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STAFF REPORT AND RECOMMENDATION ON APPEAL SUBSTANTIAL ISSUE DETERMINATION

Local Government: City of San Diego

Decision: Approved with Conditions

Appeal Number: A-6-LJS-20-0008

Applicant: Roger Abbott

Location: 6340 Camino de la Costa, La Jolla, San Diego, San Diego County. (APN: 351-571-11)

Project Description: Remodel an existing one-story over basement, approx. 5,564 sq. ft. single family residence with two detached one-story garages (approx. 831 sq. ft. northern garage and 893 sq. ft. southern garage) and construct approx. 214 sq. ft. first floor addition and new approx. 3,488 sq. ft. second story on the main residence, an approx. 552 sq. ft. addition to the northern garage, and an approx. 539 sq. ft. addition to the southern garage, resulting in a two-story over basement, 9,176 sq. ft. single family residence with detached 1,383 sq. ft. and 1,432 sq. ft. garages on a 1.37 acre bluff top lot.

Appellants: Andrew Midler, Monica Midler, Moses Property LLC

Staff Recommendation: Substantial Issue

IMPORTANT HEARING PROCEDURE NOTE

The 49th working day from the date the appeal was filed is April 20, 2020. On April 16, 2020, due to the COVID-19 crisis, Governor Newsom extended the 49-day substantial issue determination deadline, as well as other deadlines in the Coastal Act, by 60 days. See Order N-52-20. The deadline for the hearing on substantial issue on this matter is therefore June 19, 2020.

<https://www.gov.ca.gov/wp-content/uploads/2020/04/4.16.20-EO-N-52-20-text.pdf>

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 subject site consists of two adjacent bluff-top parcels containing a single family residence, two detached garages, extensive landscaping and pool on the inland side of the residence, a small lawn area supported by a 110-ft. long concrete wall seaward of the residence, and stairs leading down the bluff face. Substantially all improvements to the site were originally constructed prior to passage of the Coastal Act, except for an addition to one of the detached garages approved by the City of San Diego in 2008. Both the existing residence and two garages are considered non-conforming structures as the residence is located within ten feet of the (partially buried) bluff edge, while the two detached garages on the eastern side of the property along Camino de la Costa are located within the twenty-foot front yard setback.

On January 23, 2020, the City of San Diego approved an amendment to a previously approved local CDP to remodel and construct additions to the existing single family residence and two detached garages. For the single family residence, the western portion of the residence closer than twenty-five feet to the natural bluff edge would be

demolished, and a 214 sq. ft. first-floor addition and new approx. 3,488 sq. ft. second story added to it, resulting in a two-story over basement, approximately 9,176 sq. ft. single family residence. The portions of the two garages closer than twenty feet to Camino de la Costa would be demolished and an approximately 552 sq. ft. addition to the northern garage and an approximately 539 sq. ft. addition to the southern garage would be constructed, increasing their size to 1,383 sq. ft. and 1,432 sq. ft., respectively. The westernmost existing development beyond or along the bluff edge, consisting of retaining walls, patios, and private access stairs, were allowed to remain by the City permit, although the permit disallows repair and maintenance to the accessory structures along or beyond the bluff edge.

Because the project includes increasing the size of the non-conforming residence and detached garages by more than fifty percent, the improvements to those structures constitute redevelopment under the City of San Diego certified Local Coastal Program (LCP), and as such, the residences and garages are required to conform to current development standards. The City found that the project is consistent with the City of San Diego LCP as well as the public access policies of the Coastal Act. However, as approved by the City, the development raises several LCP and Coastal Act consistency issues with regards to development in an area subject to future coastal hazards.

The appellants contend that the proposed structure would violate LCP policies regarding siting of a structure on a site that contains existing shoreline protection. Specifically, they contend that the City allowed the single family residence to be located twenty-five feet inland of the bluff edge, when the LCP requires that new development on a site containing shoreline protection must be set back a minimum of forty feet from the bluff edge.

The applicants claim that the wall located along the bluff edge is a retaining wall that does not have deep footings, supports only the back yard lawn rather than the single family residence, and that the site is stable and not subject to wave action or erosion. However, the fact that the wall is not required to support the residence, or that the wall does not receive wave action, does not mean it is not a shoreline protective device. Approximately twenty-five feet of the 110-ft long wall is located seaward of the buried bluff edge. The Commission's geologist has reviewed the approved project and notes that the presence of the wall has protected the bluff by slowing or limiting the rate or extent of erosion that would otherwise have occurred on the natural bluff face, affecting both the profile of the bluff and the amount of sand that reaches the beach. Thus, the retaining wall functions in part as a shoreline protective device under the LCP. Staff has conveyed this information to the City in an October 2018 letter ([Exhibit 5](#)). Thus, allowing redevelopment of the residence twenty-five feet from the bluff edge raises a substantial issue with regard to conformity with the LCP.

