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STAFF REPORT AND RECOMMENDATION ON APPEAL SUBSTANTIAL ISSUE DETERMINATION

Local Government: City of Carlsbad

Decision: Approved with Conditions

Appeal Number: A-6-CII-20-0056

Applicant: David and Barbara Cline

Location: 5215 Shore Drive, Carlsbad, San Diego County.
(APN: 210-061-08)

Project Description: Remodel and construction of 3,145 sq. ft. two-story addition to an existing 2,330 sq. ft. one-story single-family residence on a 0.32 acre bluff top lot. Removal of unpermitted development on bluff face and bluff restoration. Retention of unpermitted private stairway from residence to beach, deck, and gunite augmentation.

Appellants: Chair Steve Padilla and Vice Chair Donne Brownsey

Staff Recommendation: Substantial Issue

IMPORTANT HEARING PROCEDURE NOTE

The Commission will not take testimony on this “substantial issue” recommendation unless at least three commissioners request it. The Commission may ask questions of the applicant, any aggrieved person, the Attorney General or the executive director prior to determining whether or not to take testimony regarding whether the appeal raises a

substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally and at the discretion of the Chair limited to 3 minutes total per side. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing.

If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission, after public hearing, determine that a substantial issue exists with respect to the grounds on which the appeal has been filed.

The project approved by the City proposes to remodel and construct a two-story 3,145 sq. ft. addition to an existing one-story 2,330 sq. ft. home on a 0.32 acre blufftop lot. The home was built prior to the Coastal Act ("pre-Coastal") and contains a pre-Coastal revetment at the toe of the bluff and gunite blanket on approximately the lower third of the bluff. The subject property also contained a wooden pre-Coastal staircase extending from the home to the beach and a deck located on the mid-bluff, which, along with the gunite protection, were substantially altered and expanded between 2004 and 2010 without a coastal development permit. The property contains a number of other unpermitted developments on the bluff face, including private concrete steps leading to the beach that were added to the gunite at the base of the bluff. The proposed project would remove some of the bluff-face development and restore the bluff. The project would restore the deck to its pre-Coastal configuration and retain the staircase, added gunite, and concrete steps.

The City found that the proposed project is consistent with the blufftop development and shoreline protection provisions of the certified Local Coastal Program (LCP). However, the development as approved by the City raises several potential LCP inconsistencies with regard to geologic stability, bluff-face development, and shoreline protection and public access and recreation.

The LCP requires new development to submit a geotechnical report that, among other requirements, concludes that the cliff is stable and analyzes future rates of cliff erosion. The project's geotechnical report appears to rely on the existing shoreline protection to determine that the cliff is stable, and it fails to include future rates of cliff erosion or sea level rise in its analysis.

The LCP also prohibits development on the bluff face. The City found that the proposed retention of the stairs and deck on the bluff face is consistent with the LCP because both were installed prior to the Coastal Act. However, both features have been either refinished or replaced with new materials without benefit of a coastal development

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permit. The City also found that removal of the augmented gunite and concrete steps would pose a safety hazard and remove public access provided by the steps during periods of high tides or wave activity.

The gunite and its subsequent augmentations have never been permitted, so their impacts on sand supply and public access have never been analyzed. In addition, the proposed additions to the home will prolong any impacts to sand supply and public access created by the existing gunite protection and revetment.

Because of the above-described inconsistencies with the LCP and the Coastal Act, staff recommends that the Commission determine that the project raises a substantial issue regarding conformance with the certified LCP and the Chapter 3 policies of the Coastal Act.

Standard of Review: Certified City of Carlsbad Local Coastal Program and the public access and recreation policies of Chapter 3 of the Coastal Act

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EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Pre-Coastal Bluff-face Development](#)

[Exhibit 3 – Unpermitted Bluff-face Development](#)

[Exhibit 4 – City of Carlsbad Staff Report and Planning Commission Resolution No. 7380](#)

[Exhibit 5 – Site Plan](#)

[Exhibit 6 – Coastal Commission Letter October 4, 2019](#)

[Exhibit 7 – Appeal Forms](#)

I. APPELLANTS CONTEND

The appellants contend that the project as approved by the City does not conform to the City of Carlsbad's certified Local Coastal Program (LCP) with regard to geologic stability, bluff-face development, and shoreline protection and public access.

