

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REQUEST FOR RECONSIDERATION

Application No.: 6-15-1988-REC

Applicant: Robert Monroe & Norton Sloan

Agent: Walter Crampton

Location: 197-201 Pacific Avenue, Solana Beach, San Diego County (APNs 263-323-04; -05)

Project Description: Infill 90 ft. long, 7-17 ft. high, 2-11 ft. deep, 1,350 sq. ft. notch in coastal bluff with erodible concrete, construct 2 ft. by 2 ft. key embedded into bedrock formation, and installation of carved and colored erodible concrete on face of proposed infills.

Commission Action: Denial

Staff Recommendation: Deny the request for reconsideration.

SUMMARY OF STAFF RECOMMENDATION

On December 13, 2017, the Commission denied the applicant's permit application on the grounds that it was not consistent with the Chapter 3 policies of the Coastal Act. On January 12, 2018, the applicant submitted a written request for reconsideration of the Commission's action, supported by a letter from attorney D. Wayne Brechtel contending the Commission committed three errors of law: (1) failure to adopt findings in support of the denial; (2) failure to apply the Certified Land Use Plan for the City of Solana Beach; and (3) improper treatment of the Commission's Sea Level Rise Policy Guidance as a regulatory document and basis for the denial. Having reviewed the applicant's claims, staff recommends that the Commission deny the request for reconsideration on grounds

that: (1) no new relevant evidence has been presented which, in the exercise of reasonable diligence, could not have been presented at the hearing on the permit amendment and (2) there has been no error of fact or law which has the potential for altering the Commission's decision. (Pub. Resources Code, § 30627; Cal. Code of Regs., tit. 14, § 13109.4.) The applicant offered no new evidence, and bases the request on asserted errors of fact and law that in a further assertion, have the potential of altering the Commission's decision to deny the application.

As further detailed below, staff responds that 1) revised findings in support of the Commission's denial are proposed for adoption at this hearing and previous to the consideration of the reconsideration request; 2) although the Commission may use the Solana Beach Land Use Plan as guidance, it is not bound to apply the LUP as the standard of review in a jurisdiction that lacks a fully-certified LCP and that the denial nevertheless was consistent with the LUP policies; and 3) the Commission properly used its adopted 2015 Sea Level Rise Policy Guidance as guidance and a source of best available science in this matter.

Specifically, the Commission is required to adopt findings in support of its action. Revised findings supporting the Commission's denial have been prepared and are scheduled for review and adoption by the Commission on the same agenda as the subject reconsideration. Thus, the Commission will have adopted findings as required. The findings demonstrate that the Commission looked to the certified Land Use Plan for the City of Solana Beach for guidance in its decision, as well as to the Sea Level Rise Policy Guidance, but made a decision based on the Chapter 3 policies of the Coastal Act. The certified LUP does not mandate approval of all notch infills, and the Commission found that scope of the proposed work would have impacts that could be feasibly avoided by the no project alternative. Thus, there is has been no error of fact or law that could have the potential of alternating the Commission's decision.

Procedural Note:

Consideration of a reconsideration request is governed by the Coastal Act, section 30627 and the Commission's regulations, section § 13109.1 et seq. The Commission's regulations provide that at any time within thirty (30) days following a final vote upon an application for a coastal development permit, the applicant of record may request that the Commission grant a reconsideration of the denial of the application, or of any term or condition of a coastal development permit which has been granted. (Cal. Code of Regs., tit. 14, § 13109.2.) The regulations also state that the grounds for reconsideration of a permit action shall be as provided in Coastal Act Section 30627, which states:

The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the Commission's initial decision.

Section 30627(b)(4) of the Coastal Act states that the Commission "shall have the discretion to grant or deny requests for reconsideration."

The applicant timely submitted a request for reconsideration of the Commission's December 13, 2017 decision on January 12, 2018, stating the alleged grounds within the 30-day period following the final vote, as required by Section 13109.2 of the regulations. If a majority of the Commissioners present vote to grant reconsideration, the permit application will be scheduled for a future public hearing, at which the Commission will consider it as a new application. (Cal. Code of Regs., tit. 14, § 13109.5(c).)

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APPENDICES

[Appendix A – Substantive File Documents](#)

EXHIBITS

[Exhibit 1 – Reconsideration Request](#)

[Exhibit 2 – Revised Findings](#)

I. MOTION AND RESOLUTION

Motion:

“I move that the Commission grant reconsideration of Coastal Development Permit Application 615-1988.”

