

CALIFORNIA COASTAL COMMISSION

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W13a

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-24-0224

Applicant: Seaside Coastal Living LLC

Location: 314 La Rambla, San Clemente, Orange County (APN: 692-272-13)

Project Description: Demolish an existing two-story guest unit/garage structure and swimming pool, and construct a new 25-foot-high, two-story over basement, 12,780 square foot single-family residence with an attached 850 square foot ADU, a new rear yard pool, spa, concrete patio, landscaping, and 3,000 cubic yards of grading (1,500 cu. yds. of cut and 1,500 cu. yds. of fill) on a coastal blufftop lot.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The project site is an ocean-fronting coastal blufftop lot located at 314 La Rambla in the City of San Clemente, Orange County ([Exhibit 1](#)). The proposed development includes demolition of an existing two-story guest unit/garage structure and a swimming pool, and construction of a new 25-foot-high, two-story over basement, 12,780 square foot single-family residence with an attached 850 square foot Accessory Dwelling Unit (ADU) ([Exhibit 2](#)). The proposed foundation involves 5-inch thick concrete floor slabs

with 15-inch x 24-inch concrete footings. No deepened foundation system is proposed. Approximately 3,000 cubic yards of grading is proposed.

The primary Coastal Act issues associated with the project are safe siting and adaptability of the proposed new development which will be subject to coastal hazards on this ocean-fronting blufftop lot. An appropriate setback distance is applied to new blufftop development to reduce the likelihood that the new development will become threatened by erosion in the future and to reduce the likelihood that shoreline/bluff protection may be sought to protect the new development in the future. A setback is typically determined by consideration of a combination of factors including the location of the bluff edge, the location of the 1.5 (static) factor of safety line, and the rate of bluff retreat.

The applicant's consultant has identified the location of the bluff edge at the seaward edge of the relatively flat building pad ([Exhibit 3](#)). The applicant's geotechnical consultant has also provided the location of the 1.5 factor of safety (static) line ([Exhibit 3](#)). The Commission's engineering geologist has reviewed the consultant's bluff edge location and 1.5 factor of safety line and concurs with both. Typically, geotechnical consultants determine the bluff retreat rate by review of historic data. These data include historic aerial photos and historic surveys of a subject site. Because sufficiently detailed surveys are rare, historic aerial photography is more commonly used to assess changes in bluff edge position over time. In San Clemente, the railroad track was constructed around the turn of the 20th century and pre-dates aerial photography, so there are no historic aerial photos available without the railroad present at the base of the bluff. The railroad track and berm upon which it sits have prevented wave attack and marine erosion since they were constructed. Despite occasional storm damage and wave overtopping in this general location, the railroad and the berm have effectively halted marine erosion at the toe of the bluff for the last 135 years or so. Thus, the natural rate of bluff retreat is difficult to determine for this site and throughout San Clemente.

Because the base of the bluff in San Clemente has been protected by the railroad berm and in some areas the related revetment, it is difficult to determine how the bluff would have retreated in the past had such protection not been present, which in turn makes it difficult to project the likely rate of bluff retreat in the future over the expected 75 year life of proposed development. The Commission's technical staff is working on developing guidance to apply to this situation that is unique to San Clemente.

In the absence of the typically applied method to determine bluff retreat rate, the Commission, in this case, must rely on the current location of the bluff edge and the 1.5 factor of safety line to best estimate the safest location on site to place new development and to determine the development siting least likely to require future shoreline/bluff protective devices. San Clemente LUP Policy HAZ-41 requires a minimum bluff edge setback of *at least* 25 feet and consistent with the distance recommended by site specific geotechnical study.

The applicant's geotechnical studies provide evidence that the proposed project is not in acute danger from renewed marine erosion at the bluff toe, and that even occasional

wave contact with the bluff toe beyond the railroad is unlikely without a significant amount of SLR. However, these studies did not explicitly consider the likelihood that SLR will accelerate shoreline erosion and retreat above historical rates. In contrast, the 2019 City of San Clemente Sea Level Rise Vulnerability Assessment (City VA) examined future shoreline evolution in the project vicinity using USGS Coastal Storm Modeling System ("CoSMoS") projections of future flooding, wave runup, and shoreline retreat. The City VA analysis indicated that 3.3 feet (1 meter) of SLR could result in 95 feet of shoreline retreat (up to 150 feet under winter eroded conditions), increasing to 165 feet (to 272 feet with winter erosion) with 4.9 feet (1.5 meter) of SLR. These projections greatly exceed the magnitudes of shoreline retreat considered in the applicant's analyses and would place the mean high tide line near or beyond the line of the railroad. Moreover, under the precautionary "intermediate-high" SLR scenario, 3.3 feet of SLR could occur by the 2080s and 4.9 feet in the 2100s, the latter of which is approximately near the end of the assumed 75-year economic life of the proposed project. In short, the CoSMoS shoreline retreat projections relied on in the City VA suggest that renewed bluff toe erosion is a possibility under the higher SLR scenarios.

As proposed, the residence would be setback 65 feet from the bluff edge, right at the 1.5 factor of safety line. In response to uncertainties related to bluff retreat rate, staff is recommending that the bluff face and site stability be monitored in order to track any changes to the location of the bluff edge and site stability. Staff is recommending that, based on the required monitoring, at the point development becomes threatened, it be removed rather than protected by shoreline or bluff protective devices, as required by Section 30253 of the Coastal Act which prohibits development that would in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. In addition, staff is recommending that the residence, including foundations, be designed to facilitate removal.

Staff is also recommending a number of other special conditions to assure the proposed development will be in conformance with Coastal Act and LUP policies regarding blufftop development and hazards, and protection of visual resources, Tribal Cultural Resources, paleontological resources habitat, marine resources, and water quality. Staff-recommended special conditions are: 1) Submittal of Revised Final Plans reflecting removal of the proposed basement, pool and spa; 2) submit stability monitoring and development removal plans; 3) prohibit development on the bluff face; 4) Conformance with Geotechnical Recommendations; 5) Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris; 6) Protection of Archaeological and Tribal Cultural Resources; 7) Assumption of Risk and Waiver of Liability; 8) No Future Shoreline/Bluff Protective Device; 9) Public Trust; 10) Future Improvements; 11) Deed Restriction; and 12) Protection of Paleontological Resources.

The project site is in the Commission's permit jurisdiction as the City does not have a certified LCP. The Chapter 3 policies of the Coastal Act are the standard of review. The City's certified Land Use Plan (LUP) serves as guidance.

Staff recommends that the Commission **APPROVE** coastal development permit application 5-24-0224 with conditions. The motion is on page 5.

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EXHIBITS

[Exhibit 1 Project Location](#)

[Exhibit 2 Project Plans](#)

[Exhibit 3 Bluff Edge Location and 1.5 Factor of Safety Line](#)

[Exhibit 4 Location of Railroad Revetment](#)

[Exhibit 5 Nearby Landslides](#)

[Exhibit 6 Potential Habitat Study Areas – Map B \(LUP Figure 4-2-B\)](#)

[Exhibit 7 Existing Non-conforming Retaining Wall](#)

[Exhibit 8 City Engineer Letter for the Proposed Pool and Spa](#)

MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 5-24-0224 pursuant to the staff recommendation.

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

Resolution:

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

I. 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.

II. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Submittal of Revised Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director two (2) full-size sets of the following revised final plans that have been reviewed and approved by the City of San Clemente, modified as described below:

A. Revised Architectural, Foundation, Grading, Drainage & Landscape Plans that conform with the plans submitted to the Commission titled "New Custom Home for: Seaside Coastal Living, LLC" prepared by Jay Johnson A.I.A. & Associates Inc., dated 3/28/2023, and "In-Concept Landscape Plan" prepared by James Pekarske Landscape Architect dated 3/14/2023, except that they shall be modified as required below:

- i. The development, including foundations, shall be designed to facilitate removal of the structure and its foundation in the future, in the event of the residential structure becomes threatened by bluff retreat and/or geologic instability;
- ii. Eliminate the basement from the project;
- iii. Eliminate the pool and spa from the project;
- iv. For any proposed accessory structures such as decks, patios, and walkways which are at grade and do not require foundations, a minimum 10-foot bluff edge setback is required. A safety fence with shallow footings may be allowed provided it is located 10 feet or more inland of the bluff edge;
- v. Identify the existing nonconforming bluff edge retaining wall with a notation stating that that element is not approved through this CDP or any previous CDP.

B. Bird Strike Prevention. Revised final architectural plans shall depict the location, design, height and materials of deck railings, fences, screen walls and gates. Said plans shall include, at a minimum, the following requirements:

Oceanfront deck railing systems, fences, screen walls, gates, and windows and the like that are subject to this permit shall use materials designed to minimize birdstrikes with the deck railing, fence, gate, window or similar feature. Such materials may consist of all or in part of wood, wrought iron, frosted or partially-frosted glass, Plexiglas or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas may be installed

only if it contains UV-reflective glazing that is visible to birds or is used with appliques (e.g. stickers/decals) designed to reduce bird-strikes by reducing reflectivity and transparency. Any appliques used shall be installed to provide coverage consistent with manufacturer specifications (e.g. one applique for every 3 foot by 3 foot area). Use of opaque or partially opaque materials is preferred to clear glass or Plexiglas and appliques. All materials and appliques shall be maintained throughout the life of the development

C. Exterior Lighting. All on-site exterior lighting seaward of the residence shall be shielded, downward-directed, and DarkSky approved.

D. Revised Drainage Plan. The revised drainage plan shall conform with the plan submitted to the Commission titled "Preliminary Grading and Drainage Plan" prepared by Toal Engineering, Inc. dated 2/15/2023, except for the following required modifications: as proposed all on-site drainage shall be collected and directed away from the bluff edge; on-site drainage shall be collected and directed to the street; infiltration of on-site drainage shall be minimized to the maximum extent feasible; site drainage shall be filtered prior to leaving the site.

E. Revised Landscape Plan. The revised landscape plan shall conform with the plan submitted to the Commission titled "In-Concept Landscape Plan" prepared by James Pekarske Landscape Architect dated 3/14/2023, except for the following required modifications:

i. The rear yard (between the residence and the bluff edge) shall be planted and maintained to minimize the need for irrigation and on-site introduction of water and shall consist of non-invasive, low or very low water use, plants native to coastal Orange County and appropriate to the coastal bluff habitat type. Native plants shall be from local stock wherever possible. Landscaped areas in the front yard (street-facing) area shall consist of non-invasive, primarily low water use, native plants. All plants shall be low or very low water use plants for the City of San Clemente/Region 3 as identified in the WUCOLS database hosted at the California Center for Urban Horticulture at University of California, Davis (See: <https://ccuh.ucdavis.edu/wucols-db>);

ii. English ivy (*Hedera helix*), Rhododendron species (*Azalea* spp.), and White Iceberg Rose (*Rosa floribunda*) shall be removed from the proposed plant list;

iii. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council; <http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a "noxious weed" by the State of California or the U.S. Federal Government shall be utilized within the property;

iv. No permanent irrigation system shall be installed in the rear yard (between the residence and the bluff edge); Temporary above ground irrigation is

allowed only to establish plantings. Any permanent irrigation system landward of the residence shall be low volume (drip, micro jet, etc.), weather based and shall only be permitted on the street facing portion of the lot. Use of reclaimed water for irrigation is encouraged. Other water conservation measures are encouraged;

v. All vegetation shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscaping plan.

