Policy cited above require that visual resources in scenic areas be protected, and where feasible, enhanced. The LUP includes a number of policies regarding protection of scenic views. LUP Policy VIS-1 echoes Section 30251, including more specifically, that scenic and visual qualities of coastal bluffs be preserved and, where feasible, restored and enhanced.

The LUP also identifies a number of scenic gateways, scenic corridors, and public view corridors. The subject site is visible from the coastal trail view corridor ([Exhibit 5](#)). The subject site is also visible from the public beach seaward of the site. While the LUP designates specific view corridors to be protected, it also requires protection, and enhancement where feasible, of all scenic and visual qualities within the coastal zone. More specifically, the LUP requires preservation and enhancement of the scenic qualities of coastal bluffs.

As described previously, the temporary structure that the applicants are proposing to retain is a timber lagging barrier wall supported with soldier piles. The timber used for the lagging was not treated in any way, however due to the walls' anticipated life span of 1-2 years, it is not expected to have any significant visual impacts. And, as also described above, the wall and soldier piles are proposed to be removed to approximately 3 ft. below ground surface and are not expected to be exposed. However, in the event that the soldier piles do become exposed at some point in the future, resource impacts, including potential visual impacts, arising from that exposure must be addressed (**Special Condition 4**).

The goals of the LUP's visual resources policies include maintaining the natural state of the bluffs for public views and other purposes. If the soldier piles were to become exposed, it would alter the public views of the coastal bluff. The possible imposing visual presence of steel soldier piles would interfere with the views of the bluff in its "natural" state, inconsistent with the LUP policies cited above and with Coastal Act

Section 30251. A row of soldier piles would not provide views of the bluff in a natural state. Although exposure of the soldier piles is not expected, it cannot be ruled out. Therefore, in order to assure that the proposed development remains consistent with the Chapter 3 policies of the Coastal Act, and with the policies of the City's certified LUP, **Special Condition 4** is imposed which requires the applicants to apply for an amendment to the CDP or for a new CDP to address resource impacts, including visual resource impacts, raised by soldier pile exposure in the future should exposure occur. Only as conditioned can the proposed development be found consistent with the Coastal Act and the City's certified LUP.

F. Public Access and Recreation

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Relevant San Clemente LUP Public Access Policy:

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

One of the basic goals stated in the Coastal Act is to maximize public access and recreation along the coast.

The proposed project is located in the Pier Bowl area of San Clemente. This area is a popular visitor destination point for local and regional beachgoers. The project itself is located within the railroad ROW and will not impact any public access to and along the coast. However, during construction for removal of the wall there is the potential for impacts to public access due to the staging of construction materials. Therefore, **Special Condition 6** requires that the applicant agree that all construction activity conducted during the summer period between Memorial Day Weekend and Labor Day of any year may only use public beach parking spaces for staging during the weekdays. No public beach parking spaces shall be used for staging during the weekend of this timeframe unless the Commission amends this permit, or the Executive Director provides a written determination that no amendment is legally required for any proposed

minor deviations. Additionally, because the San Clemente Pedestrian Beach Trail is located adjacent to the project site, **Special Condition 7** requires the applicant to agree that the San Clemente Pedestrian Beach Trail shall remain open to pedestrian traffic throughout the construction period, or if certain construction activities result in it being infeasible to keep the trail open, the applicants are required to submit a Public Access Plan for review and approval of the Executive Director, prior to closing the trail, that provides clearly designated detours, with signage and timing, which redirects pedestrian traffic through the shortest detour available for the shortest period of time feasible. Therefore, the Commission finds that the development, as conditioned, is consistent with the public access policies of the Certified LUP and Chapter 3 of the Coastal Act.

G. Biological Resources

Section 30107.5 of the Coastal Act, defines an environmentally sensitive area as:

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

Section 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 such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

Section 30240 requires that only resource-dependent uses that do not significantly disrupt habitat values are permitted in environmentally sensitive habitat areas (ESHA), and any uses in areas adjacent to ESHA must be sited and designed to prevent impacts that would significantly degrade those areas and must be compatible with their continuance. The applicants submitted a Biological Resources Memorandum which states that field surveys were conducted for the site. Additionally, a review of the U.S. Fish and Wildlife Service's (USFWS) list of Threatened, Endangered, Candidate, and Proposed species; the California Department of Fish and Wildlife (CDFW) California Natural Diversity Database (CNDDB); National Marine Fisheries Service (NMFS 2023); and the California Native Plant Society (CNPS) Inventory of Rare and Endangered Plants of California (CNPS 2023) was also conducted for the project site, which identified documented occurrences from within the vicinity of the project area. It was determined that five special status species have a low potential for occurrence within the project site. The five special status species include the following: Southern California legless lizard (*Anniella stebbinsi*), Blainville's horned lizard (*Phrynosoma blainvillii*), pallid bat (*Antrozous pallidus*), Western red bat (*Lasiurus blossevillii*), and the

Pacific pocket mouse (*Perognathus longimembris Pacificus*). However, none of these special status species were identified in surveys of the site or in desktop analysis. Therefore, the applicant determined that there is no evidence of ESHA on the project site.

The project area contains seven vegetation communities and/or land cover types (disturbed, iceplant mats, myoporum groves, ornamental (planted), quailbush scrub, urban/developed, and wattle ruderal patch). None of these vegetation communities are considered vulnerable or rare at the state or global levels. One special status plant species, Chaparral ragwort (*Senecio aphanactis*), was determined to have a low potential for occurrence at the site. No observations of Chaparral ragwort were found during field surveys of the project site or during desktop analysis. The memorandum concluded that the emergency work performed did not have an impact on any state or federally protected biological resources.

The Commission's ecologist Dr. Corey Clatterbuck also reviewed data available for the site and determined that there is no ESHA within the project area. Therefore, the proposed project, including construction and staging areas, is not expected to impact any environmentally sensitive habitat areas or the animals and plants that rely on them. The installation of the subject temporary barrier wall occurred in the previously disturbed ROW and no impacts to biological resources were identified during field investigations. Therefore, as proposed, the project is sited and designed to prevent any adverse impacts to ESHA and can be found consistent with Coastal Act section 30240(b). Further, since the landslides occurred on the coastal bluff and vegetation within the impact area was severely disturbed during these landslide events, the City proposes to revegetate the slope with native vegetation as a part of its related slope stabilization project (ECDP No. G-5-23-0060).

H. Local Coastal Program

Coastal Act Section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a CDP 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 (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of CDP applications to be supported by findings showing the approval, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The Commission's regulatory program for reviewing and granting CDPs has been certified by the Resources Secretary to be the functional equivalent of CEQA. (14 CCR § 15251(c).)

In this case, the City of San Clemente is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of San Clemente determined that the proposed development is a statutory exemption under Section 15269 (b) and (c) which exempts from CEQA requirements emergency repairs to publicly or privately owned service facilities necessary to maintain service essential to the public health, safety, welfare. 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 Number 5-23-0701 and associated file documents
- Emergency Permits Nos. G-5-23-0056 and G-5-23-0060