Staff recommends a **NO** vote of the foregoing motion. Failure of the motion will result in denial of the applicant’s request for reconsideration and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby denies the request for reconsideration of the Commission’s decision on Coastal Development Permit Application 6-15-1988 on the grounds that there is no relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the December 13, 2017 public hearing, and that there were no errors in fact or law that have the potential of altering the Commission’s initial decision.

II. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

The project denied by the Commission was to fill a 90 ft. long, 7 to 17 ft. high, 2 to 11 ft. deep, 1,350 sq. ft. notch in the coastal bluff located at the beach level, within the face of an approximately 88-ft. high coastal bluff, with an erodible concrete mix. The subject project would have been placed on an approximately 20 foot long stretch of natural bluff, as well as in front of portions of old seacave fills previously approved by the Commission along this stretch of bluff.

The erodible concrete was proposed to be colored and sculpted to match the appearance of the natural bluff, and designed to erode at approximately the same rate as the adjacent natural bluffs. The notch infill was to be keyed into formational bedrock and extend from the rear of the notch seaward up to the drip line of the bluff face.

The existing notch is located below two single family homes located at 197 and 201 Pacific Avenue in the City of Solana Beach. The Commission approved construction of the two-story, 2,128 sq. ft. single family residence with an attached two-car garage at 197 Pacific Avenue in January 1984 (CDP #6-83-690/Monroe). The closest portion of this home is located approximately 30 feet from the bluff edge.

The home at 201 Pacific Avenue was originally built in 1935. In February 1982, the Commission approved redevelopment of this home, consisting of expansion and

remodeling of the existing 1,200 sq. ft. single-story home to a 3,051 sq. ft. two-story home (CDP #6-81-306). In June 1994, the Commission approved construction of a 225 sq.ft. second story addition to the home. The closest portions of the home is 15 feet from the bluff edge. The bluff face fronting both of the two subject properties is publicly owned.

In consideration of the permit, the City of Solana Beach has a certified Land Use Plan; however, the City does not yet have a certified Implementation Plan. Therefore, the Commission used the Chapter 3 policies of the Coastal Act as standard of review, with the City's LUP used as guidance.

B. COMMISSION ACTION

Following its deliberation at the December 2017 hearing, the Commission voted 3-7 with one abstention, denying Coastal Development Permit Application #6-15-1968, and finding that the infill would adversely impact shoreline sand supply, public access, recreation, and visual quality, inconsistent with Chapter 3 of the Coastal Act.

C. RECONSIDERATION REQUEST ANALYSIS

As stated above, the Commission's decision whether to accept or deny the applicant's request for reconsideration shall be based on whether there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the Commission's initial decision. (Pub. Res. Code, § 30627(b)(3)).

The applicant's request for reconsideration (ref. [Exhibit #1](#))¹ alleges three assertions of errors of fact and law that occurred and further alleges such errors have the potential for altering the Commission's decision.

1. Assertion: Lack of Findings

The applicant's first contention is that the Commission has failed to make any findings to support its denial of the permit. Because the Commission's action substantially differed from staff's recommendation, the Commission must adopt revised findings. (Regulation § 13096.) Revised findings have been prepared and are scheduled for adoption on the same hearing as the subject reconsideration. These findings reflect and support the Commission's denial. Specifically, the findings reflect the Commission's decision that the infill is inconsistent with the shoreline sand supply, public access, public recreation, and visual protection policies of the Coastal Act. Adoption of these findings will fulfill

¹ In a few places the reconsideration request refers to violations of Section 30325 (regarding Commission proceedings). For the purposes of this response, staff assumes the applicant instead meant to refer to ch. 3 policy Section 30235 (regarding the protection of existing structures by seawalls and other construction that alters natural shoreline processes).

the Coastal Act requirement. Therefore, this is not an error of fact or law and this claim presents no basis for reconsideration pursuant to Section 30627(b)(3).

2. Assertion: The Commission Improperly Disregarded the Solana Beach Land Use Plan That It Unanimously Certified

The Commission has certified the City's Local Coastal Program Land Use Plan (LUP), but the City has not yet completed, nor has the Commission reviewed any implementing ordinances. Thus, the City's LCP is not fully certified, and Chapter 3 of the Coastal Act is the standard of review with the LUP used for guidance.