The second contention raised by the appellants is the failure of the City to review and require a CDP for the allegedly unpermitted removal of a palm tree on the bluff face in 2017 and failure to enforce the vegetation and hardscape height limits in the public view corridors in the property's side yard setbacks. While removal of the palm tree from a bluff face does meet the definition of "Development" that may have required a coastal development permit, there is no indication that any impacts arose from the removal, and

it is unlikely that a new tree would have been required in its place, as vegetation that requires irrigation located on bluff faces is discouraged by the LCP due to erosion and geological stability concerns. Thus, this allegation does not raise a substantial issue. With regard to the view corridors in the side yard setbacks, the City's local approval requires the recordation of a public view corridor in the setback and the approved plans limit all landscape and hardscape within them to three feet in height or open fencing. Neither of these latter contentions raises a substantial issue.

However, because of the above-described inconsistencies with the geological setback requirements of the LCP, staff recommends that the Commission determine that the project raises a substantial issue regarding conformance with the certified LCP.

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

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EXHIBITS

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[Exhibit 2 – Aerial View](#)

[Exhibit 3 – Site Photo](#)

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[Exhibit 5 – Commission staff comment letter](#)

[Exhibit 6 – Appellants’ Appeal](#)

I. APPELLANTS CONTEND

The project as approved by the City does not conform to the certified Local Coastal Program (LCP) with regard to the following:

1. The subject property contains shoreline protection in the form of a rear wall that is partially located on the bluff face. The certified LCP requires that structures containing shoreline protection must observe a minimum forty-foot setback from the bluff edge, yet the City of San Diego erroneously allowed the proposed redeveloped residence to be sited twenty-five feet back from the bluff edge.
2. In 2017, the appellant notified the City that the applicant undertook unpermitted development in the form of vegetation removal near and on the coastal bluff on the applicant's property and has failed to maintain side yard public view corridors required by a previous local permit, which the City did not address in this permit action approving the redevelopment of the residence and detached garages.

II. LOCAL GOVERNMENT ACTION

The project was approved by the Planning Commission on January 23, 2020, as Coastal Development Permit No. 522763 with special conditions including recordation of a public view easement, a waiver of future shoreline protection, and non-repair of existing development seaward of the bluff edge.

The appellants participated in the local hearing process through testimony and submitted documentation. Thus, the appellants are aggrieved persons under Coastal Act regulations and have standing to appeal to the Coastal Commission (Cal. Code of Regs. Tit. 14 Section 13573(a)(4)).

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 San Diego 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-LJS-20-0008 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-LJS-20-0008 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 1.37-acre bluff top site at 6340 Camino de la Costa in the San Diego community of La Jolla consists of two adjacent parcels containing a single family residence, two detached garages, extensive landscaping and pool on the inland side of the residence, a small lawn area supported by a 110-foot long concrete wall seaward of the residence, and stairs down the bluff face. Substantially all the improvements on the site were originally constructed prior to passage of the Coastal Act. Both the existing residence and detached garages are considered non-conforming structures, as the residence is located within ten feet of the (partially buried) bluff edge, while the two detached garages on the eastern side of the property along Camino de la Costa are located with the twenty-foot front yard setback.

On January 23, 2020, the City of San Diego approved an amendment to a previously approved local CDP (no. 522763) for a 279 sq. ft. addition to the northern detached garage and construction of a 1,273 sq. ft. pool lanai. The amendment is to remodel and construct additions to the existing single family residence and two detached garages. Under the approved amendment, the western portion of the existing residence currently located closer than twenty-five feet to the natural bluff edge will be demolished, and a 214 sq. ft. first-floor addition and new approx. 3,488 sq. ft. second story added to it, resulting in a two-story over basement, approximately 9,176 sq. ft. single family residence. The portions of the two garages closer than 20 feet to Camino de la Costa will be demolished and an approximately 552 sq. ft. addition to the northern garage and an approximately 539 sq. ft. addition to the southern garage would be constructed, increasing their size to 1,383 sq. ft. and 1,432 sq. ft., respectively. The westernmost existing development beyond or along the bluff edge, consisting of a 110-foot long retaining wall, patios, and private access stairs, were allowed to remain by the City permit.