F. The permittee(s) shall undertake development in accordance with the approved plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director provides a written determination that no amendment is legally required.

2. Site Stability Monitoring & Removal of Development Plan.

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director, for review and written approval, a Monitoring Plan for conducting regular review of bluff retreat and site stability at the subject site. The plan shall be prepared by a licensed professional (certified engineering geologist or geotechnical engineer) with expertise in coastal bluff processes. The plan shall require on-going, periodic monitoring, initially at five-year intervals, beginning five years from the date of approval of Coastal Development Permit 5-24-0224 for the life of the structure (residence and accessory development (e.g. bluff edge retaining wall)). The Monitoring Plan shall identify specific methods for bluff retreat measurements at the subject site. The plan shall describe methodology and monitoring parameters to assess: 1) the location of the bluff edge; 2) evidence of any land movement on site (such as but not limited to, cracks or gaps in the soil, hardscape or buildings); and 3) evidence of any landslide movement on-site.

At a minimum, the Monitoring Plan shall include the following:

i. **Reference Points.** Provisions for establishing, prior to construction, points of measurement (reference points) across the subject site. The plan shall substantiate the number and location of all reference points. Reference points should occur across the site, with an emphasis on the area between the residence and the bluff edge as identified on LGC Geotechnical, Inc. Geotechnical Map Oct., 2022 included as [Exhibit 3](#) of this staff report. The reference points shall be related back to La Rambla as a stationary point of comparison.

ii. **Measurement Episodes.** Provisions for a certified engineering geologist, civil engineer, and/or geotechnical engineer with expertise in coastal bluff and landslide processes, to conduct measurements in feet of the linear distance, between the established reference points and (a) the bluff edge, (b) the

existing bluff edge retaining wall, (c) the on-site residence, and (d) La Rambla. Measurements shall be taken during the spring every five years and within five calendar days after any event that (1) results in any portion of the bluff edge eroding inland five feet or more, and/or (2) results in the visible cracks or gaps in the soil, hardscape or buildings on-site, and/or (3) development of a new significant landslide feature. The plan shall provide for a methodology consistent with standard surveying and blufftop delineation methods for determining the location of the blufftop edge and documenting distances on land. Such methodology may include establishing the distance of the current bluff edge to La Rambla, and any changes to that recorded distance.

Each measurement episode shall also be documented through identification of the following: (i) the date of the measurement; (ii) the person making the measurement and their qualifications; (iii) tidal and weather details for the times and dates of the measurement episode; (iv) the presence or absence of the railroad at the base of the coastal bluff; and (v) color photos that capture the area between each reference point and the features of interest (i.e., the bluff edge, gaps or cracks, landslide features and La Rambla), including each date/time associated with each photo. The photo documentation shall be accompanied by a site plan that identifies the location and orientation of each photo.

iii. Landslide Hazard Investigation. Provisions for a visual inspection and photo documentation of the residence structure, bluff edge retaining wall, and surrounding area between the blufftop edge and residence to check for signs of landslide activity such as scarps, ground cracks, and broken underground utility drainage, and/or irrigation lines.

iv. Evaluation of Safety & Stability. Provisions for a summary evaluation, in each monitoring report, of the following: (i) the overall safety and stability of the authorized development and the bluff edge retaining wall in relation to erosion, instability and landslide hazards; (ii) the adequacy of the current monitoring frequency and whether the monitoring frequency should be increased, and, if so, to what time interval; and (iii) an assessment of the need for full or partial removal of threatened development.

v. Criteria for Determining Safety of the Residence. The Monitoring Plan shall identify the criteria by which it shall be determined that the residence is no longer deemed safe for occupation and at which removal of the structure must be implemented. In any case, in the event the edge of the bluff recedes to within twenty feet of the foundation of the blufftop residence, but no government agency has ordered that the structures not be occupied, a geotechnical investigation shall be prepared by a licensed geotechnical engineer and geologist, retained by the permittees, that addresses whether any portions of the residence are threatened by coastal hazards. The report shall identify all those immediate or potential future measures that could stabilize the blufftop residence without shore or bluff protection, including but not limited to removal or relocation of portions of the residence. The report

shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that the residence or any portion of the residence is unsafe for occupancy, the permittee shall, within 90 days of submitting the report, apply for a coastal development permit amendment to remedy the hazard, which shall include proposed removal of the threatened portion of the structure.

vi. Reporting Plan. Provisions for submittal of monitoring reports to the Executive Director for review and approval by June 1st of each year in which an analysis takes place and/or within 30 days after a monitor-triggering event (landslide, earthquake, etc.) occurs. The report shall summarize all measurements and provide analysis of trends, annual retreat or rate of retreat, and the overall stability of the bluff face.

vii. Agree to Remove Debris. In the event that portions of the development, including the bluff edge retaining wall, fall to the bluffs or ocean before they are removed/relocated, the landowner shall remove all recoverable debris associated with the development from the bluffs and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

viii. Removal Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a plan prepared by a licensed geologist or geotechnical engineer with expertise in coastal bluff and shoreline processes, that provides a detailed description of how the site development, including bluff edge retaining wall, will be removed if it becomes threatened.

B. The permittee(s) shall undertake development in accordance with the approved final plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. No Development on the Bluff Face. By acceptance of this permit, the applicant acknowledges and agrees that no development, as defined in Section 30106 of the Coastal Act, shall occur in the open space area between the bluff edge and the seaward property line. This prohibition on development shall apply to the bluff face as the location of the bluff edge changes over time, due to landward retreat of the bluff edge. The "bluff edge" is as defined in the certified San Clemente Land Use Plan (LUP).

4. Conformance with Geotechnical Recommendations. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director's review and approval, along with a copy of each plan, evidence that an appropriately licensed geotechnical professional has reviewed and approved all final design and construction plans, including foundation and grading/drainage plans, and certified that each of those final plans is consistent with all the recommendations contained in the geotechnical investigations submitted with coastal development permit

application 5-24-0224 (see Appendix A). The permittee shall undertake development in conformance with the approved plans. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director provides a written determination that no amendment is required.

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

A. No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.

B. 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.

C. Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.

D. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.

E. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.

F. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.

G. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.

H. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.

I. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.

J. The discharge of any hazardous materials into any receiving waters shall be prohibited.

K. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.

L. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity

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

6. Protection of Archaeological and Tribal Cultural Resources. The permittee 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 permittee shall (i) notify in writing, email, and/or phone calls, as necessary, the representatives of Juaneño (Acjachemen) and Luiseño Native American Tribes listed on an updated Native American Heritage Commission (NAHC) contact list for the area; (ii) invite all 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. A qualified archaeologist means an individual who meets the Secretary of the Interior's Professional Standards for an Archaeological Principal Investigator and/or is listed as Registered Professional Archaeologist. The archaeological 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.

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 permittee shall retain an archaeologist and a tribal cultural resource specialist qualified to analyze the significance of the find in consultation with the Juaneño (Acjachemen) and Luiseño Native American Tribes listed on the NAHC list. Significance testing may be carried out only if acceptable to the affected Native American Tribe(s), in accordance with a Significance Testing Plan. The specialist(s) shall immediately notify the 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 onsite during the course of the project, immediately after such discovery, the onsite archaeologist and Native American monitor(s) 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. An "exclusion zone" may be established around the discovery area. If the county coroner determines that the human remains are those of a Native American, the coroner shall contact the NAHC within 24 hours, pursuant to Health and Safety Code Section 7050.5. The NAHC shall deem the Native American most likely descendant (MLD) to be invited to participate in the identification process pursuant to Public Resources Code Section 5097.98. The permittee shall comply with the requirements of Section 5097.98 and work with the MLD person(s) to preserve the remains in place, move the remains elsewhere onsite, relinquish the remains to the descendants for treatment, or determine other culturally appropriate treatment. Within five (5) calendar days of notification to NAHC, the permittee shall notify the Coastal Commission's Executive Director of the discovery of human remains and identify any changes to the proposed development or mitigation measures that may be needed related to the inadvertent discovery. The Executive Director shall maintain confidentiality regarding the presence of human remains on the project site. The Executive Director shall determine whether the identified changes are de minimis in nature and scope.

D. A permittee seeking to recommence construction within the exclusion zone (excluding the discovery of human remains, which shall follow Section 5097.98 as noted in (C) above), 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 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.

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 waves, erosion, storm conditions, landslides, geologic instability 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; 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.

8. No Future Bluff or Shoreline Protective Device.

A. By acceptance of this permit, the permittees agree, on behalf of themselves and any successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-24-0224 including, but not limited to, the residence and foundation in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, landslides, geologic instability, sea level rise, or any other natural hazards in the future. By acceptance of this permit, the permittees hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235, any similar provision of a certified LCP, or any applicable law.

B. By acceptance of this Permit, the permittees further agree, on behalf of themselves and all successors and assigns, that they are required to remove all or a portion of the development authorized by this permit and restore the site, if:

- i.** The City or any government agency with jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to damage or destruction from waves, erosion, storm conditions, landslides, geologic instability, sea level rise, or other natural hazards related to coastal processes, and that there are no feasible measures that could make the structure suitable for habitation or use without the use of bluff or shoreline protective devices;
- ii.** Essential services to the site (e.g. utilities, roads) can no longer feasibly be maintained due to the coastal hazards listed above;
- iii.** Removal is required pursuant to LCP policies for sea level rise adaptation planning; or
- iv.** The development requires new or augmented shoreline protective devices that conflict with applicable LCP or Coastal Act policies.

In addition, this approval does not permit any development to be located on lands impressed with a public trust interest, and any development that comes to be located on such lands due to the movement of the mean high tide line must be removed unless the Coastal Commission determines, pursuant to a permit amendment, that the development may remain pursuant to the Coastal Act. If the development comes to be located on lands impressed with a public trust interest due to the movement of the mean high tide line, the applicant would also be subject to the State Lands Commission's (or other designated trustee agency's) discretionary leasing approval.

9. Public Trust. Approval of CDP No. 5-24-0224 does not allow encroachment onto lands impressed with a public trust interest. Any development that comes to be located on such lands shall be removed unless authorized by the Coastal Commission. Additionally, If the development comes to be located on lands impressed with a public trust interest, such development is subject to approval by the State Lands Commission or other designated trustee agency.

10. Future Improvements. This permit is only for the development described in Coastal Development Permit 5-24-0224. 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 the Coastal Development Permit 5-24-0224. 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 Permit 5-24-0224 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

11. Deed Restriction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has executed and recorded against the parcel 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.