Nevertheless the Commission considers the LUP important guidance for informing its deliberations and in fact its decision in this matter is consistent with the LUP policies regarding infills. As detailed in the revised findings for the subject permit which are attached as [Exhibit #2](#) and hereby incorporated by reference, the Commission determined that the proposed infill project is inconsistent with the shoreline sand supply, public access, public recreation, and visual protection policies of the Coastal Act. In addition, the Commission considered several relevant provisions LUP policies relating to shoreline protection, including policies related to erodible concrete seacave/notch infills. Specifically, the Commission analyzed the project's consistency with the following LUP policies:

***Policy 4.30:** Limit buildings and structures on the sloped face and toe of the bluff to lifeguard towers, subsurface public utility drainage pipes or lines, bluff retention devices, public stairs and related public infrastructure which satisfy the criteria established in the LCP. No other permanent structures shall be permitted on a bluff face. Such structures shall be maintained so that they do not contribute to further erosion of the bluff face and are to be visually compatible with the surrounding area to the maximum extent feasible.*

***Policy 4.38:** Maximize the natural, aesthetic appeal and scenic beauty of the beaches and bluffs by avoiding and minimizing the size of bluff retention devices, preserving the maximum amount of unaltered or natural bluff face, and minimizing encroachment of the bluff retention device on the beach, to the extent feasible, while ensuring that any such bluff retention device accomplishes its intended purpose of protecting existing principal structures in danger from erosion.*

Page 13 of the Hazards and Shoreline/Bluff Development chapter states the following, in part:

- *Infill/Bluff Stabilization – Seacave/Notch Infill (See Appendix B Figure 1A) – This first solution is designed to address sea caves and undercut portions of the lower dense sandstone bluff where the clean sand lens is not yet exposed. If left uncorrected, the sea cave/undercut will eventually lead to block failures of the lower sandstone, exposure of the clean sand lens and landward bluff retreat. This failure exposes the clean sand lens of the upper bluff terrace deposits*

triggering rapid erosion and landward retreat of the upper bluff, which eventually endangers the structures at the top of the bluff. If treated at this stage, the Bluff Retention Device will minimize the need for a future higher seawall and future upper bluff repair. This alternative is not designed as a structural wall, is not reinforced, does not include tiebacks, and uses only erodible concrete which shall erode at the same erosion rate as the surrounding natural bluff material. The infill is required to maintain a textured and colored face mimicking the existing bluff material. Erodible concrete seacave/notch infills are designed to erode with the natural bluff and, when maintained to do so, are not subject to the sand supply mitigation, public access and recreation mitigation, encroachment/removal agreement, or authorization timeline policies of the LUP.

Policy 4.48: A Seacave/Notch Infill shall be approved only if all the findings set forth below can be made and the stated criteria satisfied.

A. Based upon the advice and recommendation of a licensed Geotechnical or Civil Engineer, the City makes the findings set forth below:

- 1. The Seacave/Notch Infill is more likely than not to delay the need for a larger coastal structure or upper bluff retention structure, that would, in the foreseeable future, be necessary to protect an existing principal structure, City facility, and/or City infrastructure, from danger of erosion. Taking into consideration any applicable conditions of previous permit approvals for development at the site, a determination must be made based on a detailed alternatives analysis that none of the following alternatives to the coastal structure are currently feasible, including:*
 - Controls of surface water and site drainage;*
 - A smaller coastal structure; or*
 - Other non-beach and bluff face stabilizing measures, taking into account impacts on the near and long term integrity and appearance of the natural bluff face, and contiguous bluff properties.*
- 2. The bluff property owner did not create the necessity for the Seacave/Notch Infill by unreasonably failing to implement generally accepted erosion and drainage control measures, such as reasonable management of surface drainage, plantings and irrigation, or by otherwise unreasonably acting or failing to act with respect to the bluff property. In determining whether or not the bluff property owner's actions were "reasonable," the City shall take into account whether or not the bluff property owner acted intentionally, with or without knowledge, and shall consider all other relevant credible scientific evidence as well as relevant facts and circumstances.*

3. *The location, size, design and operational characteristics of the proposed seacave/notch infill will not create a significant adverse effect on adjacent public or private property, natural resources, or public use of, or access to, the beach, beyond the environmental impact typically associated with a similar bluff retention device and the seacave/notch infill is the minimum size necessary to protect the principal structure, and has been designed to minimize all environmental impacts, and provides mitigation for all coastal and environmental impacts as provided for in this LCP.*

B. The Seacave/Notch Infill shall be designed and constructed:

1. *To avoid migration of the Seacave/Notch Infill onto the beach;*
2. *To be re-contoured to the face of the bluff, as needed, on a routine basis, through a CDP or exemption, to ensure the seacave/notch infill conforms to the face of the adjoining natural bluff over time, and continues to meet all relevant aesthetic, and structural criteria established by the City;*
3. *To serve its primary purpose which is to delay the need for a larger coastal structure, and designed to be removable, to the extent feasible, provided all other requirements under the LCP are satisfied; and,*
4. *To satisfy all other relevant LCP and City Design Standards, set forth for Bluff Retention Devices.*

These LUP policies clearly indicate support for the concept of filling notches and seacaves with erodible concrete where the primary purpose is to delay the need for a larger coastal structure, and they are designed to be removable to the extent feasible, and provided all other requirements under the LCP are satisfied.