The site is within an area of the City of San Diego's certified permit jurisdiction between the first coastal road and the sea, and is thus appealable to the Coastal Commission. The La Jolla Community Plan, which serves as the certified Land Use Plan for the community, and the Land Development Code, which serves as the certified Implementation Plan, are the standard of review along with the public access policies of Chapter 3 of the Coastal Act.

B. Contentions That Raise a Substantial Issue

1. Coastal Hazards

The appellants contend that the locally approved development is not in conformance with the coastal hazards policies of the certified LCP for properties containing coastal bluffs. The relevant policies and requirements of the certified Land Use Plan and Implementation Plan are listed below for reference.

Section 113.0103 of the City's Land Development Code, which serves as the Implementation Plan for the LCP, contains the definitions of various terms utilized in the LDC, and defines the following relevant terms accordingly:

Coastal bluff means an escarpment or steep face of rock, decomposed rock, sediment, or soil resulting from erosion, faulting, folding, or excavation of the land mass that has a vertical relief of 10 feet or more and is in the coastal zone.

Coastal bluff edge means the termination of the top of a coastal bluff where the downward gradient of the land surface begins to increase more or less continuously until it reaches the general gradient of the coastal bluff face.

Environmentally sensitive lands means land containing steep hillsides, sensitive biological resources, coastal beaches, sensitive coastal bluffs, or Special Floor Hazard Areas.

Sensitive coastal bluff means a coastal bluff that is designated within hazard category numbers 41 through 47, inclusive, on the City's Geologic Hazards Maps plus the area of an additional 100-foot strip located landward and contiguous to the coastal bluff edge.

Section 143.0130 of the Land Development Code addresses uses allowed within environmentally sensitive lands and states the following, in relevant part:

Allowed uses within environmentally sensitive lands are those allowed in the applicable zone, except where limited by this section.

(a) Sensitive Coastal Bluff Areas. Permitted uses and activities in sensitive coastal bluff areas, as indicated on Map Drawing No. C-713, are limited to the following:

- 1) Single Dwelling Units together with accessory structures and landscape features incidental to residential uses;
- 2) Bicycle storage facilities;
- 3) Public comfort stations;
- 4) Public pergolas and gazebos;
- 5) Public parking lots;
- 6) Public seating benches;
- 7) Open fences and walls for public safety, provided they do not interfere with existing or designated public or visual access ways;

- 8) Safety and public information signs;
- 9) Public stairways, ramps, and other physical beach access facilities, as identified in the applicable land use plan;
- 10) Essential public walkways leading to permitted beach access facilities;
- 11) Essential public drainage facilities;
- 12) Bluff repair and erosion control measures, when necessary to protect existing primary structures and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

Section 143.0143(f) of the Land Development Code, which serves as part of the certified Implementation Plan, contains development regulations for sensitive coastal bluffs and states, in relevant part:

All development including buildings, accessory structures, and any additions to existing structures shall be set back at least 40 feet from the coastal bluff edge, except as follows:

- (1) The City Manager may permit structures to be located between 25 and 40 feet from the bluff edge where the evidence contained in a geology report indicates that the site is stable enough to support the development at the proposed distance from the coastal bluff edge and the project can be designed so that it will not be subject to or contribute to significant geologic instability throughout the anticipated life span of the primary structures, and no shoreline protection is required.

Reduction from the 40-foot setback shall be approved only if the geology report concludes the structure will not be subject to significant geologic instability, and not require construction of shoreline protection measures throughout the economic lifespan of the structure. In addition, the applicants shall accept a deed restriction to waive all rights to protective devices associated with the subject property. The geology report shall contain:

- A. An analysis of bluff retreat and coastal stability for the project site, according to accepted professional standards;
- B. An analysis of the potential effects on bluff stability of rising sea levels, using latest scientific information;
- C. An analysis of the potential effects of past and projected El Niño events on bluff stability;
- D. An analysis of whether this section of coastline is under process of retreat.

- (2) Accessory structures and landscape features customary and incidental to residential uses shall not be closer than 5 feet to the coastal bluff edge provided, however, that these shall be located at grade. Accessory structures and features may be landscaping, walkways, unenclosed patios, open shade structures, decks that are less than 3 feet above grade, lighting standards, fences and walls, seating benches, signs, or similar structure and features, excluding garages, carports, buildings, pools, spas, and upper floor decks with load-bearing support structures.

[...]

The La Jolla Community Plan, which serves as the certified Land Use Plan for La Jolla, states on Page 48, in Policy 4b, the following in relevant part:

Do not allow a bluff edge setback less than 40 feet if erosion control measures or shoreline protective devices exist on the site which are necessary to protect the existing principal structure in danger from erosion.