II. LOCAL GOVERNMENT ACTION

The coastal development permit for the project was approved by the City of Carlsbad Planning Commission on August 19, 2020 ([Exhibit 4](#)). The approval contained numerous conditions, including a requirement for dedication of a 25 ft. lateral public beach access easement. A further condition of approval requires the owner/developer to restore the bluff back to a condition prior to approximately 2004, with the exception of the gunite added to the base of the stairway, which is to remain.

III. APPEAL PROCEDURES

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits.

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to the de novo portion of the hearing on the merits of the project, then, or at a later date. If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, those allowed to testify at the hearing will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project then, or at a later date, reviewing the project de novo in accordance with sections 13057-13096 of the

Commission's regulations. If the Commission conducts the de novo portion of the hearing on the permit application, the applicable standard of review for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program (LCP).

In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also applicable Chapter 3 policies when reviewing a project on appeal.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo portion of the hearing, any person may testify.

The Coastal Act requires that the Commission shall hear an appeal unless no substantial issue exists with respect to the grounds on which the appeal was filed under Section 30603. (§ 30625(b)(2).) Section 13115(c) of the Commission regulations provides that the Commission may consider the following five factors when determining if a local action raises a significant issue:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

The Commission may, but need not, assign a particular weight to a factor.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to the Code of Civil Procedure, section 1094.5.

The City of Carlsbad has a certified Local Coastal Program (LCP), and the subject site is located in an area where the Commission retains appeal jurisdiction because it is located between the first public road and the sea. Therefore, before the Commission considers the appeal de novo, the appeal must establish that a substantial issue exists

with respect to the grounds on which an appeal has been filed pursuant to Section 30603. In this case, for the reasons discussed further below, the Commission exercises its discretion to determine that the development approved by the City raises substantial issue with regard to the appellant's contentions regarding coastal resources.

IV. SUBSTANTIAL ISSUE MOTION AND RESOLUTION

Motion:

I move that the Commission determine that Appeal No. A-6-CII-20-0056 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

Resolution:

The Commission hereby finds that Appeal No. A-6-CII-20-0056 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. SUBSTANTIAL ISSUE FINDINGS AND DECLARATION

A. Project Description and Background

The subject property is a 0.32 acre coastal blufftop lot located on the west side of Shore Drive, just south of Cannon Road ([Exhibit 1](#)). The bluff descends approximately 30 ft. from the top of the bluff to the shoreline. The home was built in 1954 and pre-dates the passage of the Coastal Act. A private wooden staircase descending from the house to the beach and a small wooden deck located approximately halfway down the bluff were installed prior to the Coastal Act, according to 1972 California Coastal Records Project (CCRP) aerial photographs ([Exhibit 2](#)). The bluff face was stabilized with a gunite blanket across approximately eight contiguous properties, including the subject site, prior to 1972. A rock revetment was also placed at the base of the bluff prior to the Coastal Act ([Exhibit 2](#)). Coastal development permit #F1612 authorized the installation of two retaining walls on the seaward side of the home in 1974, which created a patio and a terraced yard extending from the home's westernmost wall ([Exhibit 2](#)).

Development on the property has since undergone numerous improvements and additions without a permit. It is evident from CCRP photographs that between 2004 and 2006, the patio attached to the western wall of the home was extended to cantilever over the rear yard, the private wooden stairs were either refinished or replaced with Trex or similar materials, and the deck on the bluff face was similarly refinished or replaced and expanded to add a shower area and a hot tub ([Exhibit 3a](#)). The bluff was excavated to accommodate the expanded deck and shower area, and two retaining walls were installed to stabilize these areas. Stone cladding was added to these two unpermitted retaining walls as well as the two retaining walls permitted in 1974. CCRP photographs also indicate that between 2006 and 2008, concrete steps were installed to provide access from the private staircase on the bluff face to the beach ([Exhibit 3b](#)). The applicant has confirmed that additional shotcrete was added to the pre-coastal gunite blanket in 2010.

Coastal Commission staff confirmed these unpermitted modifications while visiting the site on August 9, 2019. In a letter dated October 4, 2019, staff advised the applicant to include in their proposed project the removal of all unpermitted development and restoration of the bluff face to a natural condition. Staff also advised the applicant that, because the pre-Coastal staircase and deck had been substantially altered without benefit of a coastal development permit, the structures could no longer be considered legally non-conforming and thus could not be restored to their previous configuration ([Exhibit 6](#)).

On August 19, 2020, the City of Carlsbad approved a coastal development permit for the remodel and construction of a two-story 3,145 sq. ft. addition to the existing one-story 2,330 sq. ft. single family residence ([Exhibit 4](#)). The unpermitted cantilevered patio expansion and stone cladding would be removed. However, the staircase on the bluff face as well as the additional gunite and concrete staircase added at the base of the bluff would be retained. The deck on the bluff face would be restored to its smaller, pre-Coastal configuration. The two retaining walls that were installed when the deck was expanded without a permit would also be removed. To stabilize the 3 ft. vertical cut into the bluff that would result from the removal of the expanded deck and retaining walls, the bluff would be restored by installing a steel wire mesh stabilization system and geomat and planting a hydroseed mix on the exposed soil ([Exhibit 5b](#)).

The standard of review is consistency with the certified City of Carlsbad Local Coastal Program, Mello II segment, and because the site is between the sea and the first public road, the public access and recreation policies of the Coastal Act.

B. Bluff-face Development

The appellants contend that the project, as approved by the City, is inconsistent with the City of Carlsbad's certified LCP provision regarding development on the bluff face.

Policy 4-1(IV) of the Mello II Land Use Plan (LUP) states:

No development shall be permitted on sand or rock beach or on the face of any ocean bluff, with the exception of access ways to provide public beach access and of limited public recreational facilities.

Section 21.201.070 of the City's Implementation Plan (IP) states:

- A. All repair and maintenance activities governed by the provisions of this subsection shall be subject to the permit regulations of the California Coastal Act, including, but not limited to, the regulations governing administrative and emergency permits. ...
- B. The following repair and maintenance activities require a coastal development permit because they involve a risk of substantial adverse impact to coastal resources or access.
 - 1. Any method of repair or maintenance of a seawall, revetment, bluff retaining wall, breakwater, groin, culvert, outfall, or similar shoreline work that involves:
 - a. Repair or maintenance involving substantial alteration of the foundation of the protective work including pilings and other surface or subsurface structures;
 - b. The placement, whether temporary or permanent, of rip-rap, artificial berms of sand or other beach materials, or any other forms of solid materials, on a beach or in coastal waters, streams, wetlands, estuaries and lakes or on a shoreline protective work except for agricultural dikes within enclosed bays or estuaries;
 - c. The replacement of twenty percent or more of the materials of an existing structure with materials of a different kind; or
 - d. The presence, whether temporary or permanent, of mechanized construction equipment or construction materials on any sandy area or bluff or within twenty feet of coastal waters or streams.
 - [...]
 - 3. Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, or any sand area, within fifty feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within twenty feet of coastal waters or streams that include:
 - a. The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials;
 - b. The presence, whether temporary or permanent, of mechanized equipment or construction materials.

The proposed project is located within the City's Coastal Shoreline Development Overlay Zone and subject to the policies in Section 21.204 of the IP. Section 21.204.050 of the IP states:

- A. Grading and Excavation. Grading and excavation shall be the minimum necessary to complete the proposed development consistent with the provisions of this zone and the following requirements:

[...]

2. No excavation, grading or deposit of natural materials shall be permitted on the beach or the face of the bluff except to the extent necessary to accomplish construction pursuant to this section.

The City's approval allows the applicants to retain the private staircase on the bluff face and restore the deck to its original configuration. However, both the staircase and deck have been substantially modified from their original pre-Coastal configuration without the benefit of a coastal development permit, including grading and excavation work on the bluff face that is prohibited by the LCP. Further, the private staircase and deck do not provide public beach access or public recreation facilities. As such, the City's approval allowing the applicants to retain the private staircase and restore the deck to its previous configuration is inconsistent with Policy 4-1(IV) and Section 21.204.050.

The local approval found that the unpermitted concrete steps and additional gunite layers at the base of the bluff provide public access safety during high tides. The concrete steps were installed for private use. It is unclear whether or not the steps and additional gunite provide meaningful public access, and whether or not this public access would have otherwise existed without the additions. CCRP aerial images suggest that the footprint of the concrete steps extends beyond the pre-Coastal gunite and rock revetment onto the sandy beach, reducing the area available for public recreation and access ([Exhibit 3b](#)). Thus, further information about the extent of the unpermitted gunite and concrete steps and their use by the public is needed in order to demonstrate compliance with Policy 4-1(IV). Therefore, the City's approval raises a substantial issue regarding consistency with the LCP.

Even if the improvements to the pre-Coastal stair and deck, and the addition of the concrete steps and additional gunite on the bluff face could be characterized as repair and maintenance activities, Section 21.201.070 of the City's IP requires a coastal development permit for this work because of the potential for adverse impacts to coastal resources and access. The City's approval granted after-the-fact authorization for these structures, but did not review the impacts of the development on coastal resources or public access. As such, the City's approval of the structures is inconsistent with the IP and raises a substantial issue.

C. Geologic Stability

Policy 4-1(I)(a) of the City's Certified Mello II Land Use Plan (LUP) requires:

For all new development along the shoreline, including additions to existing development, a site-specific geologic investigation and analysis similar to that required by the Coastal Commission's Geologic Stability and Blufftop Guidelines shall be required; for permitted development, this report must demonstrate bluff

stability for 75 years, or the expected lifetime of the structure, whichever is greater.

Section 21.204.110 of the IP states that:

- A. Geotechnical reports shall be submitted to the city planner as part of an application for plan approval. Geotechnical reports shall be prepared and signed by a professional civil engineer with expertise in soils and foundation engineering, and a certified engineering geologist or a registered geologist with a background in engineering applications. The report document shall consist of a single report, or separate but coordinated reports. The document should be based on an onsite inspection in addition to a review of the general character of the area and it shall contain a certification that the development as proposed will have no adverse effect on the stability of the bluff and will not endanger life or property, and professional opinions stating the following:
 1. The area covered in the report is sufficient to demonstrate the geotechnical hazards of the site consistent with the geologic, seismic, hydrologic and soil conditions at the site;
 2. The extent of potential damage that might be incurred by the development during all foreseeable normal and unusual conditions, including ground saturation and shaking caused by the maximum credible earthquake;
 - 3. The effect the project could have on the stability of the bluff.**
- B. As a minimum the geotechnical report(s) shall consider, describe and analyze the following:
 1. Cliff geometry and site topography, extending the surveying work beyond the site as needed to depict unusual geomorphic conditions that might affect the site.
 - 2. Historic, current and foreseeable cliff erosion** including investigation of recorded land surveys and tax assessment records in addition to the use of historic maps and photographs where available and possible changes in shore configuration and sand transport.
 3. Geologic conditions, including soil, sediment and rock types and characteristics and structural features, such as bedding, joints and faults.
 4. Evidence of past or potential landslide conditions, the implications of such conditions for the proposed development, and the potential effects of the development on landslide activity.
 5. Impact of construction activity on the stability of the site and adjacent area.
 6. Ground and surface water conditions and variations, including hydrologic changes caused by the development (i.e., introduction of sewage effluent and irrigation water to the ground water system, alterations in surface drainage).
 7. Potential erodibility of site and mitigating measures to be used to ensure minimized erosion problems during and after construction (i.e., landscaping and drainage design).

8. **Effects of marine erosion on seacliffs.**
9. Potential effects of earthquakes including:
 - a. Ground shaking caused by maximum credible earthquake;
 - b. Ground failure due to liquefaction, lurching, settlement and sliding; and
 - c. Surface rupture.
10. Any other factors that might affect slope stability.
11. **The potential for flooding due to sea surface super elevation (wind and wave surge, low barometric pressure and astronomical tide), wave run-up, tsunami and river flows. This potential should be related to one-hundred and five-hundred-year recurrence intervals.**
12. A description of any hazards to the development caused by possible failure of dams, reservoirs, mudflows or slides occurring off the property and caused by forces or activities beyond the control of the applicant.
13. The extent of potential damage that might be incurred by the development during all foreseeable normal and unusual conditions, including ground saturation and shaking caused by the maximum credible earthquake.
14. **The effect the project could have on the stability of the bluff.**
15. **Mitigating measures and alternative solutions for any potential impact.**

The report shall also express a professional opinion as to whether the project can be designed or located so that it will neither be subject to nor contribute to significant geologic instability throughout the lifespan of the project. The report shall use a currently acceptable engineering stability analysis method, shall describe the degree of uncertainty of analytical results due to assumptions and unknowns, and at a minimum, shall cover an area from the toe of the bluff inland to a line described on the bluff top by the intersection of a plane inclined at a twenty-degree angle from horizontal passing through the toe of the bluff or fifty feet inland from the bluff edge, whichever is greater. The degree of analysis required shall be appropriate to the degree of potential risk presented by the site and the proposed project. If the report does not conclude that the project can be designed and the site be found to be geologically stable, no coastal shoreline development permit shall be issued.

[Emphases added in **bold**]

The proposed addition to the existing home will not expand the footprint of the home further seaward ([Exhibit 5a](#)). However, the existing home is already protected by shoreline protection, including a rock revetment at the toe of the bluff and a gunite blanket on the bluff face. The City's LCP requires new development, including additions to existing homes, to be safe from hazards for the lifetime of the development.

The submitted geotechnical report for the proposed project concludes that the bluff is stable. However, the analysis appears to include the existing shoreline protection. Furthermore, the report does not analyze cliff erosion or the effects of sea level rise on future erosion. The factor of safety and erosion rate must be determined without the existing shoreline protection in order to make a finding whether the proposed development will be safe from failure or erosion over a 75-year lifetime without needing any future shoreline protection. As such, the geotechnical report is inconsistent with Mello II Policy 4-1(IV) and Section 21.204.110. Thus, a substantial issue has been raised.

The City found that the geotechnical report concluded that the removal of unpermitted features and restoration of the bluff will have no adverse effect on the stability of the bluff for the life of the project. However, it is not clear that the geotechnical report reviewed these proposed modifications to the bluff. The concrete steps and bluff-face staircase and deck that have been granted after-the-fact approval also appear to have been omitted from the analysis. Thus, the City has granted approval of development that does not appear to have been analyzed according to the provisions in Section 21.204.110, raising a substantial issue.

D. Shoreline Protection and Public Access and Recreation

Policy 4-1(III) of the Mello II LUP states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. As a condition of coastal development permit approval, permitted shoreline structures may be required to replenish the beach with imported sand. Provisions for the maintenance of any permitted seawalls shall be included as a condition of project approval.

Section 21.204.040 of the IP states:

A. Uses substantially similar to the permitted uses listed above may be permitted on the beach subject to this chapter and Chapters 21.42 and 21.50.

B. 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. As a condition of approval, permitted shoreline structures may be required to replenish the beach with imported sand.

Provisions for the maintenance of any permitted seawalls shall be included as a condition of project approval. As a further condition of approval, permitted shoreline structures shall be required to provide public access. Projects which create dredge

spoils shall be required to deposit such spoils on the beaches if the material is suitable for sand replenishment. Seawalls shall be constructed essentially parallel to the base of the bluff and shall not obstruct or interfere with the passage of people along the beach at any time.

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

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

Section 30212 of the Coastal Act states, in part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

LCP Policy 4-1(III) and Section 21.204.030.B allow shoreline armoring to protect existing development, coastal dependent uses, or public beaches in danger of erosion. The existing house and original gunite blanket were installed prior to the Coastal Act. However, the gunite blanket was augmented and concrete stairs were added at the base of the bluff between 2006 and 2010 without a coastal development permit. The extent of the gunite augmentation is unclear and aerial images of the site suggest that the concrete stair extends onto sandy beach that would otherwise be available for public access and recreational use ([Exhibit 3b](#)). Because no coastal development permit was issued for the gunite augmentation and installation of concrete stairs, this development has not been analyzed for impacts to sand supply or public access, and therefore is inconsistent with the provisions of the LCP and the Coastal Act and raises a substantial issue.

The Commission typically considers the demolition of more than 50% of exterior walls to constitute redevelopment of a site. Once a home is redeveloped, it no longer qualifies as "existing development" entitled to shoreline protection. The proposed addition to the existing single-story house would increase the square footage by more than 50%. The

submitted plans lack detailed demolition calculations; however, it appears that more than 50% of the exterior walls of the existing one-story residence may be demolished to accommodate the proposed addition and remodel. If so, the project will effectively result in the construction of a new home that is dependent on pre-Coastal shoreline protection that was installed to protect a pre-Coastal home. Siting a new home in a location that requires shoreline protection will perpetuate the impacts of that shoreline protection on sand supply and coastal access and recreation for another 75 years. These adverse impacts are likely to be exacerbated by the effects of future sea level rise, ultimately resulting in the loss of public beach area. Therefore, the proposed addition to the home raises a substantial issue regarding consistency with the LCP and the coastal access and recreation policies of Chapter 3 of the Coastal Act.

Finally, the City also found that removal of the unpermitted augmentation of the existing gunite blanket on the lower bluff face will immediately endanger the project site as well as adjacent properties to the north and south. The extent of the augmentation is unclear, and additional information is needed to conclude that the neighboring sites are in danger if the augmentation is removed. Therefore, a substantial issue is raised.

E. Substantial Issue Factors

As discussed above, there is inadequate factual and legal support for the City's determination that the proposed development is consistent with the certified LCP. In this case, the City's approval is inconsistent with LCP policies regarding geotechnical stability, bluff-face development, and shoreline protection and public access and recreation. The other factors that the Commission normally considers when evaluating whether a local government's action raises a substantial issue also support a finding of substantial issue. First, the objections to the project suggested by the appellants raise substantial issues of regional or statewide significance due to the presence of blufftop development in San Diego County and throughout the state. Second, the local decision creates a poor precedent with respect to proper interpretation of the City's LCP. The City's failure to require an adequate geotechnical analysis, require removal of unpermitted bluff-face development, and properly analyze the impacts of shoreline protection are not only incorrect interpretations of the LCP, but they could also set an adverse precedent elsewhere along the coast. Finally, the coastal resources affected by the decision are significant due to the extent of coastal bluffs in San Diego County and the potential impacts of shoreline protection devices on the diminished sand supply in the region.

F. Unpermitted Development

Unpermitted development has occurred on the project site, including the reconstruction of a private pre-Coastal wooden stairway extending from the home to the beach, reconstruction and expansion of a pre-Coastal wooden deck located on the mid-bluff, excavation of the bluff face and installation of two retaining walls to support the expanded mid-bluff deck and new shower area, plumbing for the shower area and hot tub on the mid-bluff deck, addition of stone cladding on the two unpermitted retaining walls on the bluff face and two permitted retaining walls, expansion of the patio attached

to the western wall of the home to cantilever over the rear yard, addition of concrete stairs connecting the private stairs to the beach at the base of the bluff, and augmentation to the pre-Coastal gunite blanket on the bluff face.

The City's approval of the project authorized the removal of the unpermitted cantilevered patio and two retaining walls on the mid-bluff associated with the deck and shower area. The City further authorized the applicant to remove the mid-bluff shower area and deck expansion, restore the bluff, and restore the deck to its pre-Coastal condition. Finally, the City approved retention of the unpermitted reconstructed private stairway, the concrete steps connecting the private stair to the beach, and augmentation of the gunite. Finding of substantial issue pursuant to the staff recommendation will result in the violations continuing at the site. Commission enforcement staff will consider options to resolve these violations as a separate matter, including, potentially, through the de novo phase of this appeal.

Although development has taken place prior to submission of this appeal, consideration of this appeal by the Commission has been based solely upon the development's consistency with the public access and recreation policies of the Coastal Act and the City's LCP. Commission review and action on this appeal does not constitute a waiver of any legal action with regard to the alleged violations, nor does it constitute an implied statement of the Commission's position regarding the legality of development, other than the development addressed herein, undertaken on the site without a coastal development permit.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Geotechnical Investigation and Bluff Stability Study, TerraCosta Consulting Group. October 25, 2017
 - Geotechnical Investigation Update, TerraCosta Consulting Group. April 15, 2019
 - Addendum to Geotechnical Investigation and Bluff Stability Study, TerraCosta Consulting Group. May 21, 2020
- City of Carlsbad Planning Commission Resolution No. 7380. August 19, 2020
- City of Carlsbad Planning Commission Staff Report. August 19, 2020
- Coastal Development Permit #F1612
- City of Carlsbad Certified Mello II LCP