12. Protection of Paleontological Resources. The permittee shall undertake development in compliance with the following mitigation measures to protect paleontological resources:

A. All mitigation programs shall be performed by a qualified professional (project) paleontologist, defined as an individual with an M.S. or Ph.D. in paleontology or geology who has proven experience and who is knowledgeable in professional paleontological procedures and techniques. The individual shall also be an Orange County Certified Professional Paleontologist. Fieldwork may be conducted by a qualified paleontological monitor, defined as an individual who has experience in the collection and salvage of fossil materials. The paleontological monitor shall always work under the direction of a qualified paleontologist.

B. Starting at the surface, monitoring shall be conducted full-time in areas of grading or excavation in undisturbed geological formations or deposits. Monitoring of artificial fill, if present, is not recommended.

C. Paleontological monitors shall be equipped to salvage fossils as they are unearthed to avoid construction delays. The monitor must be empowered to temporarily halt or divert equipment to allow removal of abundant or large specimens in a timely manner. Monitoring may be reduced if the potentially fossiliferous units are not present in the subsurface, or, if present, are determined upon exposure and examination by qualified paleontological personnel to have low potential to contain fossil resources. The monitor shall notify the project paleontologist, who shall then notify any concerned parties of the discovery. Additionally, no further grading shall occur in the area of the discovery until the Community Development Director concurs in writing that adequate provisions are in place to protect these resources.

D. Paleontological salvage during trenching and boring activities shall typically be from the generated spoils and shall not delay trenching or drilling activities. Fossils shall be collected and placed in cardboard flats or plastic buckets and identified by field number, collector, and date collected. Notes shall be taken on the map location and stratigraphy of the site, which is photographed before it is vacated and the fossils are removed to a safe place. On mass grading projects, discovered fossil sites shall be protected by flagging to prevent them from being overrun by earthmovers (scrapers) before salvage begins. Fossils shall be collected in a similar manner, with notes and photographs being taken before removing the fossils. Precise location of the site shall be determined through use of handheld Global Positioning System units. If a large terrestrial vertebrate that is too large to be easily removed by a single monitor, such as a large bone or a mammoth tusk, a fossil recovery crew shall excavate around the find(s), encase the find(s) within a plaster and burlap jacket, and remove the find(s) after the plaster is set. For large fossils, use of the contractor's construction equipment may be solicited to help move the jacket to a safe location.

E. Particularly small invertebrate fossils typically represent multiple specimens of a limited number of organisms, and a scientifically suitable sample can be obtained from one to several five-gallon buckets of fossiliferous sediment. If it is possible to dry screen the sediment in the field, a concentrated sample may consist of one or two buckets of material.

F. In accordance with the "Microfossil Salvage" section of the SVP guidelines (2010:7), bulk sampling and screening of fine-grained sedimentary deposits (including carbonate-rich paleosols) must be performed if the deposits are identified to possess indications of producing fossil "microvertebrates" to test the feasibility of the deposit to yield fossil bones and teeth. If indicators of potential microvertebrate fossils are found, screening of a test sample (approximately 600 pounds) is recommended, according to the SVP guidelines. If feasible, wet screening shall be conducted on the project site. If screening yields significant

fossils, then removing and processing a "standard sample" of 6,000 pounds shall be performed.

G. In the laboratory, individual fossils shall be cleaned of extraneous matrix, any breaks shall be repaired, and the specimen, if needed, shall be stabilized by soaking in an archivally approved acrylic hardener (*e.g.*, a solution of acetone and Paraloid B-72).

H. Recovered specimens shall be prepared to a point of identification and permanent preservation (not display), including screen-washing sediments to recover small invertebrates and vertebrates. Preparation of individual vertebrate fossils is often more time consuming than for accumulations of invertebrate fossils.

I. Identification and curation of specimens into a professional, accredited public museum repository with a commitment to archival conservation and permanent retrievable storage (*e.g.*, the Cooper Center) shall be conducted. The paleontological program should include a written repository agreement prior to initiating mitigation activities. Prior to curation, the lead agency (the City of San Clemente) shall be consulted on the repository/museum to receive the fossil material.

J. A final report of findings and significance shall be prepared, including lists of all fossils recovered and necessary maps and graphics to accurately record their original location(s). The report, when submitted to and accepted by the appropriate lead agency, shall signify satisfactory completion of the project program to mitigate impacts to any potential nonrenewable paleontological resources (*i.e.*, fossils) that might have been lost or otherwise adversely affected without such a program in place.

III. FINDINGS AND DECLARATIONS

A. Project Location and Description

The proposed development is located on a 21,216 square foot, beach fronting, blufftop lot at 314 La Rambla in the City of San Clemente, Orange County ([Exhibit 1](#)). The subject site is designated RL (Residential Low Density) in the San Clemente certified Land Use Plan (LUP). The lot is not currently subject to marine erosion as the San Clemente Coastal Trail and the Orange County Transit Authority railroad tracks (protected in places by a rock revetment) runs parallel to the public beach below and are located between the toe of the bluff and the ocean. The site consists of a generally flat pad facing La Rambla and descends 105 feet down a steep coastal bluff. The nearest formalized public access to the Coastal Trail and public beach is at the T Street railroad overpass and public beach access stairway, approximately 700 feet north of the site. There are also pioneered footpaths a few hundred feet south of the site both down the slope from the bluff top at the end of La Rambla and from Boca del Canon that are used by many to access the trail, T-Street at-grade railroad crossing, and the beach.

In 2018, the previous property owner purchased two properties at 323 W Paseo De Cristobal and 314 La Rambla; with a single-family residence on one parcel and a pool and guest house on the other parcel, respectively. Despite the fact that they are two separate legal lots, the two lots have been essentially treated as a single lot in the past as they shared the same owner and the guest house was used as an ancillary development to the main residence. The previous owner subsequently sold one of the two lots (the 314 La Rambla property) to the current applicant, who is seeking to redevelop it through this application.

The project site is currently developed with an existing 670 square foot, 22-foot-high, two-story guest house/garage structure (3-car garage and two bathrooms on the first floor and additional living area on the second floor) and a swimming pool constructed in 1957, prior to the passage of the Coastal Act. The applicant proposes to demolish these features and construct a new 25-foot-high, two-story over basement, 12,780 square foot single-family residence with an attached subterranean 850 square foot ADU, a new rear yard pool, spa, concrete patio, landscaping, and 3,000 cubic yards of grading (1,500 cu. yds of cut and 1,500 cu. yds of fill) ([Exhibit 2](#)). The proposed new residence would encroach further toward the bluff edge (approximately 75 feet) than the currently existing building footprint. The proposed foundation involves five-inch-thick concrete floor slabs with 15 inch x 24 inch concrete footings. No deepened foundation system is proposed.

There is an existing non-conforming, retaining wall approximately 1.5 to 7.5 feet in depth in the western portion of the site along the top of the coastal bluff ([Exhibit 7](#)). The wall appears to have been constructed as part of original site development in the 1950's, prior to the enactment of the Coastal Act by a previous property owner. A localized, shallow debris fall, which occurred in 2010, damaged the northwest portion of the wall, which is located along the top of the bluff edge. A chain link fence has been installed to prevent access to the area of failure. Other than this failed portion of the wall, the wall appears to be in relatively good condition. The applicant is not proposing to remove the wall at this time as it would be geotechnically infeasible and leaving the wall in place is the least environmentally damaging alternative.

Standard of Review

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

B. Coastal Hazards

Section 30253 of the Coastal Act states, in 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 protective devices that would substantially alter natural landforms along bluffs and cliffs.

Section 13577(h) of the Commission's Regulations, defines bluff edge as:

Bluff line or edge shall be defined as the upper termination of a bluff, cliff, or seacliff. In cases where the top edge of the cliff is rounded away from the face of the cliff as a result of erosional processes related to the presence of the steep cliff face, the bluff line or edge shall be defined as that point nearest the cliff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff. In a case where there is a steplike feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the cliff edge...

City of San Clemente LUP Policies

GEN-7 Setback Requirements. Setback requirements from bluff and canyon edges and biological resources shall have priority over street and rights-of-way setback requirements, while maintaining a minimum five feet setback from the property line.

HAZ-8 Geotechnical Review. A geotechnical review is required for all shoreline/coastal bluff or canyon parcels where new development or major remodel is proposed. If, as a result of geotechnical review, a greater setback is recommended than is required in the policies herein, the greater of the setbacks shall apply. For shoreline/coastal bluff or canyon parcels, geotechnical review shall identify the bluff or canyon edge, provide a slope stability analysis, and a bluff/slope retreat rate analysis. Consideration of the expected long-term average coastal bluff retreat rates over the expected life of the structure (minimum of 75 years unless otherwise specified in the LCP), shall include retreat rates due to expected sea level rise and a scenario that assumes that any existing shoreline or bluff protective device is not in place. The anticipated retreat over the expected life of the structure shall be added to the setback necessary to assure that the development will maintain a minimum factor of safety against land sliding of 1.5 (static) and 1.1 (pseudo static) for the life of the structure. The analysis for shoreline/coastal bluff parcels shall use the best available science on sea level rise and consider a range of scenarios including the high scenario of sea level rise expected to occur over the life of the structure and its effect on long term bluff retreat rates. The City may issue building permits for structures that maintain a different minimum factor of safety against landslides under certain circumstances and conditions, pursuant to the Geotechnical Review specifications in the IP and where alternative stability requirements are approved by the City Engineer.

HAZ-9 Site-Specific Coastal Hazard and Erosion Study. A site-specific coastal hazard and erosion study is required for all new shoreline and coastal bluff development that could be threatened by coastal hazards such as inundation, flooding, wave run-up and overtopping, erosion, etc. including an analysis of the changes to these hazards due to sea level rise within the anticipated life assuming no reliance upon existing or future shoreline protective devices. This study shall be prepared by a qualified professional, and shall use the best available science, and a scenario-based analysis to assess the potential coastal impacts (inundation, flooding, wave run-up and overtopping, erosion, etc.), taking into consideration the effects of sea level rise over the lifetime of the development (minimum of 75 years unless otherwise specified) considering, at a minimum, a high sea level rise scenario. If the new development cannot fully minimize hazards risks by avoiding all geologic and coastal hazards for the anticipated life of the development without reliance upon existing or future shoreline protection, the study should discuss possible adaptation responses to the hazards to reduce risk as feasible and mitigate impacts to coastal resources. The study should also include an evaluation to determine whether any grading (permitted or unpermitted) has occurred and whether the grading, if any, has had an effect on potential inundation hazard.

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-19 No Right to Future Bluff or Shoreline Protective Device for New Development. New development, including Major Remodels, shall be sited and designed to avoid the need for shoreline protective devices over the life of the structure(s), except when such development is coastal-dependent and there is no feasible alternative that avoids the need for a shoreline protective device (and in such cases such devices shall be limited to the maximum feasible degree). When consistent with GEN-8, a condition of any CDP issued for new development, including Major Remodels, but excluding coastal-dependent development, in areas subject to coastal hazards, including but not limited to tidal and storm flooding, wave runup, and erosion, as influenced by sea level rise over time, shall require the property owner(s) to record deed restriction(s) on all properties on which proposed development is sited that acknowledges that, pursuant to Section 30235 of the Coastal Act and HAZ-18, the owner has no right to construct shoreline protection to protect the new development approved pursuant to the permit and that expressly waives any right to apply to construct such protection pursuant to Section 30235 of the Coastal Act and HAZ-18.