The La Jolla Community Plan states on Page 40, in Policy 3e, the following regarding non-conforming bluff top property:

On coastal bluff property, when redevelopment of an existing previously conforming structure includes the demolition or removal of 50 percent or more of the exterior walls, require the entire structure to be brought into conformance with all policies and standards of the Local Coastal Program, including, but not limited to, bluff edge setback. Additions that increase the size of the structure by 50 percent or more shall not be authorized unless the structure is brought into conformance with the policies and standards of the Local Coastal Program. The baseline for determining the percent change to the structure is the structure as it existing on March 17, 1990. Any changes to the structure that have occurred since March 17, 1990 shall be included when determining if the 50 percent threshold is met. This policy does not apply to development that is exempt from coastal development permit requirements pursuant to the Land Development Code.

The La Jolla Community Plan states on Page 49, in Policy 4k, the following regarding non-conforming bluff top property.

For structures located partially or entirely within the bluff edge setback, require all additions (at grade and at upper floors) to be landward of the bluff edge setback line. Additions that increase the size of the structure by 50 percent or more, including all authorized additions that were undertaken after March 17, 1990 (effective certification of the LCP), shall not be authorized unless such structures are brought into conformance with the policies and standards of the Local Coastal Program.

The La Jolla Community Plan states on Page 70 for “Development Near Coastal Bluffs,” that:

a. The City should ensure that residential projects along the coastal bluff maintain yards and setbacks as established by the underlying zone and other applicable regulations in the Land Development Code in order to form view corridors and to prevent a walled-off appearance from the street to the ocean.

b. The City should ensure that bluff stability is a foremost consideration in site design. New development on or near the coastal bluff will be designed in a manner that will protect the bluff from erosion.

The Coastal Bluffs and Beaches Guidelines, which is a part of the Land Development Manual, a supplementary document to the Land Development Code designed to assist in its interpretation and implementation that is part of the certified Implementation Plan, is divided into three sections – I: Explanation of Definitions, II Description of Regulations, and III: Coastal Bluff Measurement Guidelines – and states the following, in relevant part:

Section II: Description of Regulations

The regulations for development proposed on a sensitive coastal bluff are located in Section 143.0143. The regulations for development proposed on a site containing a coastal beach are located in Section 143.0144. The following guidelines are intended to aide in the interpretation and implementation of pertinent development regulations in these sections. The numbers referenced for each development regulation refer to the Code section numbers of the Environmentally Sensitive Lands Regulations. The text provided for each regulation does not repeat the Code language but rather restates the regulation with more details and explanations.

A. 143.0143(a) Development on the Face of a Sensitive Coastal Bluff

In general, development is not permitted on the face of a sensitive coastal bluff. Only erosion control facilities, essential public drainage facilities, and public physical beach access facilities are permitted on the face of a sensitive coastal bluff, subject to the regulations of Section 143.0143(g) and (h). Other uses identified in Section 143.0130(a) are permitted on the sensitive coastal bluff, landward of the bluff edge, and only in compliance with the required setbacks from the bluff edge, pursuant to Section 143.0143(f).

Where a stepped bluff landform exists, all of the area of the site that is seaward of the bluff edge (measured at the uppermost rise within the premises) shall be considered the bluff face. This shall include any generally horizontal steps that are below the uppermost riser.

[...]

C. 143.0143(f) Distance from Coastal Edge of Sensitive Coastal Bluffs

Development proposed on a sensitive coastal bluff, including primary and accessory structures, and grading, shall be located at least 40 feet landward from the coastal bluff edge, except as follows:

2. A distance of more than 40 feet from the coastal bluff edge may be required based on current geologic conditions.

3. Development may be located less than 40 feet but not less than 25 feet from the coastal bluff edge if there is evidence on a geology report that the site is stable enough to support the development at the proposed distance and if the development will neither be subject to nor contribute to significant geologic instability or require a shoreline or bluff erosion control device. In determining stability of the sensitive coastal bluff, consideration shall be given to the rate of bluff retreat to determine whether the proposed development will be impacted within a reasonable economic life-span, taken to be 75 years. If a development is approved with a less-th-40-foot distance to the coastal bluff edge, future erosion control measures are precluded. Air-placed concrete, retaining walls, and seawalls will only be permitted when the principal structure, or public improvements not capable of being relocated, are in imminent danger. Less environmentally damaging alternatives that reduce risk and avoid the need to significantly alter the natural landforms of the beach and/or bluff shall be considered as feasible.