In this case, the proposed bluff infill is not required to protect a principal structure in the foreseeable future. The applicants did not present any evidence nor assert that the bluff top homes are at risk, and the Commission's engineer agrees that that the homes are not currently in danger.

The LUP further requires that the size of the proposed seacave/notch infill should not "create a significant adverse effect beyond the environmental impact typically associated with a similar bluff retention device and the seacave/notch infill is the minimum size necessary to protect the principal structure." The visual protection policies of the LUP emphasize minimizing the size of bluff retention devices, and preserving the maximum amount of unaltered or natural bluff face, and requires that an alternative analysis must determine that a smaller coastal structure is not feasible. The subject notch infill project is substantially larger than past infill projects approved by the Commission, and thus would

have commensurately larger impacts on visual quality and shoreline sand supply than typically associated with notch fills. The history of infills has yielded inconsistent results with regard to visual and access impacts, as noted by the photos submitted by Surfrider, attached to the Revised Findings ([Exhibit #2](#))

Thus, the Commission determined that the size and scope of the project would not be visually compatible with the surrounding area to the maximum extent feasible. Decisions are predicated on the nature of the proposed development, particular site conditions, and coastal resource impacts. In this case, the Commission found that no project alternative is a feasible alternative that would avoid impacts consistent with the LUP requirements. The Commission's action was consistent with the Solana Beach LUP. Regardless, the Commission properly relied on Chapter 3 policies of the Coastal Act, the standard of review, for its denial of the CDP application.

3. Assertion: The Commission Improperly Applied the Interpretive Guidelines for Addressing Sea Level Rise as a Regulatory Document and Used it as the Basis for the Denial of the Infill Application and Further Violated Section 30325 (sic) of the Coastal Act.

In 2015, the Commission adopted interpretive guidance for addressing sea level rise. The guidance was adopted pursuant to section 30620 of the Coastal Act, which gives the Commission specific authority to give guidance to local governments in determining how the Coastal Act policies must be applied. This type of guidance can be especially useful in helping understand how to apply the Coastal Act in light of new and emerging issues, and this includes responding to threats associated with sea level. The guidance calls for local governments to evaluate sea level rise vulnerability and then assess adaptation strategies and the impacts of those strategies on their coastal resources.

As noted in the revised findings for the subject project, the Guidance states that adaptation strategies should be chosen based on the specific risks and vulnerabilities of a region or project site and the applicable Coastal Act and LCP requirements, with due consideration of local priorities and goals. The guidelines do not prescribe or prohibit any particular approach to addressing or limit shoreline protection, but emphasize limiting hard structures where feasible alternatives exist.

In the case of the subject infill, the Commission, based on the facts before it and the best available science, determined that this particular project was not the best adaptation strategy. The no project alternative is a feasible alternative that would eliminate all impacts to natural resources and yet allow for adaptation strategies in the future. The Commission found that if infills are always considered the first and only alternative when no primary structures are at risk, particularly on a larger and more extensive basis year after year, there is a significant chance that all of Solana Beach's bluffs will inevitably be covered with shoreline protection, with all of the impacts associated with that protection. This could reduce the incentive for property owners to support regional alternatives that avoid these impacts, such as beach nourishment or planned retreat. Supporting the no project alternative is consistent with the direction of the Sea Level Rise Guidance, but as described above, it is based on the Chapter 3 policies of the Coastal Act.

Section 30235 of the Coastal Act states, in part:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply...

Denial of the project is not inconsistent with Section 30235. The applicants have not demonstrated and did not previously assert that the bluff top homes are at risk, and the Commission's engineer agrees that that the homes are not currently in danger.

D. CONCLUSION

The applicant has not proven that an error of fact or law has occurred which has the potential of altering the Commission's initial decision. The applicant has not provided relevant new evidence which, in the exercise of reasonable due diligence, could not have been presented at the hearing on the matter. Consequently, there is no basis for reconsideration, and the Commission denies the applicant's request for reconsideration pursuant to Section 30627(b)(4) of the Coastal Act.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- City of Solana Beach certified LUP