HAZ-32 New Development in Hazard Areas. New development shall only be permitted where an adequate factor of safety can be provided including on sites with ancient landslides, unstable slopes, or other geologic hazards.

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

HAZ-37 Removal of Non-conforming, Unpermitted and/or Obsolete Structures and Uses. When a principal structure is removed, all non-conforming accessory development and/or uses shall be removed. Development on the shoreline, canyon, and/or bluff sites must identify and remove all unpermitted and/or obsolete structures that are no longer being used, including but not limited to protective devices, fences, walkways, stairways, etc. which encroach into canyons or bluffs or shoreline or onto public property.

HAZ-41 Blufftop Setback. Proposed development, redevelopment, and accessory structures, if such accessory structures require a foundation on blufftop lots shall be set back by the greater of the following distances: the setback distance recommended as a result of the geotechnical study required by policy HAZ-8 or HAZ-9, at least 25 feet from the bluff edge, or in accordance with a stringline drawn between the nearest corners of adjacent structures on either side of the development. No deepened foundations, such as caissons, shall be located within 25 feet of a bluff edge. Cantilevering into the bluff top setback or geologic setback may be allowed up to a 10-foot seaward projection when necessary to avoid a taking pursuant to Policy GEN-8. In addition, construction within 5-feet of the public right-of-way front yard setback for all stories shall be allowed as long as adequate architectural relief (e.g., recessed windows or doorways or building articulation) is maintained as determined by the City. No variance or other additional permit shall be required for a reduction in the street side setback to a minimum of 5-feet when this policy is applied, provided the development is consistent with all other applicable LUP policies.

HAZ-42 New Development and Accessory Structures in Bluff Setbacks. All new development, except for public access facilities, including additions to existing structures, on blufftop lots shall be landward of the setback line required by Policy HAZ-41. This requirement shall apply to the principal structure, additions and accessory or ancillary structures such as guesthouses, pools, and septic systems, etc. with a foundation. Accessory structures such as

decks, patios, and walkways, which are at grade and do not require foundations may extend into the setback area and shall be sited in accordance with a stringline, but no closer than 10 feet to the bluff edge, provided such accessory structures:

- a. are consistent with all other applicable LCP policies;
- b. are sited and designed to be easily relocated landward or removed without significant damage to the bluff area;
- c. will be relocated and/or removed and the affected area restored to natural conditions when threatened by erosion, geologic instability, or other coastal hazards
- d. Are removed by the landowner in the event that portions of the development fall to the bluffs, beach or ocean before they are removed/relocated, along with all recoverable debris, and the material lawfully disposed of in an approved disposal site;
- e. Do not require any bluff or shoreline protective device.

HAZ-43 Blufftop Swimming Pool Setback. The minimum setback for swimming pools is the greater of the following distances: 25 feet from the bluff edge or the setback distance recommended as a result of the geotechnical review required by policy HAZ-8 or HAZ-9. All new or substantially reconstructed swimming pools shall incorporate a leak prevention/detection system.

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

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

“BLUFF EDGE” The upper termination of a bluff, cliff, or seacliff: In cases where the top edge of the bluff is rounded away from the face of the bluff as a result of erosional processes related to the presence of the steep bluff face, the bluff line or edge shall be defined as that point nearest the bluff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the bluff. In a case where there is a step like feature at the top of the bluff face, the landward edge of the topmost riser shall be taken to be the bluff edge. Bluff edges typically retreat landward due to coastal erosion, landslides, development of gullies, or by grading (cut). In areas where the bluff top or bluff face has been cut or notched by grading, the bluff edge shall be the most landward position of either the current or historic bluff edge. In areas where fill has been placed near or over the historic bluff edge, the original natural bluff edge, even if buried beneath fill, shall be taken to be the bluff edge.

“STRINGLINE” means in a developed area where new construction is generally infill and is otherwise consistent with the policies of the Land Use Plan of the City of San Clemente Local Coastal Program, no part of a proposed new structure, including decks, shall be built closer to a bluff edge, canyon edge or beach-front than a line drawn between the nearest adjacent corners of the adjacent structures for a structural stringline and to the nearest corner of an accessory structure for an accessory stringline.

The subject site is a generally trapezoidal-shaped, 21,216 square foot coastal blufftop lot which fronts La Rambla and measures approximately 80 feet wide and 230 feet long (from street to seaward property line). The rear/seaward property line is located about mid-way down the face of the coastal bluff, falling roughly between the 30 and 50 foot contour elevations. Topographically, the property extends from the street, across a relatively level pad at an average elevation of 100 feet (above mean sea level) and descends southwesterly to the mid-bluff seaward property line. A public trail is located at the base of the bluff. Seaward of the trail is the railroad track which is protected by rock revetment ([Exhibit 4](#)). The trail and railroad are at a local elevation of approximately 20 feet (above mean sea level). The lower portion of the bluff is not part of the subject property. The overall slope height is roughly 77± feet.

Coastal bluff development is inherently hazardous and poses potential adverse impacts to the geologic stability of coastal bluffs and shoreline processes. It also raises concerns regarding the stability of residential structures and the question of whether future shoreline/bluff protection might be sought by property owners when new development becomes threatened, inconsistent with Coastal Act Section 30253.

Section 30253(a) and (b) requires, among other things, that: geologic hazards be minimized, that new development assure stability and structural integrity, and not in any way require construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. LUP Policy HAZ-41 requires blufftop development to be set back by the greater of the following distances: the setback distance recommended by the required geotechnical study, a minimum of 25 feet from the bluff edge, or in accordance with a stringline drawn between the nearest corners of adjacent

structures. The LUP also prohibits deepened foundations, such as caissons, within 25 feet of a bluff edge. In addition, the LUP allows development to extend up to five feet into the otherwise required front yard (street side) setback when necessary to accommodate increased bluff edge setbacks. In such cases, no variance or other additional local permit is required, provided the development is consistent with all other applicable LUP policies. LUP Policy HAZ-41 distinguishes between the geologically necessary setback and the minimum 25-foot bluff edge setback; it requires development to be setback by the greater of the two in order to address both geologic and non-geologic concerns (e.g., biological resources, visual resources).

New blufftop development can adversely impact bluff stability by introducing added weight on top of the bluff, by increasing water into the bluff from landscape irrigation, broken irrigation or water lines, inadequate drainage systems or leaking pools, and other anthropogenic activities, and through grading, among other means. In addition, once a new structure is constructed on a blufftop lot, if the bluff erodes to a point where the new structure becomes threatened, the owner may seek shoreline and/or bluff protection to defend the structure, inconsistent with these Coastal Act and LCP policies. Imposition of an appropriate development setback helps to address these issues associated with blufftop development.

San Clemente LUP policy HAZ-32 requires that new blufftop development only be permitted when a slope stability factor of safety of 1.5 (or greater) is provided, as determined through site specific geotechnical analysis. The setback should account for this 1.5 factor of safety line to remain seaward of the structure when considering the expected bluff retreat over the 75 years of life of the development.

The goal of the bluff edge setback, in addition to safety, is to reduce the likelihood that shoreline or bluff protection may be sought in the future to protect development. Given the inherent uncertainty in predicting geologic processes, it is important that the setback allows for potential changes in bluff erosion rates resulting from future sea level rise. Safe siting of development is critical not only for the occupants of the development, but also to prevent permanent adverse impacts to coastal resources. The LCP acknowledges that seawalls, revetments, cliff retaining walls, groins and other such structural or “hard” methods intended to forestall erosion from affecting the blufftop development, can in fact alter natural landforms and natural shoreline processes, resulting in a variety of negative impacts on coastal resources, including adverse effects on sand supply, public access and recreation, public coastal views, natural landforms, and overall shoreline beach dynamics on and off site, including ultimately the loss of the beach. LUP policies aim to restrict development on the face of coastal bluffs and to protect coastal bluffs from encroachment of development to increase safety and avoid future shoreline or bluff protection, and also to ensure protection and enhancement of visual and habitat values of the bluff.

Shoreline/Bluff Protection

The Coastal Act discourages shoreline and bluff protective devices because they generally cause significant impacts on coastal resources and can constrain the ability of the shoreline to respond to dynamic coastal processes. This is expected to be made worse with future sea level rise.

Shoreline and bluff protective devices, by their very nature, tend to conflict with various Commission approved LCP and Chapter 3 policies because shoreline/bluff structures 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 shoreline/bluff protective devices, such as seawalls, revetments, groins, and caissons 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 order to ensure that new development is sited and designed to not create or contribute significantly to the destruction of the site or surrounding area through construction of protective devices, it is important to ensure that new development not be allowed that could require bluff protection to the extent such bluff protection would be inconsistent with Coastal Act Chapter 3 coastal resource policies. If it is known that the development requires bluff protection, it would be unlikely that such development could be found to be consistent with Section 30253 of the Coastal Act which, as stated above, requires that new development not *create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area*, given the well-known coastal resource impacts that shoreline/bluff protection typically causes.

Requests for shoreline/bluff protective devices are common when development is threatened by erosion, flooding, and storm activity. From a public access perspective, a major concern with shoreline/bluff protection is the threat of lost public beach area. As the beach erodes, the shoreline retreats landward toward developed areas. Shoreline protection devices also directly interfere with public access to tidelands by impeding the ambulatory nature of the boundary between public and private lands. The impact of a shoreline protection device on public access is most evident on a beach where wave run-up and the mean high tide line are frequently observed in an extreme landward position during the winter season. As the shoreline retreats landward due to the natural process of erosion, the boundary between public and private land also retreats landward. Construction of shoreline protection such as rock revetments and seawalls to protect private property would prevent any current or future migration of the shoreline landward, thus eliminating the distance between the high water mark and low water mark. As the distance between the high water mark and low watermark narrows or disappears, the seawall effectively eliminates lateral access opportunities along the beach as the entire area below the fixed high tideline becomes inundated. The ultimate result of a fixed tideline boundary (which would otherwise normally migrate and retreat landward, while maintaining a passable distance between the highwater mark and low water mark overtime) is a reduction or elimination of the area of sandy beach available for public access and recreation.

However, Section 30235 of the Coastal Act recognizes that "existing" development may be protected by a shoreline protective device subject to certain conditions. Section 30235 does not apply here because the proposed project is new development. As such,

the proposed development must be conditioned to prohibit future shoreline or bluff protection of the proposed, new development.

New development may be approved only if the Commission can be assured it will not result in the need for future shoreline or bluff stabilization to protect the structure in the future. **Special Condition 8** requires that the applicant waive any rights that may exist under Coastal Act Section 30235 or under the future certified San Clemente LCP to construct new shoreline/bluff protection to protect the new blufftop residence. In addition, the condition documents that the residence may only remain as long as it is reasonably safe from failure due to waves, erosion, storm conditions, sea level rise, or other natural hazards, without shoreline or bluff stabilization to protect the residence in the future; or as long as essential services to the site (e.g., utilities, roads) can feasibly be maintained. Also, the condition documents that removal may be required in the future if required pursuant to LCP policies for sea level rise adaptation planning. Should the blufftop residence become unstable or structurally unsound without construction of new shoreline/bluff armoring, or if any government agency orders that the structure is not to be occupied due to failure and erosion of the bluff, or if the site is no longer accessible the applicant must agree to remove the subject structure, in part or entirely, and remove and dispose of any debris that fall to the beach.

Setback

An appropriate setback distance is applied to new blufftop development to reduce the likelihood that new development will become threatened in the future and to reduce the likelihood that shoreline/bluff protection may be sought in the future. A setback is typically determined by consideration of a combination of factors including the location of the bluff edge, the location of the 1.5 (static) factor of safety line, and the rate of bluff retreat.

The City's LUP bluff edge definition (cited in the policies section above) is similar to the definition of "bluff edge" contained in the Coastal Commission's regulations (Cal. Code Reg. Title 14, §13577(h)). In this case the applicant's consultant has identified the location of the bluff edge at the seaward edge of the relatively flat building pad. The applicant's geotechnical consultant has also provided the location of the 1.5 factor of safety (static) line ([Exhibit 3](#)). The Commission's engineering geologist has reviewed both consultant's bluff edge location and factor of safety line and accepts the identified locations.

Bluff stability has been an issue of historic concern throughout the City of San Clemente. A number of modern and historic landslides have occurred on the San Clemente bluffs, including the much-publicized slide below the historic Casa Romantica (415 Avenida Granada), as well as a number of slides that have caused closure of the railroad through San Clemente recently. Two recent landslides have been mapped immediately north and south of the subject site along the bluff; A landslide occurred just north of the site in 1998, and a larger landslide occurred south of the site in 1965 and 1966 ([Exhibit 5](#)). The landslide south of the site occurred on a clay bed within the Capistrano Formation. Structural projection of the clay bed to the northwest indicates

that the clay bed rupture surface for the landslide is the same clay bed that was encountered in the subsurface exploration below the subject site.

The shoreline dynamic in San Clemente is complicated by the presence of the railroad track at the base of the bluff and, in some areas, the revetment that protects the track. Due to the historic presence of the railroad track it is difficult to determine the rate of bluff retreat that would naturally occur were it not for the presence of the railroad.

Typically, geotechnical consultants determine the bluff retreat rate by reviewing historic data. These data include historic aerial photos and historic surveys of a subject site. Because sufficiently detailed surveys are rare, historic aerial photography is more commonly used to assess changes in bluff edge position over time. In San Clemente, the railroad track (constructed before the turn of the 20th Century) pre-dates aerial photography, so there are no historic aerial photos available to review the site prior to the presence of the railroad at the base of the bluff. Despite occasional storm damage and wave overtopping in this general location of the railroad and the berm have effectively halted marine erosion at the toe of the bluff for the last 135 years or so. Thus, the natural rate of bluff retreat is difficult to determine for this site and throughout San Clemente. All the historic surveys and aerial photos reviewed by the applicant's geotechnical consultant were made available for review by the Commission's technical staff.

The City's LUP anticipates that sea level rise, coupled with coastal storms, will "eventually threaten the revetment, railroad, and development landward of the revetment such that an adaptive response will be necessary" (LUP Section 5.1.4). Section 30253(a) and (b) of the Coastal Act requires, among other things, that: geologic hazards be minimized, that new development assure stability and structural integrity, and not in any way require construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. This means setbacks must account for bluff retreat and geologic hazards in a scenario without armoring. Because the base of the bluff in San Clemente has been protected by the railroad, berm and in some areas the related revetment, it is difficult to determine how the bluff would have retreated in the past had such protection not been present, which in turn makes it difficult to project the likely rate of bluff retreat in the future over the expected 75 year life of a proposed development. The Commission's technical staff is working on developing guidance to apply to this situation that is unique to San Clemente. This is important because the Orange County Transportation Authority (OCTA) is currently considering solutions to address increased frequency of wave attacks and landslides on the railroad through San Clemente, which have impacted rail travel through San Clemente a number of times over the last few years. Although OCTA is currently in the early stages of consideration, one potential solution is removal of the track and associated revetment and relocation of the track to a more inland location. Thus, the potential for wave action to affect bluff retreat during the life of the proposed development is possible and should be regarded.

In the absence of the typically applied method to determine bluff retreat rate, the Commission in this case must rely on the location of the bluff edge and the 1.5 factor of safety line to best estimate the safest location on site to place new development and

determine the development siting least likely to generate requests for shoreline/bluff protective devices. San Clemente LUP Policy HAZ-41 requires a minimum bluff edge setback of *at least* 25 feet and consistent with the distance recommended by the site specific geotechnical study.

For planning purposes, residential development is generally expected to have a 75-year lifespan. Quantitative slope stability analyses typically calculate a “factor of safety” as an indicator of stability. In theory, slope failure is imminent when the factor of safety drops to 1.0 or less, while values above 1.0 indicate increasing confidence in the stability of a slope. A common standard for assuring stability, which the Commission has consistently applied for many years in evaluating blufftop development, is a factor of safety of 1.5 or greater (or 1.1 for pseudostatic conditions, accounting for ground-shaking during a large earthquake). To establish a safe setback for slope stability from the edge of a coastal bluff, it is necessary to find the distance inland of the bluff edge at which the factor of safety is equal to 1.5 (static).

The applicant's geotechnical studies provide evidence that the proposed project is not in acute danger from renewed marine erosion at the bluff toe, and that even occasional wave contact with the bluff toe beyond the railroad is unlikely without a significant amount of SLR. This is due to the width of the beach and the elevation of the railroad berm. However, these studies did not explicitly consider the likelihood that SLR will accelerate shoreline erosion and retreat above general historical rates. In contrast, the 2019 City of San Clemente Sea Level Rise Vulnerability Assessment (“City VA”) examined future shoreline evolution in the project vicinity using USGS Coastal Storm Modeling System (“CoSMoS”) projections of future flooding, wave runoff, and shoreline retreat. The City VA analysis indicated that 3.3 feet (1 meter) of SLR could result in 95 feet of shoreline retreat (up to 150 feet under winter eroded conditions), increasing to 165 feet (to 272 feet with winter erosion) with 4.9 feet (1.5 meters) of SLR. These projections greatly exceed the magnitudes of shoreline retreat considered in the applicant's analyses and would place the mean high tide line near or beyond the line of the railroad. Moreover, under the precautionary “intermediate-high” SLR scenario, 3.3 feet of SLR could occur by the 2080s and 4.9 feet in the 2100s, the latter of which is approximately near the end of the assumed 75-year economic life of the proposed project. In short, the CoSMoS shoreline retreat projections relied on in the City VA suggest that renewed bluff toe erosion is a possibility under the higher SLR scenarios.

The proposed residence would be setback approximately 65 feet from the bluff edge, right at the 1.5 factor of safety line ([Exhibit 3](#)). Future bluff and shoreline conditions are difficult to predict with certainty. The presence of the railroad at the base of the subject bluff makes it even more difficult to predict future bluff and shoreline conditions at the site. It is possible that the railroad and revetment could be removed in as little as 30 years. Thirty years is well below the expected life of the proposed development, considered to be 75 years. The Commission cannot approve new development if it will require shoreline or bluff protection in the future, which cannot be ruled out in this case.

As described further below, the Commission imposes **Special Condition 2** which requires the bluff face, blufftop and site development to be monitored for land movement and signs of distress in the soil and in the structure. In addition, **Special**

Condition 2 requires that the applicant recognize and agree that, if the residence and associated development approved by this action becomes threatened in the future, the applicant agree that all threatened development will be removed rather than protected. **Special Condition 2** also requires that site development be designed for ease of removal and submittal of a plan describing how removal will occur in the event development becomes threatened. The plan required by **Special Condition 2** requires establishing criteria for determining when residence is threatened by slope stability issues and erosion and sets a trigger for when additional analysis is needed to evaluate whether any portion of the structure is threatened. In this case, the Commission requires a minimum trigger threshold of 20 feet between the bluff edge and the base of the proposed residence which represents a conservative threshold given the scale of blufftop failures in San Clemente, which can extend more than 10 feet from the pre-failure bluff edge (e.g., the upper bluff failures and landslides of concern in CDP 5-24-0398). The requirements of this special condition are necessary to address the unique challenge of estimating bluff retreat in San Clemente due to the lack of historical retreat data and over 100 year long presence of the railroad. This uncertainty has led to a concern that the proposed setback may not be ultimately adequate should the railroad be removed and the bluff be exposed to marine erosion. The requirements of **Special Condition 2** increase the likelihood that the residence will remain safe to the extent feasible for its 75 year life, and if it does become threatened it will be removed to assure that future shoreline/bluff protection will not be sought. Without these measures, the Commission could not find the proposed development to be consistent with Coastal Act Section 30253 which requires that risk be minimized, and that new development not require bluff or shoreline protection in the future. Only as conditioned, is the proposed development consistent with the Coastal Act and with the LUP policies regarding blufftop development. In addition, **Special Condition 3** requires the applicant to acknowledge that no development shall occur in the open space area between the bluff edge and the seaward property line, as that area changes over time due to landward retreat of the bluff edge.

Basement/Pool

Because the rate of bluff retreat cannot be predicted with reasonable certainty, it is unclear whether new development may be at risk and eventually require bluff or shoreline protection. Rather than authorizing future bluff or shoreline protection, the Commission is requiring removal at the point the residence and related development becomes threatened. Thus, new development on coastal bluff lots must be designed for ease of removal, including the foundations. As proposed, the residence would include a 2,980 square foot basement ([Exhibit 2, pages 14 and 15](#)). Removing the approximately 10-foot deep, 2,980 square foot basement would be significantly more difficult than removing at grade development. Moreover, both the construction and removal of the basement would require substantial landform alteration on the coastal blufftop. This is because, while that portion of the bluff is not currently exposed, there is enough uncertainty to be concerned about its potential exposure (and therefore alteration of natural landforms) in the future as the bluff retreats with sea level rise. Further, the proposed basement walls could act as a bluff retention device in the future if enough erosion or landsliding occur on the site, interfering with natural shoreline

processes (naturally eroding bluffs add beach materials to the shoreline). And, although the proposed basement area would initially be buried beneath the residence, the basement walls may become exposed in the future if the bluff recedes over time. The exposed lower level could adversely impact public views from the beach below.

Protective measures to preserve the bluff are not allowed for new development. New development must be safe over its lifetime without future bluff or shoreline protection. The Commission has previously found that a basement on a blufftop lot is inconsistent with these Coastal Act requirements (A-6-ENC-18-0060/Martin; A-6-ENC-16-0068/Hurst; 5-24-0207/Dunnwald). Construction of a basement at this site is not consistent with the LUP bluff development policies or the Coastal Act policy that requires risk to be minimized, stability and structural integrity be maintained, and that new development not result in the need for shoreline or bluff protective devices. Therefore, **Special Condition 1** prohibits construction of a basement and requires the submission of revised final plans that do not include a basement.

The proposed project also includes construction of a new swimming pool and spa located on the seaward side of the residence ([Exhibit 2, page 12](#)). Swimming pools and other water features can decrease bluff stability as sources of excess water on the bluff due to pool leaks or leaks in the waterlines leading to the pool. They also increase the added weight of development on the blufftop. Thus, swimming pools are discouraged on blufftop lots. Although the City engineer conditionally approved the proposed pool and spa beyond the 1.5 factor of safety setback ([Exhibit 8](#)), in this case, due to the uncertainty of future erosion and bluff stability a pool/spa is not appropriate. Furthermore, the proposed pool and spa, which would be even more seaward than the residence (and seaward of the identified 1.5 factor of safety), are still subject to the same uncertainty with regards to bluff retreat. Future bluff retreat, as mentioned previously, is very difficult to estimate in San Clemente due to the lack of data about natural bluff retreat. Consistent with the Commission's precautionary approach to siting new development and considering sea level rise, the Commission finds that it would be prudent to remove the pool and spa until more certainty is known about the potential for bluff retreat in this area. Therefore, **Special Condition 1** prohibits construction of a pool and spa and requires submission of revised plans that delete the swimming pool and spa from the project.

Existing Non-conforming Retaining Wall

As described in the project description section, there is an existing non-conforming, retaining wall approximately 1.5 to 7.5 feet in depth in the western portion of the site along the top of the coastal bluff ([Exhibit 7](#)). The wall appears to have been constructed as part of original site development in the 1950's. A localized, shallow debris fall, which occurred in 2010, damaged the northwest portion of the wall, which is located essentially at the top of the bluff edge. A chain link fence has been installed to prevent access to the area of failure. Other than this failed portion of the wall, the wall appears to be in relatively good condition.

Pursuant to HAZ-37 of the certified LUP, when a principal structure is removed, all non-conforming accessory development and/or uses must be also removed. However, the

applicant's geotechnical consultant provided a letter stating that removal of the subject retaining wall would likely cause more harm than good because removing it would require a significant amount of grading, excavation and landform alteration, which would not be the least environmentally damaging alternative. Additionally, without the wall, surface water run-off for much of the lot would flow over the top of bluff edge, and would have a detrimental impact on the stability of the bluff. There is also a concern that during the removal work, debris may fall down the bluff and pose a safety hazard to the public trail down below. The Commission finds that, due to the reasons above, removal of the retaining wall is not appropriate at this time. Instead, **Special Condition 2**, as described further below, requires monitoring of the retaining wall and requires removal when threatened by future bluff erosion.

Monitoring

Special Condition 2 requires the applicant to submit a Monitoring Plan that will track the location of the bluff edge (as defined by San Clemente LUP) in relation to the proposed residence (once constructed) and to La Rambla, and to note any signs of movement and/or distress (e.g., scarps, cracks or gaps in the soil, hardscape or structures, or indications of landslide activity). In addition, the Monitoring Plan is required to provide a detailed description of how the new development will be removed at the point it becomes threatened. To increase the accuracy of monitoring, the plan must include provisions for: (i) establishing reference points for measurement prior to construction; (ii) conducting measurements, at the required monitoring intervals, of the distances between the authorized development and the bluff edge, and the bluff edge and La Rambla; (iii) an assessment of the safety and stability of the site and authorized development, the adequacy of the current monitoring frequency, and the need for removal of the structure, any part of the structure or other on-site development; and (iv) steps to be taken to address any instability or risk revealed by the monitoring. The plan must include requirements for reporting back to the Executive Director and the content to be included in the reports. The reports are required to summarize the results of the monitoring and note any evidence of land movement or structural distress. The findings included in the reports shall assess the safety of the authorized development for occupancy and steps to be taken before the residence becomes unsafe for occupation. The Monitoring Plan must require that monitoring occur at least every five years and after any significant geologic events (landslide, earthquake, etc.). The reports must include an assessment of whether the frequency of monitoring is adequate or should be increased, with the evidence supporting the assessment. The plan must be prepared by a licensed geologist or geotechnical engineer with expertise in coastal bluff processes and landslide hazards. The Monitoring Report is necessary to provide the information necessary to know when site development must be removed. This monitoring is necessary to find the proposed development consistent with Section 30253 of the Coastal Act and the LUP policies regarding blufftop development, since the uniquely high uncertainty in bluff retreat projections means the setback may not be adequate on its own to ensure that the residence will not require armoring of the bluffs within its 75 year lifespan.

No Future SPD/BPD

Given that the risks of developing a new single-family residence on the subject blufftop lot cannot be completely eliminated (despite the minimization measures imposed by the special conditions of the permit), there is no assurance that bluff or shoreline protection will not be needed to protect the proposed new home, and Section 30253 of the Coastal Act prohibits new development from creating the need for bluff or shoreline protective devices. Therefore, the Commission imposes **Special Condition 8**. This condition prohibits the construction of shoreline or bluff protective device(s) to protect the approved development, requires that the landowners remove the authorized structure and its foundation if bluff retreat or landsliding progresses to the point where the structure is threatened, and requires that the landowners accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion of the site.

Public Trust

The Commission cannot authorize private residential development on public trust lands. In the event that the coastal bluff and shoreline are altered in the future due to sea level rise, landslide, or other events, such that site development approved by this permit encroaches onto public trust lands, **Special Condition 9** acknowledges that private development cannot be authorized and requires that any encroaching development be removed unless authorized by the Coastal Commission as consistent with the Coastal Act.

Assumption of Risk

As stated previously, bluffs are hazardous and unpredictable. Given that the applicant has chosen to implement the project despite the risks associated with building on a blufftop lot, the applicant must assume the risks associated with that development. Accordingly, **Special Condition 7** requires the applicant to acknowledge the risks and indemnify the Commission against claims for damages that may occur as a result of its approval of this permit. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand hazards.

Deed Restriction

Special Condition 11 requires the applicant to execute and record a deed restriction approved by the Executive Director against the property imposing the special conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property. This special condition is required, in part, to effectively put future property owners on notice regarding potential hazards of the property, the risks of development on the property, the prohibition against construction of bluff or shoreline protective devices to protect the approved development, the Commission's immunity from liability, and the indemnity afforded the Commission. By recording the terms and conditions of this permit against the property, future purchasers are notified in advance of their purchase of the limitations on development of the property.

Future Development

Section 30610(a) of the Coastal Act exempts certain improvements to existing single-family residential structures from coastal development permit requirements. Pursuant to this exemption, once a house has been constructed, certain improvements that an applicant might propose in the future are normally exempt from the need for a permit or permit amendment. Depending on the specific improvements proposed, building additions and construction of new accessory structures could contribute to geologic hazards at the site. For example, installing a landscape irrigation system on the property in a manner that leads to saturation of the bluff could increase the potential for landslides or catastrophic bluff failure. Another example would be installing a sizable accessory structure for additional parking, storage, or other uses normally associated with a single family home in a manner that does not provide for the recommended setback from the bluff edge.

Accordingly, Coastal Act section 30610(a) requires the Commission to specify by regulation those classes of development which involve a risk of adverse environmental effects and require that a permit be obtained for such improvements. Pursuant to section 30610(a) of the Coastal Act, the Commission adopted section 13250 of Title 14 of the California Code of Regulations (CCR). Section 13250(b)(6) of the Coastal Act specifically authorizes the Commission to require a permit for improvements to existing single-family residences that could involve a risk of adverse environmental effect by indicating in the development permit issued for the original structure that any future improvements would require a development permit. As noted above, certain additions or improvements to the approved structure could involve increased risk at the site. Therefore, pursuant to section 13250(b)(6) of Title 14 of the CCR, the Commission imposes **Special Condition 10**. This condition informs the applicant that future development at the bluff top site, pursuant to sections 13250 and 13252 of the Commission's regulations, requires an amendment to this permit (5-24-0224) or a new coastal development permit. Future development includes, but is not limited to, structural additions, landscaping, and fencing.

Geotechnical Recommendations

Special Condition 4 requires that final project plans be submitted, for the review and approval of the Executive Director, that are consistent with the applicant's geotechnical engineers' recommendations for site preparation and foundation design and that the foundation be designed to facilitate the removal of the structure and its foundation in the future. These requirements are necessary for consistency with section 30253 of the Coastal Act, which states in part that new development shall minimize risk to life and property in areas of high geologic hazard, assure structural integrity and stability, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Landscaping & Drainage

City of San Clemente certified LUP Policy HAZ-46 requires landscaping and drainage associated with new development on oceanfront blufftop lots be managed in a manner that will reduce the introduction of excessive water onto the blufftop and bluff face. As mentioned, Coastal Act Section 30253 requires that risk be reduced and geologic

stability be assured, among other things. Drainage and landscape measures on coastal blufftop lots are necessary to reduce erosive runoff and slope destabilization. Existing vegetation on the bluff face will remain undisturbed.

The proposed landscape plan includes drought-tolerant coastal native plant species in the rear yard facing the bluff, and some moderate to high water use plant species in the inland side of the lot. To encourage bluff stability and discourage erosive runoff, the area closest to the bluff (the area between the proposed residence and the bluff edge) should be landscaped only with non-invasive, low water use plants native to coastal Orange County. In addition, no permanent irrigation should be installed in this area, though temporary, above ground irrigation is allowed only long enough to establish plantings. The Commission finds that, for the proposed blufftop project to encourage stability and avoid contributing significantly to erosion, these landscape and irrigation measures must be imposed.

The proposed landscape plan on the inland side includes high and moderate water use plant species according to WUCOLS, including *Hedera helix*, *Rhododendron* species, and *Rosa floribunda*, which are high water use species, and *Magnolia grandiflora*, *Buxus japonica*, *Euonymus japonicus*, *Ligustrum japonicum*, *Pelargonium peltatum*, *Photinia x fraseri*, *Trachelospermum jasminoides*, *Jasminum polyanthum*, *Rosa banksiae*, and *Potentilla verna*, which are moderate water use species. Consistent with the above-mentioned policies, plantings on the inland side of the lot must be non-invasive, and primarily low water use, drought tolerant, natives. Any irrigation installed on the inland side of the lot must be low volume (drip, micro jet, etc.), and weather based. Therefore, the proposed landscape plan must be revised to remove high water use plant species from the proposed plant list and minimize moderate water use plant species to the maximum extent feasible.

In addition, it is important that drainage not be directed over the bluff face. There is an existing wood boardwalk, fencing, and walls near the bluff edge that will direct drainage away from the bluff face, and back onto the lot. However, the proposed drainage plan would infiltrate much of the site drainage into the lot, rather than collect it and direct it back to the street and thence to the City's storm drain system. The plan includes significant amounts of permeable area in the rear yard. Although increasing permeable areas in geologically stable areas is often encouraged for water quality benefits, in areas such as the subject coastal blufftop lot, increased permeability can lead to adverse impacts on site stability. Infiltration of drainage at this site could reduce the factor of safety of the bluff slope by groundwater recharge that could increase pore pressures at the slope. Increasing water on the bluff can have destabilizing effects, inconsistent with Section 30253 of the Coastal Act. For these reasons, **Special Condition 1** requires a revised landscape plan to incorporate all of the measures described above.

Conclusion

In summary, the presence of the railroad and related shoreline protection at the base of the bluff at this site and throughout the San Clemente shoreline preclude the typical methods of estimating bluff retreat rate. While predicting the future condition of coastal bluffs and blufftop sites is difficult to do with certainty in any case, that uncertainty is

increased by the fact that San Clemente bluffs have been protected from typical marine erosion since the original construction of the railroad at the turn of the last century. The Commission's technical staff are working on guidance for how to approach the unique challenges for estimating future bluff retreat in San Clemente. The importance of considering a scenario without armoring of the bluff is underscored by the possibility that the railroad may be relocated in as early as 30 years. Thus, the Commission must act conservatively to minimize risk, assure stability and structural integrity and not allow development that could require bluff or shoreline protection in the future. Therefore, the Commission has imposed special conditions which require monitoring of the blufftop site, removal of the development when it becomes threatened rather than protect it, and that the proposed basement and pool/spa be eliminated from the proposed development. The required special conditions assure that, as conditioned, the proposed development will not result in impacts to coastal resources such as alteration of landforms along bluffs and cliffs and adverse impacts to shoreline processes. Finally, the project is conditioned to assume the risk of development and to record a deed restriction that imposes the conditions of the permit as covenants upon the property. These conditions are necessary to find that the development is consistent with Section 30253 of the Coastal Act and the certified LUP policies regarding blufftop development and hazards.

Thus, the Commission finds that as conditioned, the proposed development assures stability and structural integrity, minimizes risks to life and property and will not 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 the bluff.

C. 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 land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

City of San Clemente LUP Policies:

VIS-1 Visual Character and Aesthetic Resources Preservation. New development shall be designed to preserve the visual character and aesthetic resources of the City's coastal zone including preservation of the physical features of coastal bluffs and canyons, and where feasible, enhance and restore scenic and visual qualities of the coastal zone, including to and along the ocean and coastal bluffs, visually significant ridgelines, and coastal canyons, open spaces, prominent, mature trees on public lands, and designated significant public views (as identified on Figure 6-1 Scenic Gateways and Corridors, Figure 6-2-A Public View Corridors and Figure 6-

2-B Public View Corridors). Where protection of visual character and aesthetic resources is not feasible, impacts should be mitigated.

Coastal Act Section 30251 requires that development minimize alteration of natural landforms (such as coastal bluffs) and also requires that scenic and visual qualities be protected. Section 30251 of the Coastal Act protects the scenic and visual qualities of coastal areas as a resource of public importance. Development is required to 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. LUP Policy VIS-1 includes similar requirements that landform alteration be minimized and that scenic qualities be protected.

The proposed development is located on a blufftop lot adjacent to the public beach. The subject site is visible from the shoreline along the public beach below and from the public Coastal Trail located at the toe of the site's coastal bluff. The bluffs along this stretch of shoreline in San Clemente, including the subject site, extend about 75 feet above beach level. From the beach, residential developments along the blufftop is visible.

The proposed residence must be sited and designed to be visually compatible with the relatively undisturbed character of the surrounding natural coastal bluffs, protect views to and along the beach area, and minimize the alteration of existing landforms. Although the proposed residence will be encroaching further seaward than the existing guest unit/garage structure, it will be set back landward than the neighboring structures to the south and to the north, and will not adversely affect existing public views. Moreover, no caissons are proposed, so no concern is raised by caissons becoming visible to the public in the future. Finally, **Special Condition 1** requires that the proposed basement be eliminated from the project and **Special Condition 3** requires the applicant to acknowledge that no development shall occur in the open space area between the bluff edge and the seaward property line, as that area changes over time due to landward retreat of the bluff edge. As conditioned, no concern is raised by the possibility of the basement or any other future development becoming visible to the public in the future. The proposed development, as conditioned, will continue to be consistent with existing development in the area and will not adversely affect existing public views. As proposed and conditioned, the proposed development would comply with the LUP policy requiring a minimum 25-foot setback from the bluff edge as defined in the LUP and would comply with LUP policies that require protection public visual resources. In addition, as proposed and conditioned, the project will conform to Section 30251 of the Coastal Act regarding protection of scenic and visual qualities of coastal areas.

As discussed previously, **Special Condition 10** ensures that any future development on the site, which may affect the stability or appearance of the bluff, requires a coastal development permit. The "future development" condition will also ensure that improvements are not made at the site that could affect the visual appearance of the coastal bluff or affect the stability of the bluff. Therefore, the Commission finds that, as

conditioned, the proposed project is consistent with the visual resource protection policies of Section 30251 of the Coastal Act.

D. Public Access and Recreation

Section 30210 of the Coastal Act states:

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

The beach fronting this location is used by residents and visitors for a variety of recreational activities. As proposed, the development at the top of the bluff will not affect existing public access to the shoreline in two respects. First, no public access across the property to the beach currently exists because of the hazardous nature of the approximately 105-foot-high coastal bluff. Second, public access to the beach below this existing residence is currently available immediately adjacent (upcoast) to the subject site, at the T Street Access Point, one of the principal beach access points in San Clemente. Access to the beach is via a pedestrian overpass across the railroad. There are also pioneered footpaths a few hundred feet south of the site both down the slope from the bluff top at the end of La Rambla and from Boca del Canon that are used by many to access the trail, T-Street at-grade railroad crossing (located immediately seaward of the subject site), and beach. The proposed development will not create any new adverse impact on coastal access and recreation. The Commission finds that the proposed development does not pose significant adverse impacts to existing public access and recreation; and most importantly, there is adequate, safe public access in the vicinity, therefore, the project is consistent with Section 30210 of the Coastal Act.

E. Archaeological, Paleontological, 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 Resources Protection 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 today. 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. This area of San Clemente was inhabited by and is ancestrally and/or culturally associated with the Acjachemen/Juaneño and Luiseño peoples. Also, according to the ethnographic evidence and past consultations, villages were concentrated near watercourses and the coast, and bluffs were and are still of cultural significance as a site for ceremonial practices. Particularly because this site is atop a coastal bluff, there is potential for impacts to tribal cultural resources should be avoided or minimized and mitigated.

A majority of the subject site is currently developed and was subject to past disturbance during construction of the existing pool and pool house in the late 1950s. However, there is no evidence that any earlier grading activities were monitored by archaeological or Native American monitors. Moreover, even disturbed soils have the potential to contain Tribal Cultural Resources. A Cultural Resources Assessment was prepared for the proposed development by VCS Environmental, dated 5/10/2024. The study reports that two historic cultural sites have been mapped within a half-mile of the subject site (Spanish Colonial Revival Thematic Historic District and the Ole Hanson/Spanish

¹ <https://www.coastal.ca.gov/env-justice/tribal-consultation/>

Village by the Sea Thematic Historic District). On May 6, 2024, Patrick Maxon, M.A., RPA conducted a pedestrian cultural resources survey of the project site and found no evidence of cultural resources. A record search of the Native American Heritage Commission (NAHC) Sacred Lands File (SLF) resulted in a positive finding for the area. In order to better understand the cultural significance of the project site and the surrounding project area, Commission staff sent notices of the proposed development, consistent with the Coastal Commission's Tribal Consultation Policy, to Native American tribal representatives with ancestral ties to the area via email on July 9, 2025 to ascertain interest in consultation. As of the date of this staff report, two tribal representatives have responded showing interest to consult on this project.

There is potential for ground disturbing activities, including grading and grubbing, to impact tribal cultural resource deposits that may be present within the soil. In past permit actions near or adjacent to known tribal cultural resource sites, the Commission has required that all project grading and earth disturbing activities be monitored by both an archaeologist and representatives of affected Native American tribes. If tribal cultural resources are discovered, as conditioned, the appropriate Native American representative(s) will decide as to the appropriate treatment method or if human remains are encountered, specific measures must be taken. Per the LUP, preservation in-situ is the preferred mitigation method.

To ensure that the project minimizes and mitigates potential impacts to archaeological and/or Tribal Cultural Resources and is consistent with past Commission actions, the Commission imposes **Special Condition 6** requiring the applicant to notify the representatives of Native American Tribes listed on an updated Native American Heritage Commission (NAHC) contact list for the area, invite all 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 all project grading and earth disturbing 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 should discovery of archaeological or Tribal Cultural Resources or human remains be discovered.

In addition, on March 3, 2021, the Natural History Museum of Los Angeles County (NHMLA) performed a paleontological records search to determine if any fossil localities are located on or near the project site. The records search determined there are no documented fossil localities on the project site, but there are five fossil localities within a three-mile radius in deposits similar to those underlying the project area. In addition, on March 10, 2021, Benjamin Scherzer performed a search of the University of California Museum of Paleontology and San Diego Natural History Museum (SDNHM) online collections, the online Paleobiology Database and FAUNMAP, and other published literature for fossil localities from similar deposits within three miles of the project area, which yielded similar results.

Thus, there is a likelihood that paleontological resources may be present in geologic deposits and formations on site. **Special Condition 11** requires that a Paleontological Resource Impact Mitigation Program be implemented in order to mitigate impacts on paleontological resources as required by Coastal Act Section 30244 and to protect such resources as required by LUP Policy CUL-1. The program shall include measures such as monitoring of the project's earth disturbing activities (with the exception of artificial fill materials) by a qualified professional paleontologist, salvage and collection of fossils as they are unearthed, and the ability to temporarily halt construction to allow removal of specimens, among other measures.

The Commission finds 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.

F. Biological Resources

Section 30240(b) of the Coastal Act states:

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

City of San Clemente LUP Policies:

RES-72 Native Landscaping. Drought-tolerant native landscaping specific to the habitat type/vegetation community is required in coastal canyon and bluff areas, to reduce erosion and maintain natural open space areas. Invasive plant species are prohibited in all landscaping.

RES-84 Bird-Safe Buildings. All new buildings, and major renovations/remodels of existing buildings, shall be required to provide bird-safe building façade treatments in order to reduce potential for bird-strikes. Landscaping around buildings, including patios and courtyards, shall be designed and sited to avoid or minimize bird-strike hazards caused by reflective surfaces such as glass fencing/railing. Buildings shall be designed to use minimal exterior lighting and minimize light pollution from interior lighting to the maximum extent feasible to minimize nighttime bird-strike hazards.

RES-85 Minimization of Lighting Impacts. Eliminate or shield and direct exterior lighting away from biological resources to minimize adverse impacts to wildlife. There shall be no spillover of light into the identified biological resource. Buildings shall be designed to use minimal exterior lighting (limited to pedestrian safety needs) and to minimize direct upward light, spill light, glare and artificial night sky glow.

The City of San Clemente Certified LUP identifies certain coastal bluff areas as Potential Sensitive Habitat. The Potential Habitat Study Areas – Map B (LUP Figure 4-2-B) encompasses the subject site; however, the site is not identified as a Potential Habitat area ([Exhibit 6](#)). The Commission's staff ecologist has reviewed the proposed landscape plan and aerial photos of the site, including the vegetation to remain undisturbed on the bluff face, and determined the site and bluff face are not ESHA. As proposed, all existing vegetation present on the coastal bluff will remain undisturbed. The proposed project has been conditioned to submit a revised landscape plan that allows only non-invasive, low water use plantings that are native to coastal Orange County and prohibits permanent irrigation in the area between the proposed residence and the bluff edge. Temporary above-ground irrigation is allowed in this area only until plantings are established. In the area landward of the proposed residence, the revised landscape plan requires non-invasive, primarily low water use, native plantings. Permanent irrigation landward of the residence must be low volume (drip, micro jet, etc.), and weather based.

San Clemente's certified LUP advocates for the preservation of native vegetation and discourages the introduction of non-native vegetation in coastal canyons and along coastal bluffs. Coastal Act policies aim to prevent impacts which would significantly degrade those areas and ensure that development shall be compatible with the continuance of those habitat areas. Decreases in the amount of native vegetation along the coastal bluffs due to displacement by development or introduction of non-native vegetation has resulted in cumulative adverse impacts upon the habitat value of the coastal bluffs. The LUP coastal bluff setback policies also aim to protect the biological value of bluff habitat and preserve the visual qualities of bluff landforms.

Placement of vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org>) and California Native Plant Society (www.CNPS.org/) in their publications. The Commission typically requires that applicants utilize native plant species, particularly along coastal canyons and bluffs. LUP Policy RES-72 requires drought-tolerant native landscaping specific to the habitat type/vegetation community adjacent to coastal bluff areas. **Special Condition 1** requires a revised landscape plan that meets these requirements.

In the area landward of the proposed residence, while the use of plants native to coastal Orange County is encouraged, non-native plant species that are drought-tolerant and non-invasive may be allowed. Additionally, deep-rooted, low water use plants, preferably native to coastal Orange County require less water than other types of vegetation and so help to minimize irrigation requirements and saturation of underlying soils to decrease the potential for slope instability. In addition, low water use, drought resistant plantings and the related minimal irrigation encourage root penetration that increases slope stability. The term 'drought tolerant' is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" (a.k.a. WUCOLS) prepared by University of California Cooperative Extension and the California Department of Water

Resources dated August 2000 available at
<http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>.

Additionally, LUP Policies RES-84 and RES-85 aim to minimize adverse impacts to wildlife by requiring new buildings provide bird-safe building façade treatments in order to reduce potential for bird-strikes. Glass walls are known to have adverse impacts upon a variety of bird species. Birds are known to strike glass walls causing their death or stunning them which exposes them to predation. Some authors report that such bird strikes cause between 100 million to 1 billion bird deaths per year in North America alone. Birds strike the glass because they either don't see the glass, or there is some type of reflection in the glass which attracts them (such as the reflection of bushes or trees that the bird might use for habitat). Measures to reduce bird strikes are available. Reduction of bird strikes may be accomplished through the use of landscaping around buildings, including patios and courtyards, by designing and siting development to avoid or minimize bird-strike hazards caused by reflective surfaces such as glass fencing and railings.

Light pollution is caused by the misuse or overuse of outdoor lighting. The nighttime environment is altered by artificial lighting during nighttime hours. Artificial nighttime lighting profoundly alters the timing, intensity and spectrum of natural light regimes. Artificial light at night has both been predicted and empirically determined to have a wide diversity of biological impacts on organisms' physiology and behavior, the abundance and distribution of species and the structure and functioning of communities and ecosystems. These disruptions to wildlife and ecosystems can create lasting implications on the longevity of animal populations and the endurance of ecosystems on our planet. To avoid light pollution and the adverse impacts associated with it, nighttime lighting should only be used if needed, when needed, and where needed. The color temperature of light bulbs used can also help to decrease adverse impacts of light pollution. Assuring that lights are downward directed, shielded, and lit only the minimal amount of time necessary to achieve the lighting goal is necessary to protect biological organisms in, nearby, or passing through or above the site. Although it may seem that impacts from one single family residential development on light pollution would be minimal, when considered together with other sources of nighttime lighting, the cumulative effect is significant.

DarkSky Approved is a program that provides objective, third-party certification for products, designs, and projects that minimize glare, reduce light trespass, and don't pollute the night sky. DarkSky Approved lighting is lighting that restricts the amount of upward-directed lighting, avoids glare and over-lighting, utilizes dimming and other appropriate lighting controls, and minimizes short-wavelength (bluish) light in the nighttime environment. Because the site is adjacent to coastal bluff area and the beach and ocean, it is important that site lighting reduce potential impacts to the surrounding area to the extent feasible. Certification of the site's lighting design from DarkSky International's DarkSky Approved program will help to ensure this goal is achieved. As proposed, the project does not address night lighting. Therefore, **Special Condition 1** is imposed which requires that all outdoor lighting seaward of the residence be down-

directed, shielded, and DarkSky Approved, to assist in improving and protecting surrounding coastal bluff, beach and ocean habitat from light pollution impacts.

For these reasons, **Special Condition 1** requires submittal of a revised landscape plan depicting non-invasive, low water use plants native to coastal Orange County bluffs in the area between the proposed residence and the bluff edge, and non-invasive, primarily low water use, native plants to minimize the use of water throughout the rest of the site. **Special Condition 1** also prohibits permanent irrigation seaward of the proposed residence and limits other irrigation to low volume (drip, micro jet, etc.), and weather based. To provide protection to coastal avian species, **Special Condition 1** requires the applicant to submit final revised plans that minimize bird strike issues, which is necessary to protect against significant disruption of habitat values. Moreover, to protect habitat and species in the area, **Special Condition 1** ensures further protection of the biological resources within the surrounding coastal bluff, beach and ocean habitats through the minimization of light pollution impacts generated by project and the shielding of direct exterior lighting downward and away from the bluff slope.

The special conditions of this staff report are designed to protect the existing and potential habitat value of the coastal bluff at the site and in the surrounding area. Therefore, the Commission finds that the development, as conditioned, does not pose significant adverse impacts which would significantly degrade habitat, and is compatible with the continuance of those areas consistent with Section 30240 of the Coastal Act.

G. Marine Resources and Water Quality

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

Construction Impacts

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

In order to avoid adverse construction-related impacts upon marine resources, the Commission imposes **Special Condition 5**, which outlines construction-related best management practices (BMPs) that address measures to be implemented during construction to avoid adverse impacts to water quality and marine resources such as providing for safe storage of construction materials and the safe disposal of construction debris. During construction, the applicant will be required to implement BMPs designed to minimize erosion, loss of soil materials, and prevent debris and soil from being disbursed down the bluff or entering coastal waters or entering the storm drain system.

Post-Construction Impacts

Much of the pollutants entering the ocean come from land-based development. The Commission finds that it is necessary to minimize to the extent feasible within its jurisdiction the cumulative adverse impacts on water quality resulting from new development. The applicant provided a post construction drainage plan for the site ([Exhibit 2](#)), which directs on-site drainage away from the bluff face. In addition, as discussed in the Hazards Section, **Special Condition 1** requires a revised drainage plan to decrease the amount of drainage infiltration on-site and instead require that it be collected and directed off-site onto the street and thence to the City's storm drain system. Site drainage is also required to be filtered prior to leaving the site. In addition, plants with high-water demand are typically not well-suited to the Mediterranean climate of southern California, and therefore often require intense fertilization and application of pesticides/herbicides as a maintenance regime, in addition to regular irrigation. This type of landscaping can add pollutants to both dry weather and stormwater runoff. Therefore, **Special Condition 1** requires a revised landscape plan that uses non-invasive, low water use, primarily native plants.

Imposition of **Special Condition 1** requires revised landscape and drainage plans to address water quality impacts that would otherwise accrue from the proposed development, as described here and in the Hazards section of this report. As conditioned, the project will minimize the project's adverse impact on coastal waters and will not have a significant impact on marine resources, biological productivity or coastal water quality. Therefore, the Commission finds that the proposed development, as conditioned, conforms to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to protect marine resources, promote the biological productivity of coastal waters and to protect human health.

H. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit for development in an area with no certified Local Coastal Program (“LCP”) only if the project will not prejudice the ability of the local government having jurisdiction to prepare an LCP that conforms with Chapter 3 policies of the Coastal Act. The Commission certified the Land Use Plan (LUP) for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan (IP) portion of the Local Coastal Program. Approval of the IP with suggested modifications expired on October 10, 1998 without City adoption. The City re-submitted an IP on June 3, 1999, but withdrew the submittal on October 5, 2000. The Commission certified a comprehensive LUP update amendment on August 2, 2018. The City submitted a draft IP in December 2019 but abandoned the certification effort a year later, no formal IP submittal has been re-submitted. At this time, the City of San Clemente does not have a certified LCP.

As conditioned, the proposed development is consistent with the Chapter 3 policies of the Coastal Act and the policies contained in the certified 2018 Land Use Plan regarding blufftop development and hazards, and protection of visual resources, Tribal Cultural Resources, paleontological resources; habitat, marine resources, and water quality. Approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for San Clemente that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

I. California Environmental Quality Act

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, 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 City of San Clemente is the lead agency for purposes of CEQA compliance. As determined by the City, this project is categorically exempt from CEQA. As such, the project is exempt for CEQA's requirements regarding consideration of mitigation measures and alternatives. The Commission, however, has conditioned the proposed project in order to ensure its consistency with Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing: Special Condition 1: Submittal of Revised Final Plans reflecting the requirement to delete the basement and pool; incorporation of bird strike prevention measures, minimizing exterior lighting, drainage revisions to reduce on-site infiltration, landscape revisions that increase native plants, and decrease irrigation; Special Condition 2: submit stability monitoring and development removal plans; Special Condition 3: prohibit development on the bluff face; Special Condition 4: Conformance with Geotechnical Recommendations; Special Condition 5: Storage of Construction Materials, Mechanized Equipment and Removal of

Construction Debris; Special Condition 6: Protection of Archaeological and Tribal Cultural Resources; Special Condition 7: Assumption of Risk and Waiver of Liability; Special Condition 8: No Future Shoreline/Bluff Protective Device; Special Condition 9: Public Trust; Special Condition 10: Future Improvements; and Special Condition 11: Deed Restriction will minimize all adverse environmental impacts; and 12: Protection of Paleontological Resources. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project, 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

- 1) Coastal Development Permit Application No. 5-24-0224 and associated file documents.