[NOTE: If a seawall (or other stabilization/erosion control measure) has been installed due to excessive erosion on a premises, that premises shall not qualify for a reduction of the required 40-foot distance to the coastal bluff edge. Since the instability of the coastal bluff necessitated the installation of the seawall, the coastal bluff would not be considered stable enough to support development within the 40-foot bluff edge setback]

4. A distance of five feet from the coastal bluff edge may be granted for landscape features and accessory structures that are located at grade so that they are not elevated at the base or constructed with a raised floor and are capable of being relocated. Permitted features and structures include landscaping, paved walkways, at-grade decks, unenclosed patios, open shade structures, lighting standards, fences and walls, seating benches, and signs. A distance of five feet from the coastal bluff edge may not be granted for buildings, garages, carports, pools, spas, and raised decks with load bearing support structures.

5. Open fences may be permitted closer than 5 feet to the coastal bluff edge only if necessary to provide for public safety and to protect resource areas accessible from public right-of-ways or on public parkland.

Section III: Bluff Measurement Guidelines

The following guidelines provide details on determining the location of the bluff edge for sensitive coastal bluffs and measuring the required bluff edge setback.

A. Determination of Coastal Bluff Edge for Sensitive Coastal Bluffs

The following are examples of typical sensitive coastal bluff configurations with the determination of the coastal bluff edge identified:

[...]

4. Modified Landform

Where a coastal bluff face has been altered by grading and/or retaining wall, the coastal bluff edge shall be determined from the original geometry of the natural ground surface, project to the present ground surface. See Diagram III-4. This may be determined by geotechnical investigation and/or historic documents such as photographs and maps.

Analysis

Non-Conforming Structures and Presence of Shoreline Protection

The existing single family residence and two detached garages are currently non-conforming regarding geological and front yard setbacks, respectively. The existing single-family residence is located less than ten feet from the natural bluff edge to the west, while the two detached garages are closer than twenty feet to Camino de la Costa on the east. As approved by the City, all three structures are increasing in floor area by more than fifty percent, and thus as defined by the LCP, they are being redeveloped and must be brought up to current development standards. As approved by the City, all portions of the single family residence closer than twenty-five feet to the natural bluff edge and all portions of the eastern garages closer than twenty feet to Camino de la Costa would be demolished, and all new additions would be located behind the required setback lines.

The contention raised by the appellants is that the rear wall on the western side of the bluff top developed area constitutes a shoreline protective device, which under the LCP requires that the applicant's redeveloped single family residence observe at least a 40-foot setback from the bluff. A 40-foot bluff top setback may be reduced to 25 feet upon a geological survey showing that the structure would be safe at the reduced setback for its economic life without the need for shoreline protection. However, the LCP prohibits any reduction of the setback of less than forty feet if shoreline protection is already present.

The rear retaining wall in question, built prior to passage of the Coastal Act and approximately a quarter of which is seaward of the bluff edge, is approximately 110 feet long and up to 14 feet in height, and runs almost the entire length of the western side of the bluff top building pad. When the bluff top portion of the property was developed, fill

was placed along the natural bluff edge, burying portions of it, and the subject rear wall was constructed to retain the fill for the rear lawn area. As shown on the relevant site plans and verified by the geotechnical analysis, the rear wall and related fill partially bury a segment of the bluff edge and adjacent portion of the bluff face. In addition to the quarter of the wall located seaward of the bluff edge, approximately another quarter of the wall does not observe the required 5-foot minimum bluff setback required for accessory structures. ([Exhibit 4](#))

During the City's local review of the applicant's permit application in 2018, City staff solicited Commission staff for their input on the project, as the property is located in the City's jurisdiction, appealable to the Commission. After review of the proposed plans and a site visit, Commission staff provided a comment letter to the City identifying the presence of the rear wall and its location on the bluff face or along the bluff edge and informed the City that the portion of the wall located seaward of the bluff edge should be considered a shoreline protective device. ([Exhibit 5](#))

The applicant argues that the wall is not a shoreline protective device, and has provided evidence that while portions of the rear wall are located on the bluff face, the rear wall supports only the lawn area and not the residence, and that the proposed redevelopment of the residence at 25 feet back from the bluff edge would likewise not rely on the wall to be safe for its 75-year economic life. Additionally, they have argued that the rear wall is too high above the coast to receive wave action, and thus cannot be considered shoreline protection. The applicants have provided photographic evidence that very little erosion has occurred at the site over the lifetime of the structure.

However, the Commission's geologist visited the site and reviewed the approved project. Dr. Joseph Street notes that the presence of the wall has protected the bluff by slowing or limiting the rate or extent of erosion that would otherwise have occurred on the natural bluff face, affecting both the profile of the bluff and the amount of sand that reaches the beach. Thus, the retaining wall functions in part as a shoreline protective device under the LCP. Furthermore, while minimal wave erosion has occurred on the site historically, with sea level rise, the site is expected to receive more wave action and increased potential for erosion.

The subject property is sizeable, constituting two adjacent parcels developed concurrently before passage of the Coastal Act, and contains several non-conforming structures, all of which would be redeveloped. The LCP requires that when non-conforming structures are redeveloped, that the site be brought into conformance with current standards. In the case of the proposed site, this requires the redeveloped residence to observe the minimum 40-foot setback. Alternatively, if the site is safe redevelopment to be closer than 40 feet from the bluff edge, the wall should be removed and brought into conformance with the development standards for accessory structures on bluff top sites. It is important to note that removal of a shoreline protective device does not automatically mean that a 25-foot setback is permissible; the project must still demonstrate that any new primary structure is safe on the site for the lifetime of the structure.

Thus, the approved siting of the redeveloped structure 25 feet from the bluff edge raises a substantial issue with regard to conformity with the LCP.

C. Contentions That Do Not Raise Substantial Issue

1. Unpermitted Development

The appellants contend that the project as approved by the City does not conform to the environmentally sensitive land policies of the certified LCP.

The La Jolla Community Plan states on Page 4:

The need to protect and preserve sensitive natural resources, including natural drainage, biologically sensitive slopes and hillsides, beaches, ocean, bluffs and canyons, plant and animal habitats, and wildlife linkages throughout the community. The seismic and geological instability of the area should be a consideration in such efforts.

The La Jolla Community Plan references on Page 15 the community's "Plan Framework," and states for "Coastal Bluffs" that:

The coastal bluffs are one of La Jolla's most scenic natural resources. La Jolla's bluff areas stretch from La Jolla Farms south to Tourmaline Surfing Park. The magnificent views of the ocean and shoreline from these coastal bluffs provide tremendous development incentive. The Sensitive Coastal Overlay Zone identifies where special development regulations for the environmentally sensitive areas of the shoreline and coastal bluff tops are located. The purpose of this zone and applicable regulations is to help protect and enhance the quality of sensitive coastal bluffs, coastal beaches, and wetlands. Further intentions of this overlay zone are to maximize public access to and along the shoreline consistent with sound resource conservations principles and the rights of property owners.

The La Jolla Community Plan, on Page 29 under "Natural Resource and Open Space System," states as "Goals:"

Preserve the natural amenities of La Jolla such as its open space, hillsides, canyons, bluffs, parks, beaches, tide pools, and coastal waters.

Protect the environmentally sensitive resources of La Jolla's open areas including its coastal bluffs, sensitive steep hillside slopes, canyons, native plant life, and wildlife habitat linkages.

The La Jolla Community Plan, states on Page 30 in the "Open Space Preservation and Natural Resource Protection" segment:

The City's Environmentally Sensitive Lands regulations and Sensitive Coastal Overlay zone regulations restrict the degree to which private development is

allowed to encroach upon biologically sensitive open areas, steep hillsides, and coastal bluffs in order to preserve their stability, plant, and wildlife habitats. In addition, the open space designations and zoning protect the hillsides and canyons for their park, recreation, scenic, and open space values.

The La Jolla Community Plan, on Page 39, under “Shoreline Areas and Coastal Bluffs,” directs:

a. The City should preserve and protect coastal bluffs, beaches and shoreline areas of La Jolla assuring that development occurs in a manner that protects these resources, encourages sensitive development, retains biodiversity and interconnected habitats, and maximizes physical and visual public access to and along the shoreline.

Section 113.0103 of the City’s Land Development Code, which serves as the Implementation Plan for the LCP, contains the definitions of various terms utilized in the LDC, and defines the following relevant terms accordingly:

Coastal Development means “development” as defined in the California Coastal Act of 1976, Section 30106 in the Coastal Overlay Zone, which states “development” means, on land, in or under water, the placement or erection of any solid material or structure, discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes and kelp harvesting. As used in this section, “structure” includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

Development means the act, process, or result of dividing a parcel of land into two or more parcels; of erecting, placing, constructing, reconstructing, converting, establishing, altering, maintaining, relocating, demolishing, using, or enlarging any building, structure, improvement, lot, or premises; of clearing, grubbing, excavating, embanking, filling, managing brush, or agricultural clearing on public or private property including the construction of slopes and facilities incidental to such work; or of disturbing any existing vegetation.

Section 126.0702 of the Land Development Code states when a coastal development permit is required:

(a) Permits Issued by the City. A Coastal Development Permit issued by the City

is required for all coastal development of a premises within the Coastal Overlay Zone described in Chapter 13, Article 2, Division 4, unless exempted by Section 126.0704, or if the proposed project site lies completely within the Coastal Commission Permit Jurisdiction or the Deferred Certification Area as described in Section 126.0702(b).

(b) Permits Issued by the Coastal Commission. A Coastal Development Permit or exemption for all coastal development on a project site located completely within the Coastal Commission Permit Jurisdiction or in the Deferred Certification Area must be obtained from the Coastal Commission. The Coastal Commission Permit Jurisdiction and the Deferred Certification Area are shown on Map No. C-730.1 on file in the Planning and Development Review Department, the San Diego office of the Coastal Commission, and in the office of the City Clerk as Document No. 00-17067-1.

(c) Permits Issued by the City and the Coastal Commission. A Coastal Development Permit or exemption issued by the City and the Coastal Commission are required for all coastal development on a premises located partially within the Coastal Commission permit jurisdiction. A Coastal Development Permit from each agency is required for the portion of the project within the agency's jurisdiction.

Analysis

As explained earlier in the preceding "Coastal Hazards" section of this staff report, the subject property contains a sensitive coastal bluff on its western side, and the subject property is located in the City's coastal permitting jurisdiction, appealable to the Coastal Commission. In their appeal, the appellants submitted copies of correspondence and photos given to the City beginning in 2017 alleging that the applicant undertook unpermitted development on the coastal bluff face by removing a palm tree and surrounding vegetation adjacent to the northern property line between the applicant's and appellants' properties ([Exhibit 6](#)). The appellants claim in their appeal that the City's failure to address the unpermitted tree removal through a code enforcement action or subsequently through this permit by requiring that a new, native tree be planted in place of the removed palm tree constitutes a failure to enforce the permitting requirements of the certified LCP. It is unknown whether the palm tree was a native or non-native species.

While the Commission does not have substantial information regarding the nature of the palm tree or its manner of removal, pursuant to the certified definition of "development" in the LCP, the removal of the palm tree would constitute development and would likely have required a CDP given its location on a sensitive coastal bluff face and the related concerns regarding impacts to habitat and erosion. However, there is no evidence that removal of the tree resulted in any adverse impacts to the bluff or other coastal resources. Only one species of palm tree is native to California, the California fan palm, and that species is most commonly found in desert environments. Thus, it is highly likely that the removed palm was a non-native species. Furthermore, given the location of the

palm on the bluff face and the photos provided to the City by the appellant, it appears that the palm was removed by handheld equipment and not heavy machinery. Finally, the removal of the palm tree from the bluff face would not necessarily have required the placement of a replacement tree in its location, given that such plantings typically require irrigation for a period of years in order to become established, which the LCP discourages on bluff faces due to the adverse impacts on erosion.

Thus, while the removal of the palm tree constitutes development that would likely have required a coastal development permit, the decision by the City to not address it in its permit action for the redevelopment of the property does not raise a substantial issue, and thus in these respects, the City's approval can be found in conformance with the permitting requirements of the certified LCP.

2. Visual Resources

The appellants contend that the project as approved by the City does not conform to the visual resource protection policies of the certified LCP.

The La Jolla Community Plan states on Page 5 under "General Community Goals" the need to:

Conserve and enhance the natural amenities of the community such as its views from identified public vantage points...open space, hillsides, canyons, ocean, beaches, water quality, bluffs, wildlife and natural vegetation, and achieve a desirable relationship between the natural and developed components of the community.

The La Jolla Community Plan continues, on page 31, under "Visual Resources," that:

La Jolla is a community of significant visual resources. The ability to observe the scenic vistas of the ocean, bluff and beach areas, hillsides and canyons, from public vantage points as identified in Figure 9 has, in some cases, been adversely affected by the clutter of signs, fences, structures, or overhead utility lines that visually intrude on these resources.

The La Jolla Community Plan, under "Shoreline Areas and Coastal Bluffs" on Page 31, states:

The entire coastline of La Jolla stretching from La Jolla Farms to Tourmaline Surfing park provides dramatic scenic beauty to the City of San Diego and is considered an important sensitive coastal resource and should be protected.

The La Jolla Community Plan, on Page 39, under "Visual Resources," continues:

a. Public views from identified vantage points to and from La Jolla's community landmarks and scenic vistas of the ocean, beach and bluff areas, hillsides and canyons shall be retained and enhanced for public use.

- b. Public views to the ocean from the first public roadway adjacent to the ocean shall be preserved and enhanced, including visual access across private coastal properties at yards and setbacks.

The La Jolla Community Plan states on Page 45 under “Plan Recommendations” for “Visual Resources:”

[...]

- c. Protect public views to and along the shoreline as well as to all designated open space areas and scenic resources from public vantage points as identified in Figure 9 and Appendix G (Coastal Access Subarea maps). Public views to the ocean along public streets are identified in Appendix G. Design and site proposed development that may affect an existing or potential public view to be protected. As identified in Figure 9 or in Appendix G, in such a manner as to preserve, enhance, or restore the designated public view.

- d. Implement the regulation of the building envelope to preserve public views through height, setback, landscaping, and fence transparency regulation of the land Development Code that limit the building profile and maximize view opportunities.

[...]

- h. Where new development is proposed on property that lies between the shoreline and the first public roadway, preserve, enhance, or restore existing or potential view corridors within the yards and setbacks by adhering to setback regulations that cumulatively, with the adjacent property, form functional view corridors and prevent the appearance of the public right-of-way being walled off from the ocean.

Section 132.0403 of the Land Development Code contains supplemental regulation of the City’s Coastal Overlay Zone that further implements the coastal resource protection policies of the LUP:

- (a) If there is an existing or potential public view and the site is designated in the applicable land use plan as a public view to be protected,
 - 1) The applicant shall design and site the coastal development in such a manner as to preserve, enhance, or restore the designated public view, and
 - 2) The decision maker shall condition the project to ensure that critical public views to the ocean and shoreline are maintained or enhanced.

- (b) A visual corridor of not less than the side yard setbacks or more than 10 feet in width, and running the full depth of the premises, shall be preserved as a deed restriction as a condition of Coastal Development Permit approval whenever the following conditions exist:
- 1) The proposed development is located on premises that lies between the shoreline and first public roadway, as designated on map Drawing No. C-731; and
 - 2) The requirement for a visual corridor is feasible and will serve to preserve, enhance, or restore public views of the ocean or shoreline identified in the applicable land use plan.
- (c) If there is an existing or potential public view between the ocean and the first public roadway, but the site is not designated in a land use plan as a view to be protected, it is intended that views to the ocean shall be preserved, enhanced, or restored by deed restricting required side yard setback areas to cumulatively form functional view corridors and preventing a walled effect from authorized development.
- (d) Where remodeling is proposed and existing legally established development is to be retained that precludes establishment of the desired visual access as delineated above, preservation of any existing public view on the site will be accepted, provided that the existing public view is not reduced through the proposed remodeling.
- (e) Open fencing and landscaping may be permitted within the view corridors and visual accessways, provided such improvements do not significantly obstruct public views of the ocean. Landscaping shall be planted and maintained to preserve public views.

In their appeal, the appellants submitted copies of past correspondence with the City claiming that the applicant has not been maintaining the required public view easements along his northern and southern side yard setbacks as required by previous City permit action. The appellants contend the applicant instead allowed the landscaping within the side yard areas to grow above the three-foot height limit imposed on such view easements as well as maintaining solid walls and fencing within the side yards, rather than fences and walls that are at least seventy-five percent open to light, as required by the Land Development Code.

While the appellant's submittal and the City's local permit file for the permit being appealed contain insufficient photographs or supporting information indicating what the past state of the vegetation in the side yard setbacks have been, City approval of the

subject project requires that the northern 7-foot, 4-inch side yard setback and southern 7-foot, 6-inch side yard setbacks be placed under recorded public view easements limiting all landscape and hardscape within the view easements to a height of 3 feet or lower, and requiring that any fencing or walls within the easements be at least 75 percent open to light, per the requirements of the Land Development Code ([Exhibit 4](#)).

Thus, the City's local action does address the appellants' past complaints of improperly maintained public view easements and imposes the LCP's requirement to provide public view corridors on coastal properties where feasible. Thus, these aspects of the City's approval can be found in conformance with the certified LCP's visual protection policies and this particular issue raises no substantial issue.

D. 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 locally approved project does not apply the development requirements for bluff top properties and allows a protective device to remain in place and occupy coastal bluff area. The other factors that the Commission normally considers when evaluating whether a local government's action raise a substantial issue also support a finding of substantial issue: the objections to the project suggested by the appellants raise substantial issues of regional or statewide significance regarding shoreline protection, and the local government's decision has the potential to establish adverse precedential value for future interpretations of the certified LCP.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS