

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO DISTRICT OFFICE  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4402  
VOICE (619) 767-2370  
FAX (619) 767-2384



# F14a

Filed: 2/7/2020  
Action Deadline: N/A  
Staff: MF-SF  
Staff Report: 11/3/2021  
Hearing Date: 11/19/2021

## STAFF REPORT: APPEAL- DE NOVO

**Local Government:** City of San Diego

**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:** Demolition of an existing 5,524 s.f. one-story over basement single-family residence (SFR) and construct a 10,385 s.f. two-story over basement SFR; and remodel two detached one-story garages for total new garage areas of 1,383s.f. (northern) and 1,432 (southern). Removal of several accessory structures within 5 ft. of the bluff edge including a stairway on the bluff face and approx. 52 ft. of an existing retaining wall; construction of a new retaining wall 25 ft. from the bluff edge.

**Staff Recommendation:** Approval with Conditions

---

## SUMMARY OF STAFF RECOMMENDATION

This staff report is for the De Novo review of an appeal for reconstruction of a single-family residence (SFR) approved by the City of San Diego.

The subject site consists of two adjacent blufftop parcels containing a SFR, two detached garages, extensive landscaping and a pool on the inland side of the residence, a small lawn area supported by a 110 ft. long concrete retaining wall seaward of the residence, and stairs leading down the bluff face. The existing

SFR is located less than 10 feet from the natural bluff edge to the West, and thus is currently non-conforming regarding the geological setback. Because the approved 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 residence and the garages, which are located within required yard setbacks, are required to conform to current development standards.

The City's permit was appealed to the Coastal Commission by Andrew and Monica Midler and Moses Property, LLC. On May 14, 2020, the Commission found that the project raised a substantial issue with regard to conformity of development in an area subject to future coastal hazards. Specifically, the portions of the retaining wall located seaward of the bluff edge function in part as a shoreline protective device under the LCP. The LCP requires that new development on a site containing shoreline protection must be set back a minimum of 40 ft. from the bluff edge. Thus, the Commission found that allowing redevelopment of the residence 25 ft. from the bluff edge raised a substantial issue with regard to conformity with the LCP.

Since then, in consultation with Commission staff, the applicant has revised the project. As revised and currently proposed, the project will remove the existing 5,254 s.f. SFR and 440 s.f. basement and 52 ft. of the retaining wall and the private stairs located seaward of the bluff edge. All improvements within 5 ft. of the bluff edge will be removed, with the exception of an existing sump pump that will be abandoned in place until it becomes exposed and can more readily be removed without causing unnecessary damage to the bluff. A new sump pump will be installed in the northwest corner of the property that will account for a 100 yr. storm; and a new retaining wall will be constructed at least 25 ft. inland of the bluff edge. The non-conforming portions of the existing northern and southern detached garages will also be removed, and the new garage additions will be located outside of the required setbacks.

The second story of the proposed structure would be cantilevered up to 15 ft. seaward of the ground floor, and at its closest would be 25 ft. inland of the bluff edge. Since the applicant will be removing the portions of the exiting retaining wall, the LCP allows the setback for new development to be reduced to no less than 25 ft. if a geologic report demonstrates that the site would remain stable enough to support the development without requiring shoreline protection throughout the economic lifespan of the structure (no less than 75 years). In this case, the second floor cantilever would be supported structurally by the first floor and foundation, which would be set back at least 40 ft. from the bluff edge. Both the applicant's geologic report and the Commission staff geologist determined that because the project has an effective 40 ft. structural setback, the proposed setback would assure stability and protect against erosion over the full project life. The portion of the structure closer than 40 ft. is only the cantilevered second story, which has no impact on site stability. Thus, the site is expected to remain stable enough to support the proposed cantilever, and a reduced 25 ft. setback for the cantilevered second story is allowable under the LCP.

The subject project will result in removal of an existing shoreline protective device, which will allow eroded bluff material to enter the littoral cell and for the bluff to retreat

naturally, removal of existing non-conforming accessory structures on the bluff, and relocation of the new residence approximately 30 ft. further inland from the bluff in a safe location, consistent with the hazards protections of the LCP. In addition, the subject project includes relocation of the existing basement currently located 25 ft. from the bluff edge to approximately 70 ft. from the bluff edge. Relocating the basement now in a safe fashion (compacted fill will replace the existing basement), and moving it outside of the geologic setback will reduce hazards on the site more than it would to keep the existing structure in its current, more vulnerable location. Other improvements include upgrading the existing drainage system with a new sump pump, which will capture the majority of the runoff over the bluff edge and redirect it to the street, supporting geologic stability. Thus, as revised, the proposed residence is sited consistent with the hazardous policies of the certified LCP.

To confirm that the project can be developed according to the above specifications in conformity with the LCP, Commission staff recommends that the Commission impose **Special Condition # 1, # 2, # 3, and # 4** which require the applicant to undertake development in accordance with approved final construction and landscaping plans, to submit a post-development runoff plan, and to implement construction best management practices. To ensure the eventual removal of the existing sump pump that cannot currently be feasibly removed without damage to the bluff, **Special Condition # 5** requires the applicant submit a removal plan that identifies safe removal methods and triggers, to remove the accessory structure when it is feasible to do so, and to retrieve any pieces of the infrastructure if they ever fall to the bluff face, beach, or sea below the subject property. To minimize the project's potential future impact on shoreline processes and to conform with the City of San Diego's LCP policies, Commission staff recommends the Commission impose **Special Condition # 6**, which waives any rights to and prohibits construction of any future bluff or shoreline protective device(s) such as revetments, seawalls, cliff retaining walls, shotcrete walls, and other such construction that armors or otherwise substantially alters the bluff face. To account for potential future coastal hazard or visual resource impacts as the bluff naturally recedes, **Special Condition # 7** requires the applicant to perform a subsequent coastal hazards analysis if or when the bluff recedes within 20 ft. of the residence and to remove any and all portions of the residence if the bluff edge recedes within 10 ft. of the proposed structure. Development on coastal bluff sites is inherently dangerous; therefore, Commission staff recommends the Commission impose **Special Condition # 8**, which requires the applicant to assume the risk of development. Lastly, to ensure that all of the conditions associated with this permit are passed down with the property title, Commission staff recommends that the Commission impose **Special Condition # 9**, which requires a deed restriction that expresses all conditions associated with an approval of the permit.

As conditioned, the proposed project will conform with the City's certified LCP and the public access and public recreation policies of the Coastal Act.

The motion to approve the coastal development permit application is on **Page 5**. The special conditions begin on **Page 6**.

## TABLE OF CONTENTS

I. MOTION AND RESOLUTION ON DE NOVO .....	5
II. STANDARD CONDITIONS .....	5
III. SPECIAL CONDITIONS.....	6
IV. FINDINGS AND DECLARATIONS.....	15
A. Project Description and Background.....	15
B. Coastal Hazards.....	15
C. Public Access and Recreation .....	30
D. Visual Resources .....	31
E. Biological Resources.....	34
F. Marine Resources and Water Quality .....	36
G. Local Coastal Planning .....	37
H. California Environmental Quality Act .....	38
APPENDIX A – SUBSTANTIVE FILE DOCUMENTS .....	39

## EXHIBITS

- [Exhibit 1 – Location Map](#)
- [Exhibit 2 – Aerial Image](#)
- [Exhibit 3 – Revised Project Plans](#)
- [Exhibit 4 – Blufftop Setbacks](#)
- [Exhibit 5 – Existing Drainage](#)
- [Exhibit 6 – Proposed Drainage](#)
- [Exhibit 7 – Pre and Post Drainage Comparison](#)
- [Exhibit 8 – City Approval](#)

## I. MOTION AND RESOLUTION ON DE NOVO

### Motion:

I move that the Commission approve Coastal Development Permit A-6-LJS-20-0008 subject to conditions set forth in the staff recommendation specified below.

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

### Resolution:

The Commission hereby approves the Coastal Development Permit for the proposed project and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the Certified Local Coastal Plan and the public access and recreation policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

## II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

#### 1. Final Plans.

- a. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final site, building, and construction plans that substantially conform with the plans submitted to the Commission, prepared by Matrix Design Studio, titled "Abbott Residence", and dated December 3, 2020 that have been stamped approved by the City of San Diego. Said plans shall include the following:
  - i. The plans shall show the bluff edge delineation along the 25-foot elevation of the property for its entire width, and the related 25-foot bluff top setback measured therefrom.
  - ii. All new development shall be located landward of the 25-foot bluff edge setback except for at-grade, accessory development in the rear yard area, which must be landward of the 5-foot bluff edge setback line.
  - iii. The plans shall show removal of the portion of the existing wall and any accessory structures within 5 ft. of the current bluff edge, with the exception of the existing sump pump which will be abandoned and considered for removal per section iv of this Special Condition.
  - iv. Any existing permanent irrigation system located on the subject site that drains anywhere on or over the bluff top and face shall be removed or capped.
- b. The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for proposed minor deviations.

- #### 2. Final Landscape/Yard Area Plans.
- PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval final landscape plans. Said plans shall substantially conform with the plans submitted to the Commission, prepared by Matrix Design Studio, titled "Abbott Residence," dated December 03, 2020, and shall include the following:

- a. A view corridor, 7-foot, 4-inch wide, shall be preserved in the north yard area, and a 7-foot, 6-inch wide view corridor shall be preserved in the south yard area. All proposed landscaping in the side yard setbacks shall be limited to species with a growth potential not to exceed three feet at maturity and shall be maintained at a height of three feet or lower (including raised planters) to preserve the views from Camino de la Costa towards the ocean.

- b. Any fencing in the side yard setback areas shall permit public views and have at least 75 percent of its surface open to light.
  - c. All landscaping shall be drought tolerant and native, or if natives are not feasible, non-invasive plant species. All landscape materials within the identified view corridors shall be species with a growth potential not to exceed three feet at maturity. No plant species listed as problematic or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. If using potable water for irrigation, the project shall use water-conserving emitters (e.g. microspray) and drip irrigation. Use of weather-based irrigation controllers and reclaimed water for irrigation is encouraged.
  - d. Five years from the date of the issuance of this coastal development permit, the permittee shall submit for the review and written approval of the Executive Director a landscaping monitoring report, prepared by a licensed Landscape Architect or qualified resource specialist, that certifies whether the on-site landscaping is in conformance with the landscape plan approved pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage. If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successor in interest, shall submit a revised or supplemental landscape plan for the review and written approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or qualified resource specialist and shall specify measures to remediate those portions of the approved landscaping plan that have failed or are not in conformance with the original approved plan.
  - e. No irrigation system may be installed within the geologic setback area.
  - f. The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for proposed minor deviations.
- 3. Construction and Pollution Prevention Plan.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a final Construction and Pollution Prevention Plan prepared and certified by a licensed professional. The final plan shall demonstrate that all construction, including, but not limited to, clearing, grading, staging, storage of equipment and materials, or other activities that involve ground disturbance; building, reconstructing, or demolishing a structure; and creation or replacement of impervious surfaces, complies with the following requirements:

a. **Minimize Erosion and Sediment Discharge.** During construction, erosion and the discharge of sediment off-site or to coastal waters shall be minimized through the use of appropriate Best Management Practices (BMPs), including:

- i. Land disturbance during construction (e.g. clearing, grading, and cut-and-fill) shall be minimized, and grading activities shall be phased, to avoid increased erosion and sedimentation;
- ii. Erosion control BMPs (such as mulch, soil binders, geotextile blankets or mats, or temporary seeding) shall be installed as needed to prevent soil from being transported by water or wind. Temporary BMPs shall be implemented to stabilize soil on graded or disturbed areas as soon as feasible during construction, where there is a potential for soil erosion to lead to discharge of sediment off-site or to coastal waters;
- iii. Sediment control BMPs (such as silt fences, fiber rolls, sediment basins, inlet protection, sandbag barriers, or straw bale barriers) shall be installed as needed to trap and remove eroded sediment from runoff, to prevent sedimentation of coastal waters;
- iv. Tracking control BMPs (such as stabilized construction entrance/exit, and street sweeping) shall be installed or implemented as needed to prevent tracking sediment off-site by vehicles leaving the construction area; and
- v. Runoff control BMPs (such as a concrete washout facility, dewatering tank, or dedicated vehicle wash area) implemented during construction to retain, infiltrate, or treat stormwater and non-stormwater runoff.

b. **Minimize Discharge of Construction Pollutants.** The discharge of other pollutants resulting from construction activities (such as chemicals, paints, vehicle fluids, petroleum products, asphalt and cement compounds, debris, and trash) into runoff or coastal waters shall be minimized through the use of appropriate BMPs, including:

- i. Materials management and waste management BMPs (such as stockpile management, spill prevention, and good housekeeping practices) shall be installed or implemented as needed to minimize pollutant discharge and polluted runoff resulting from staging, storage, and disposal of construction chemicals and materials. BMPs shall include, at a minimum:
  - 1) Covering stockpiled construction materials, soil, and other excavated materials to prevent contact with rain, and protecting all stockpiles from stormwater runoff using temporary perimeter barriers;
  - 2) Cleaning up all leaks, drips, and spills immediately; having a written plan for the clean-up of spills and leaks; and maintaining an inventory of products and chemicals used on site;
  - 3) Proper disposal of all wastes; providing trash receptacles on site; and covering open trash receptacles during wet weather; and
  - 4) Detaining, infiltrating, or treating runoff, if needed, prior to conveyance off-site during construction;

- ii. Fueling and maintenance of construction equipment and vehicles shall be conducted off site if feasible. Any fueling and maintenance of mobile equipment conducted on site shall take place at a designated area located at least 50 feet from coastal waters, drainage courses, and storm drain inlets, (unless those inlets are blocked to protect against fuel spills). The fueling and maintenance area shall be designed to fully contain any spills of fuel, oil, or other contaminants. Equipment that cannot be feasibly relocated to a designated fueling and maintenance area (such as cranes) may be fueled and maintained in other areas of the site, provided that procedures are implemented to fully contain any potential spills.
- c. **Minimize Other Impacts of Construction Activities.** Other impacts of construction activities shall be minimized through the use of appropriate BMPs, including:
  - i. The damage or removal of non-invasive vegetation (including trees, native vegetation, and root structures) during construction shall be minimized, to achieve water quality benefits such as transpiration, vegetative interception, pollutant uptake, shading of waterways, and erosion control;
  - ii. The use of temporary erosion and sediment control products (such as fiber rolls, erosion control blankets, mulch control netting, and silt fences) that incorporate plastic netting (such as polypropylene, nylon, polyethylene, polyester, or other synthetic fibers) shall be avoided, to minimize wildlife entanglement and plastic debris pollution;
- d. **Manage Construction-Phase BMPs.** Appropriate protocols shall be implemented to manage all construction-phase BMPs (including installation and removal, ongoing operation, inspection, maintenance, and training), to protect coastal water quality.
- e. **Construction Site Map and Narrative Description.** The Construction and Pollution Prevention Plan shall include a construction site map and a narrative description addressing, at a minimum, the following required components:
  - i. A map delineating the construction site, construction phasing boundaries, and the location of all temporary construction-phase BMPs (such as silt fences, inlet protection, and sediment basins);
  - ii. A description of the BMPs that will be implemented to minimize land disturbance activities, minimize the project footprint, and minimize damage or removal of non-invasive vegetation. Include a construction phasing schedule, if applicable to the project, with a description and timeline of significant land disturbance activities;
  - iii. A description of the BMPs that will be implemented to minimize erosion and sedimentation, control runoff and minimize the discharge of other pollutants resulting from construction activities. Include calculations that demonstrate proper sizing of BMPs;
  - iv. A description and schedule for the management of all construction-phase BMPs (including installation and removal, ongoing operation, inspection,

maintenance, and training). Identify any temporary BMPs that will be converted to permanent post-development BMPs;

- f. **Construction Site Documents.** The Construction and Pollution Prevention Plan shall specify that copies of the signed CDP and the approved Construction and Pollution Prevention Plan be maintained in a conspicuous location at the construction job site at all times and be available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the CDP and the approved Construction and Pollution Prevention Plan, and the public review requirements applicable to them, prior to commencement of construction.
- g. **Construction Coordinator.** The Construction and Pollution Prevention Plan shall specify that a construction coordinator be designated who may be contacted during construction should questions or emergencies arise regarding the construction. The coordinator's contact information (including, at a minimum, a telephone number available 24 hours a day for the duration of construction) shall be conspicuously posted at the job site and readily visible from public viewing areas, indicating that the coordinator should be contacted in the case of questions or emergencies. The coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.

The applicant shall undertake development in accordance with the approved Construction-Phase Pollution Prevention Plan, unless the Commission amends this permit or the Executive Director provides written determination that no amendment is legally required for any proposed minor deviations.

**4. Post-Development Runoff Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a final Post-Development Runoff Plan that demonstrates the project complies with the following requirements:

- a. **Low Impact Development Strategies.** The project shall comply with the following Low Impact Development standards:
  - i. Minimize disturbance of coastal waters and natural drainage features such as stream corridors, rivers, wetlands, natural drainage patterns, drainage swales, groundwater recharge areas, floodplains, and topographical depressions.
  - ii. Minimize removal of native vegetation, and plant additional native plants that provide water quality benefits such as transpiration, interception of rainfall, pollutant uptake, shading of waterways to maintain water temperature, and erosion control.
  - iii. Minimize the addition of impervious surfaces, and where feasible increase the area of pervious surfaces in re-development. Use strategies such as minimizing the footprint of buildings; minimizing the footprint of impervious

- pavement; and installing a permeable pavement system where pavement is required.
- iv. Disconnect impervious surface areas from the storm drain system by interposing permeable areas between impervious surfaces and the storm drain system. Design curbs, berms, and similar structures to avoid isolation of vegetative landscaping and other permeable areas, and allow runoff to flow from impervious pavement to permeable areas for infiltration. Use strategies such as directing roof-top runoff into permeable landscaped areas; directing runoff from impervious pavement into distributed permeable areas (e.g., turf, medians, or parking islands); installing a vegetated swale or filter strip to intercept runoff sheet flow from impervious surfaces; and installing a rain barrel or cistern to capture and store roof-top runoff for later use in on-site irrigation.
  - v. Where on-site infiltration is not appropriate or feasible, use alternative BMPs to minimize post-development changes in runoff flows, such as installing an evapotranspiration BMP that does not infiltrate into the ground but uses evapotranspiration to reduce runoff (e.g., a vegetated “green roof,” flow through planter, or retention pond); or implementing BMPs to reduce runoff volume, velocity, and flow rate before directing runoff to the storm drain system.
- b. **Implement Source Control BMPs.** Appropriate and feasible long-term Source Control BMPs, which may be structural features or operational practices, shall be implemented to minimize the transport of pollutants in runoff from the development by controlling pollutant sources and keeping pollutants segregated from runoff. Use strategies such as covering outdoor storage areas; using efficient irrigation; proper application and clean-up of potentially harmful chemicals and fertilizers; and proper disposal of waste.
- c. **Avoid Adverse Impacts from Stormwater and Dry Weather Discharges.** The adverse impacts of discharging stormwater or dry weather runoff flows to coastal waters, intertidal areas, beaches, bluffs, or stream banks shall be avoided, to the extent feasible. The project shall comply with the following requirements:
- i. Runoff shall be conveyed off-site or to drainage systems in a non-erosive manner. If runoff flows to a natural stream channel or drainage course, determine whether the added volume of runoff is large enough to trigger erosion.
  - ii. Protective measures shall be used to prevent erosion from concentrated runoff flows at stormwater outlets (including outlets of pipes, drains, culverts, ditches, swales, or channels), if the discharge velocity will be sufficient to potentially cause erosion. The type of measures selected for outlet erosion prevention shall be prioritized in the following order, depending on the characteristics of the site and the discharge velocity: (1) vegetative bioengineered measures (such as plant wattles); (2) a hardened structure consisting of loose materials (such as a rip-rap apron or rock slope

- protection); or (3) a fixed energy dissipation structure (such as a concrete apron, grouted rip-rap, or baffles).
- iii. The discharge of dry weather runoff to coastal waters shall be minimized, to the greatest extent feasible. Use strategies such as efficient irrigation techniques that minimize off-site runoff.
- d. **Manage BMPs for the Life of the Development.** Appropriate protocols shall be implemented to manage BMPs (including ongoing operation, maintenance, inspection, and training) to keep the water quality provisions effective for the life of the development.
- e. **Site Plan and Narrative Description.** The Post-Development Runoff Plan shall include a site plan and a narrative description addressing, at a minimum, the following required components:
- i. A site plan, drawn to scale, showing the property boundaries, building footprint, runoff flow directions, relevant drainage features, structural BMPs, impervious surfaces, permeable pavements, and landscaped areas.
  - ii. Identification of pollutants potentially generated by the proposed development that could be transported off the site by runoff.
  - iii. An estimate of the proposed changes in (1) impervious surface areas on the site, including pre-project and post-project impervious coverage area and the percentage of the property covered by impervious surfaces; (2) the amount of impervious areas that drain directly into the storm drain system without first flowing across permeable areas; and (3) site coverage with permeable or semipermeable pavements.
  - iv. A description of the BMPs that will be implemented, and the Low Impact Development approach to stormwater management that will be used. Include a schedule for installation or implementation of all post-development BMPs.
  - v. A description and schedule for the ongoing management of all post development BMPs (including operation, maintenance, inspection, and training) that will be performed for the life of the development, if required for the BMPs to function properly.

The applicant shall undertake development in accordance with the approved Post Development Runoff Plan, unless the Commission amends this permit or the Executive Director issues a written determination that no amendment is legally required for any proposed minor deviations.

- 5. Existing Sump Pump Removal Plan.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit a sump pump removal plan to the Executive Director for review and written approval. Said plan shall:
- a. Be prepared by a licensed engineer and geologist, with expertise in coastal processes and hazards.

b. Document the location of the bluff edge at present, the location of the bluff edge in relation to the sump pump, and any changes in the condition of the bluff (including erosion) since the latest TerraCosta letter titled “Comments Regarding Geotechnical Exploration Inc.’s August 5, 2019 SLR and Wave Runup Erosion and Stability Evaluation”, submitted on November 5, 2019.

c. Identify triggers and methods by which the sump pump can be safely removed at present or in the future as it becomes exposed above grade. At a minimum the plan shall identify methods by which all or portions of sump pump infrastructure will be removed when it is at risk of falling to the bluff face, beach, or sea below. Once any triggers for removal are met, the applicant or successors shall remedy the hazard per the approved Removal Plan within 90 days.

## **6. No Future Bluff or Shoreline Protective Device.**

- a. By acceptance of this Permit, the applicant agrees, on behalf of himself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. A-6-LJS-20-0008 including, but not limited to, the single family residence, foundations, decks, hardscape, detached garages, and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, bluff retreat, landslides, or other coastal hazards in the future, and as may be exacerbated by sea level rise. By acceptance of this Permit, the applicant hereby waives, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under applicable law.
- b. By acceptance of this Permit, By acceptance of this Permit, the permittee further agrees, on behalf of themselves and all successors and assigns, that the permittee shall remove the development authorized by this Permit if any government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to natural hazards and that there are no measures that could make the structures suitable for use without the use of bluff protective devices. The permittee shall obtain a coastal development permit for removal of approved development unless the Executive Director provides a written determination that no coastal development permit is legally required. In the event that portions of the development fall to the public beach before they are removed, the permittee shall remove all recoverable debris associated with the development from the public beach and lawfully dispose of the material in an approved disposal site.

## **7. Bluff Retreat.**

- a. In the event that the edge of the blufftop recedes such that any accessory structures (wall, drainage, etc.) are threatened, such structures shall be removed. The permittee shall obtain a coastal development permit for removal of approved

development unless the Executive Director provides a written determination that no coastal development permit is legally required.

- b. In the event that the edge of the blufftop recedes to within 20 feet of the foundation or first floor of the single-family residence but no government agency has ordered that the structures not be occupied, a geotechnical investigation shall be prepared by a licensed coastal engineer and geologist, retained by the permittee, that addresses whether any portions of the single family residence are threatened by coastal hazards. The report shall identify all those immediate or potential future measures that could stabilize the single-family residence without bluff or shoreline protective device(s), including but not limited to removal or relocation of portions of the single-family residence. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical investigation concludes that any portion of the single-family residence is unsafe for occupancy, the permittee shall, within 90 days of submitting the investigation, apply for a coastal development permit amendment to remedy the hazard.
  - c. In the event that the edge of the blufftop recedes to within 10 feet of any part of the single-family residence, including the second story cantilevered floor, but no government agency has ordered that the structures not be occupied, the permittee agrees to remove any and all portions of the residence located within 10 feet of the bluff edge.
  - d. Prior to removal/relocation of any portion of the single-family residence, the permittee shall submit two copies of a Removal/Relocation Plan to the Executive Director for the review and written approval. The Removal/Relocation Plan shall clearly describe the manner in which such development is to be removed/relocated and the affected area restored so as to best protect coastal resources, including the Pacific Ocean.
  - e. In the event that portions of the approved development fall to the bluffs or ocean before they are removed/relocated, the landowner shall remove all recoverable debris associated with the development from the bluffs and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit if the Executive Director determines the removal requires a new permit or amendment.
- 8. Assumption of Risk, Waiver or Liability and Indemnity.** By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards, including but not limited to waves, storms, flooding, landslide, bluff retreat, erosion, and earth movement, many of which will worsen with future sea level rise; (ii) to assume the risks to the permittees and the properties that are the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project

against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

- 9. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject properties, subject to terms and conditions that restrict the use and enjoyment of that properties; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Properties. The deed restriction shall include a legal description of the entire parcel for all parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject properties.

## **IV. FINDINGS AND DECLARATIONS**

### **A. Project Description and History**

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 5,524 s.f. single-family residence (SFR), two detached garages, extensive landscaping and a 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 ([Exhibit 2](#)). The existing two-story home was built in 1962 and the majority of the improvements on the site were also 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 20 ft. front yard setback.

On August 13, 2008, the City of San Diego approved Coastal Development Permit No. 522763 allowing the addition of a 279 square-foot recreation room with bath and a 1,273-square-foot pool lanai with a wet bar to the existing detached garage near the northern property line. On January 23, 2020, the City of San Diego approved Coastal Development Permit No. 1901915 (amending local CDP No. 522763) for the subject project, which originally proposed to construct a 214 s.f. addition to the first story of the residence and a new 3,488-square-foot second story addition. As approved, the western portion of the existing residence currently located closer than 25 ft. to the natural bluff edge would be demolished. This would have resulted in a two-story over basement,

approximately 9,176 s.f. SFR. The portions of the two garages closer than 20 feet to Camino de la Costa were to be demolished and an approximately 552 s.f. addition to the northern garage and an approximately 539 s.f. addition to the southern garage would be constructed, increasing their size to 1,383 s.f. and 1,432 s.f., 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. Because the approved 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's permit was appealed to the Coastal Commission by Andrew and Monica Midler and Moses Property, LLC. On May 14, 2020, the Commission found that the project raised a substantial issue with regard to conformity of development in an area subject to future coastal hazards. Specifically, the retaining wall functions in part as a shoreline protective device under the LCP. 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. Thus, allowing redevelopment of the residence twenty-five feet from the bluff edge raised a substantial issue with regard to conformity with the LCP.

Since then, the applicant has revised the project. As revised and currently proposed, the project will remove the existing 5,254 s.f. SFR and 440 s.f. basement, the existing improvements located seaward of the 25 ft. blufftop setback including 52 ft. of the retaining wall and a stairwell seaward of the bluff edge, as well as removing 112 s.f. and 181 s.f. of the non-conforming portions of the existing northern and southern detached garages, respectively. The newly constructed 10,385 s.f. SFR will contain a 4,632 s.f. first floor and 824 s.f. basement located landward of the 40 ft. blufftop setback, and a 4,929 s.f. second story cantilevered between the 25 and 40 ft. blufftop setbacks ([Exhibit 4](#)). The northern and southern garages will also have 359 s.f. and 475 s.f. additions, respectively, resulting in a 1,383 s.f. northern garage and a 1,432 s.f. southern garage, both outside of the 20 ft. front yard setback. Lastly, all improvements within 5 ft. of the bluff edge will be removed, with the exception of an existing sump pump that will be abandoned in place until it becomes exposed and can more readily be removed without causing unnecessary damage to the bluff. A new sump pump will be installed to account for a 100 yr. storm event in the northwest corner of the property; and a new retaining wall will be constructed landward of the 25 ft. blufftop setback.

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 (LUP) for the community, and the Land Development Code (LDC), 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. Coastal Hazards**

The City's certified LCP contains the La Jolla Community Plan (LJCP), which serves as the community's Land Use Plan (LUP) and governs the subject site.

Page 4 of the LJCP states:

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.

Page 15 of the LJCP references 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.

On Page 29, under "Natural Resource and Open Space System," the LJCP 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.

On Page 30 of the LJCP, the "Open Space Preservation and Natural Resource Protection" segment states:

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.

Pages 39-40 of the LJCP states the following regarding development on coastal bluffs:

- a. The City should preserve and protect the 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.

[...]

In addition, development should be avoided in areas that will eventually be damaged or require extensive seawalls for protection. Public coastal access should be considered when evaluating redevelopment along the coast. The Environmental Sensitive Lands development regulations for Sensitive Coastal Bluffs and Coastal Beaches govern development, coastal bluff repair, shoreline protective work and erosion control. These regulations assure that development occurs in a manner that protects these resources, encourages sensitive development, and maximizes physical and visual public access to and along the shoreline.

[...]

c. Development on coastal bluffs should be set back sufficiently from the bluff edge to avoid the need for shoreline or bluff erosion control devices so as not to impact the geology and visual quality of the bluff and/or public access along the shoreline.

d. Accessory structures located within the bluff edge setback should be removed or relocated if determined that they pose a threat to bluff stability. When feasible, accessory structures should be brought into conformance with current standards and regulations.

e. 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.

On Page 48, the LJCP states the following concerning new blufftop development:

a. Prohibit coastal bluff development, on or beyond the bluff face, except for public stairways and ramps to provide access from the bluff top to the beach or to maintain bluff stability.

b. Set back new development on property containing a coastal bluff at least 40 feet from the bluff edge so as to not impact the geology and visual quality of the bluff. This setback may be reduced to not less than 25 feet if evidence is provided that

indicates the site is stable enough to support the development at the proposed location without requiring construction of shoreline protective measures throughout the economic lifespan of the structure (not less than 75 years). Require applicants to accept a deed restriction to waive all rights to protective devices associated with new development on coastal bluffs. 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. Require removal of obsolete or unnecessary protective devices, when feasible, and in a safe manner, or otherwise allow such devices to deteriorate naturally over time without any improvements allowed, to restore the natural integrity and visual quality of the coastal bluff over the long-term. [...]

c. Require a geotechnical report for all bluff top development to document that the site is stable enough to support the proposed development in accordance with the Environmentally Sensitive Lands regulations.

[...]

k. 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...

Page 49 of the LJCP states the following regarding non-conforming bluff top property:

j. Require removal or relocation of accessory structures located within the bluff edge setback if it is determined, in conjunction with proposed development on the site that such structures pose a threat to the bluff stability, or, such structures should be brought into conformance with current regulations.

k. 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.

Page 69 of the LJCP, in addressing "Development Near Coastal Bluffs," states:

The shoreline bluffs are one of the community's most beautiful scenic resources and offer magnificent vistas of the ocean and the coastline of La Jolla. The views provided by these coastal bluffs continue to offer tremendous incentive to residential development along the bluff top. Studies, however, have indicated that certain bluffs are susceptible to periodic erosion and are unstable. Seawalls, revetments, and parapets which have been constructed in some cases to protect private homes and property may eventually become structurally unstable. Thus, the coastal bluff regulations that are contained in the Environmentally Sensitive Lands regulations of the Land Development Code are intended to guide the placement of these seawalls, revetments, parapets, and residential structures in order to prevent structural

damage to existing principal structures, minimize erosion of the bluff face, minimize impacts on local shoreline sand supply, and maintain lateral public access along the coast.

Pages 70-71 of the LJCP states for "Development Near Coastal Bluffs," that:

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 LJCP is accompanied by the San Diego Land Development Code (LDC), which operates as the City's Implementation Plan (IP) for the aforementioned community plan policies.

Section 143.0143(f) of the LDC 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 certified LCP also contains the Land Development Manual, which is a document that supplements the IP by clarifying and explaining certain segments of the LDC to better explain their implementation and interpretation. Within the Land Development Manual is the “Coastal Bluffs and Beaches Guidelines.” This document 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).

[...]

##### 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-than-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

Properties adjacent to the coastline are naturally subject to a number of coastal hazards including but not limited to geologic instability, subaerial and marine erosion, and flooding, all of which may be exacerbated by climate change and sea level rise. The subject development is located atop an approximately 30 ft. high coastal bluff. As such, coastal hazards at the site must be appropriately evaluated over the lifetime of the proposed structure. Several hazards reports were prepared for the site (see Appendix A for a complete list) that included evaluation of sea level rise, flooding, wave runup and overtopping, geologic stability for static and seismic loading, landslides, tsunamis, and liquefaction. Landslides, tsunamis, and liquefaction were determined to be de minimis concerns for this property given its height, slope, and geologic substrate and as such are not discussed below.

Of particular concern for the subject site is the potential for bluff erosion and retreat to threaten the proposed development within the anticipated project life. The primary means by which the LCP addresses such hazards is through policies requiring setbacks for new blufftop development that are sufficient to protect against future bluff erosion and instability without requiring shoreline protection.

The existing single family residence is currently non-conforming regarding the geological setback. The residence is located less than 10 ft. from the natural bluff edge to the West. Since the residence is increasing in floor area by more than fifty percent, as defined by the LCP, it is 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 25 ft. to the natural bluff edge would be demolished, and all new additions would be located at least 25 ft. from the bluff edge. As proposed, the second story of the proposed structure will be cantilevered between the 40 ft. and 25 ft. bluff edge setbacks, while the foundation, the basement, and first story for the SFR will be located landward of the 40 ft. bluff edge setback.

The contention raised by the appellants is that the retaining wall located on the western side of the bluff top developed area constitutes a shoreline protective device. The LCP requires that development observe at least a 40 ft. setback from the bluff, which may be reduced to 25 ft. if a geological study can show 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 40 ft. if shoreline protection is already present.

The rear retaining wall in question was constructed prior to passage of the Coastal Act and is approximately 110 ft. long and up to 14 ft. 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. Thus approximately a quarter of the wall is located seaward of the bluff edge. 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 ft. minimum bluff setback required for accessory structures.

The applicant had previously argued that the wall is not a shoreline protective device, and 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 ft. back from the bluff edge would likewise not rely on the wall to be safe for its 75-year economic life. Additionally, the applicants 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.

Thus, in the case of the proposed site, the LCP requires that either the redeveloped residence observe the minimum 40 ft. setback, or if the site is can be found safe for development closer than 40 ft. to the bluff edge without the wall, the wall should be removed and brought into conformance with the development standards for accessory structures on bluff top sites. Therefore, after discussion with Commission staff, the applicant has revised the project to remove all portions of the wall located seaward of or within 5 ft. of the bluff edge and relocate the removed portions of the wall a minimum of 25 ft. landward of the bluff edge. All remaining portions of the existing wall serve as support for fill retention and are located more than 5 ft. landward the bluff edge. As such, the remaining portions of the wall are considered allowable accessory structures under the LCP. Removal of the non-conforming portions of the wall and relocation a minimum of 25 ft. inland from the bluff edge will allow eroded bluff material to enter the littoral cell and for the bluff to retreat naturally.

However, removal of a shoreline protective device does not automatically mean that a 25 ft. setback is permissible; the LCP provides for greater setbacks if necessary based on geologic conditions, and the project must still demonstrate that any new primary structure is safe on the site for the lifetime of the structure (no less than 75 years). In determining the appropriate setback that will account for the anticipated future bluff erosion, the City of San Diego's LUP allows for a variance from the standard 40 ft. bluff edge setback if a geologic report can demonstrate that:

1. the site is stable enough to support the proposed development,

2. the structure will not be subject to geologic instability over its design life, and
3. the applicant accepts a deed restriction that waives all future rights to armoring.

In the case of the proposed project, the second story of the proposed structure will be cantilevered between the 40 ft. and 25 ft. bluff edge setbacks, while the foundation, the basement, and first story for the SFR will be located landward of the 40 ft. bluff edge setback. Thus, while the City evaluated the project considering it to have a 25 ft. setback, the effective “structural” setback for the proposed development for which hazards are evaluated is 40 ft. The second story of the proposed structure cantilevered between the 40 ft. and 25 ft. bluff edge setbacks will still rely on the first floor foundations, which are set back at least 40 ft., for structural support.

#### Bluff Stability

The applicant’s geotechnical studies included slope stability analyses indicating that the bluff is stable under present conditions, with a minimum factor of safety greater than 1.5 under static conditions and greater than 1.1 under pseudostatic conditions (i.e., with ground-shaking during a large earthquake,  $k_h = 0.15 g$ ). The Commission’s staff geologist reviewed the geotechnical reports and agrees that the bluff at the site is, at present, adequately stable to support the proposed structure. However, as noted above, the LCP requires that this stable condition be maintained over the full 75-year project life without reliance on protective devices. Thus, the potential for bluff erosion and retreat over the next 75 years must also be evaluated to determine whether the proposed 40ft. structural setback is sufficient.

#### Future Bluff Retreat

The coastal bluff seaward of the project site is composed of Cretaceous-aged Point Loma Formation sandstone overlain by Quaternary-aged “old paralic” (marine terrace) deposits and, on the central portion of the site, a mantle of artificial fill. The relatively hard, erosion-resistant Point Loma Formation rock forms a raised shelf, at elevations of approximately +10 – 20 ft. [NGVD29], that extends 40 – 60 ft. seaward of the upper bluff slope. The bluff is exposed to regular wave attack, but the bedrock shelf absorbs much of the wave energy, serving as a natural breakwater protecting the more erodible upper bluff materials. The applicant’s geologic reports did not provide an estimated erosion rate for the Point Loma Formation rock, but based on other sites in La Jolla, the lower bluff shelf can be expected to retreat relatively slowly, on the order of 0.02 to 0.04 ft./yr. Although increased water depths associated with future sea level rise (SLR) may allow waves to strike the bedrock shelf with greater force, and to extend to higher elevations (see below), future erosion and retreat of the bedrock shelf alone would not pose a threat to the proposed development.

In contrast, the marine terrace deposits and fill comprising the upper bluff slope could retreat more quickly in the future if exposed to wave action. The maximum average historic upper bluff erosion rate noted in the geotechnical studies for the site is 0.23 ft./yr. Applied over the 75-yr. design life of the SFR, this average rate of erosion would result in about 17 feet of bluff edge recession. This assumes, however, that the future rate of erosion will be roughly equal to the historic rate of erosion. The applicant’s

preliminary geologic study (CWE, May 30, 2017) suggests that subaerial erosion associated with site drainage and human activities (e.g., initial development of the site) may have caused much of the observed historic bluff edge retreat. Nonetheless, the upper bluff materials (terrace deposits and fill) extend to a low enough elevation (approximately +19 ft. NGVD29) that they could be exposed to wave attack (i.e. from waves overtopping the bedrock shelf) during large storms over the life of the project. If exposed to more frequent (and higher energy) wave action with future SLR, the marine terrace deposits and artificial fill comprising the upper bluff slope could erode at higher rates than observed historically.

According to the hazard reports (Geosoils, January 28, 2019 and TerraCosta, November 5, 2019), runup from the highest waves that can reach the bluff face (depth limited waves) currently ranges in elevation from +15.7 to +18 ft. NGVD29, or approximately 1 to 3 ft. below the transition between the Point Loma shelf and the upper bluff fill and terrace deposits. With increasing sea level however, the upper bluff material will increasingly be within reach of wave runup, and erosion of the upper bluff material could occur without erosion of the lower bluff. With the addition of 3.5 ft. of SLR (which is approximately representative of the low risk aversion, high emissions scenario for the year 2100 as noted in the Coastal Commission's 2018 SLR Guidance), wave runup is anticipated to range in elevation from +22.3 ft. to +24.4 ft. NGVD29 (Geosoils, January 28, 2019 and TerraCosta, November 5, 2019). At these elevations, waves will reach the upper bluff material over the lifetime of the development. Under higher SLR scenarios, up to and including a SLR of 6-7 feet by 2100, the maximum wave runup could extend several feet higher onto the upper bluff face and the frequency of overtopping of the shelf would increase. Thus, under SLR scenarios with a non-negligible chance of occurring within the 75-year project life, the upper bluff would be exposed to wave attack more frequently, and with greater force, than in recent decades and would be expected to recede at rates greater than those observed historically.

The applicant's geotechnical studies provided only qualitative analysis of the potential effects of SLR on upper bluff erosion, consistently maintaining that the presence of the natural bedrock shelf would prevent any substantial increase in the recession rate of the upper bluff slope. However, in light of the wave runup analyses, which suggest that SLR of more than a few feet could expose the upper bluff to wave action, this is not a precautionary assumption. In order to provide an independent check on the adequacy of the proposed 40 ft. structural setback for the new residence, the Commission's staff geologist evaluated an extreme scenario for future bluff retreat at the site using the U.S. Geological Survey CoSMoS bluff retreat model (Limber et al. 2018; Barnard et al. 2018). This tool includes bluff retreat projections with varying amounts of SLR for multiple cross-shore transects in the project area. Among the information that can be extracted from the CoSMoS data is the projected factor of increase in the bluff retreat rate for a given amount of SLR (in 2100). For SLR scenarios of 1 – 2 m (3.3 – 6.6 ft.), CoSMoS projects that average bluff erosion rates (for the period 2010 – 2100) in the project vicinity could increase by factors of 1.4 – 2.3 (140 – 230%) above the historical baseline. Applied to the applicant's historical upper bluff retreat rate of 0.23 ft./yr, a 2.3 factor of increase suggests an average retreat rate of 0.53 ft./yr. through 2100, for an

A-6-LJS-20-0008 (Abbott Residence)  
Appeal- De Novo

extreme 40 feet of retreat in 75 years, with 6.6 ft. of SLR in 2100. This calculation represents an extreme, "upper bound" projection of future bluff retreat for several reasons. First, it assumes that all bluff retreat at the site is caused exclusively by marine processes, ignoring the likelihood that much of the bluff edge retreat observed historically was caused by other, non-marine factors (e.g., runoff, human disturbance). Second, the calculation begins applying the increased bluff erosion rate (0.53 ft./yr.) immediately, when in reality the projected SLR that would allow waves to reach the upper bluff slope on a regular basis will not occur immediately. The actual amount of bluff retreat that would be expected to occur, even under a very high, low probability SLR scenario, is less than 40 feet. Based on this analysis, and on the information provided by the applicant, the Commission's geologist has concluded that the proposed 40-ft. structural setback will very likely be adequate to protect against erosion hazards over the full project life.

As noted above, the second story of the proposed structure would be cantilevered up to 15 ft. seaward of the ground floor, and at its closest would be 25 ft. inland of the bluff edge. The LCP allows the setback for new development to be reduced to no less than 25 ft. if a geologic report demonstrates that the site would remain stable enough to support the development without requiring shoreline protection throughout the economic lifespan of the structure (no less than 75 years). In this case, the second floor cantilever would be supported structurally by the first floor and foundation, which would be set back at least 40 ft. from the bluff edge. As discussed above, both the applicant's geologic report and the Commission staff geologist determined that because the project has an effective 40 ft. structural setback, the proposed setback would assure stability and protect against erosion over the full project life. The portion of the structure closer than 40 ft. is only the cantilevered second story, which has no impact on site stability. Thus, the site is expected to remain stable enough to support the proposed cantilever, and a reduced 25 ft. setback for the cantilevered second story is allowable under the LCP.

It is important to note that for structures located partially or entirely within the bluff edge setback, the LCP requires that both at grade and upper floors are located landward of the bluff edge setback. Thus, an existing structure where any portion of that structure is located closer to the bluff edge than would be safe for the life of that structure (wherever that might be), cannot add a cantilevered upper story. In no circumstance would a cantilevered (or at-grade) portion of a new or addition to a structure be allowed within the minimum 25 ft setback. However, in the case of the proposed structure, as noted, the Commission staff geologist determined that because the project has an effective 40 ft. structural setback, the proposed setback would assure stability and protect against erosion over the full project life. In addition, the subject project will result in removal of an existing shoreline protective device, removal of existing non-conforming accessory structures on the bluff, and relocation of the new residence approximately 30 ft. further inland from the bluff in a safe location, consistent with the hazards protections of the LCP.

The subject project includes a basement, currently set back 25 ft. from the bluff edge. The Commission typically discourages the construction of basements on bluff top lots,

as structures in hazardous areas should be able to be removed when threatened, and the removal of basements can result in bluff cave-ins. However, in this particular case, the project will remove portions of an existing basement currently located 25 ft. from the bluff edge. It is less impactful to the bluff to remove the existing basement located 25 ft. from the bluff edge at present in a safe fashion (compacted fill will replace the existing basement), and construct a new basement 70 ft. landward of the bluff edge, than it would be to keep the existing structure in its current, more vulnerable location. Thus, the proposed residence is sited consistent with the hazardous policies of the certified LCP.

As proposed, the second story will not exceed the allowable setback of 25 ft. at present but is likely to do so in the future as the bluff naturally erodes, resulting in an overhanging floor. If the bluff edge were to retreat 25 ft. or more, for instance if future SLR in excess of 3.5 ft. results in more frequent storm wave contact with the upper bluff and higher bluff edge retreat rates than observed historically, the second floor could conceivably overhang the bluff edge. Such an overhang would not result in any impacts to the residence's structural integrity; however, an overhang may result in impacts to visual and sensitive coastal resources (see Section D, Visual Resources).

Although the available evidence suggests that the 40 ft. structural setback will be adequate for the full project life, development on coastal bluff sites is inherently dangerous, and the proposed development may be subject to unforeseen or underestimated geologic hazards in the future. Therefore, in order to anticipate coastal hazards that could threaten the proposed development, and to assure the stability of the development over its full design life without reliance on shoreline protective devices, the Commission imposes **Special Condition # 7**. If, in the future, the bluff edge retreats to within 20 feet of the first floor or foundation of the SFR, **Special Condition # 7** requires the permittee to commission a geotechnical investigation addressing whether any portions of the single family residence, including but not limited to the foundation and basement, are threatened by coastal hazards and identifying measures to stabilize the structure without the use of shoreline protection devices, including removal or relocation of all or portions of the SFR. **Special Condition # 7** also requires the permitted development to be removed if hazards have progressed to the point that any government agency has ordered that the structures are not to be occupied or must be removed, or if any portion of the development encroaches onto public property.

Further, **Special Condition # 6** prohibits construction of any future bluff or shoreline protective device(s) to protect the development approved pursuant to this permit, including, but not limited to, the residence, the patio, or the new drainage system in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, sea level rise or other natural coastal hazards in the future. Thus, pursuant to **Special Condition # 6**, the applicant must agree to waive any right to construct any future bluff or shoreline protective device(s) such as revetments, seawalls, caissons, cliff retaining walls, shotcrete walls, and other such construction that armors or otherwise substantially alters the bluff.

Additionally, the Commission imposes **Special Condition #8**, requiring the applicant to assume the risk of development. By this means, the applicant is notified that the proposed development is built in an area that is potentially subject to bluff and slope instability, sea level rise, erosion, landslides and wave uprush or other tidally induced erosion that could damage the applicant's property. The applicant is also notified that the Commission is not liable for such damage as a result of approving the permit for development. Finally, the condition requires the applicant to waive claims against the Commission and indemnify the Commission for third-party claims.

#### Accessory Structures

The LCP specifies that all accessory structures within 5 ft. of the bluff edge must be removed, though some accessory structures may be located no more than 5 ft. from the bluff edge if they are sited at grade. The project proposes to remove all existing accessory structures within 5 ft. of the bluff edge, except for the existing sump pump, and to locate all new accessory structures between the 5 ft. and 25 ft. setback lines at grade, with the exception of new drainage pipes and construction of a new sump pump that will be located approximately 15 ft. from the bluff edge and which will be capable of handling flow from a 100-yr. storm event. As discussed in detail below under Section F. Water Quality, the appellants contend that the proposed project will not adequately capture runoff over the bluff edge, inconsistent with bluff protection policies. However, the purpose of the new sump is to capture storm water runoff and redirect it to the street so it does not flow over the bluff. In order to adequately capture runoff, the new drainage system components must be sited below grade (1ft. for the pipes and 10 ft. for the sump pump). While below-grade improvements are not typically permitted closer than 25 ft. from the bluff edge, in this case, the applicant has stated that no other feasible, less environmentally damaging alternatives exist to siting of the new drainage pipes and pump below grade, and the Coastal Commission's geologist and engineers agree. The design and location of both the drainage pipes and new pump are not anticipated to have any adverse effects to geologic stability on the site. If anything, the improved drainage should support geologic stability.

With regard to the existing sump pump, which is located approximately 3 feet from the bluff edge, instead of removing it at this time, the applicant has proposed to abandon it in place, by disconnecting all pipes leading to the sump, rerouting the flow to the new sump pump, and removing the pump equipment from the existing sump. The existing sump is a cylinder, approximately 5' in diameter and 10' deep and the applicant's geologist stated that the existing sump could not be removed at present without causing significant damage to the blufftop as a result of digging the sump infrastructure out of its currently buried location. The applicant's geologist recommends leaving the sump in place and also recommended removal of all at grade and removable plumbing and features before filling the interior of the existing sump pump's outer casing with a sand and cement slurry. The Commission's staff geologist and senior engineer have reviewed the geotechnical analysis and agree. Given the existing sump pump's proximity (i.e. within 5 ft.) to the current bluff edge, however, there is potential that future bluff erosion could result in the exposure or undermining of the abandoned sump. **Special Condition # 5** requires submittal of a removal plan that identifies methods and triggers by which all or portions of the infrastructure can be safely

removed without causing damage to the bluff. **Special Condition #1** will also ensure that the sump pump is abandoned in a manner that minimizes bluff instability while still allowing for future removal by requiring that all final plans are consistent with the recommended abandonment procedures as noted in the response letter from Coffey Engineering, dated September 14, 2021.

In summary, the proposed development, as conditioned, has been sited and designed to be safe over its lifetime so as to not require shoreline protective devices. With conditions to assure that no future shoreline devices will be constructed and that provide protection against adverse impacts to geologic stability, the proposed development is consistent with the coastal hazard policies of the LCP.

### **C. Public Access and Recreation**

**Section 30210** of the **Coastal Act** states:

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

**Section 30211** of the **Coastal Act** states:

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

**Section 30212** of the **Coastal Act**, which covers new development projects states:

(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. [...]

**The La Jolla Community Plan** states on Page 41, Policy 5d, the following with regards to public access:

The City should ensure that new development does not restrict or prevent lateral, vertical or visual access [...] to the beach on property that lies between the shoreline and first public roadway, or to and from recreational areas and designated public open space easements. Further, in areas where physical vertical access to the shoreline does not exist within 500 feet of a private development project on the shoreline, consideration of a new accessway across private property should be analyzed.

**The La Jolla Community Plan** additionally states on Page 47, the following with regards to public easements for the purposes of access:

Where new development is proposed on property that lies between the shoreline and the first public roadway, ensure an offer of dedication as a public easement of a vertical accessway of not less than 10 feet in width and running the full depth of the property provided that the need for such accessway has been identified within this community plan or that no such accessway exists within a lateral distance of 500 feet of the project site as identified in Appendix G.

### Analysis

Public access and recreational opportunities to and along the California coastline are of paramount importance to the Commission and are therefore considered key coastal resources within both the Coastal Act and LUP policies. The subject property is located between the ocean and the first public road paralleling the ocean, in this case Camino de la Costa. The site is currently developed with an existing single family residence, as are all the neighboring parcels. There are currently no existing public access paths through the subject property. The proposed project will be developed entirely within private property and will not encroach upon any existing or proposed public accessways. The nearest alternative existing accessways for members of the public are approximately 730 feet to the north, at the end of Palomar Avenue, and 1,000 feet to the south near the Camino de la Costa- Avenida Cortez intersection. Both accessways appear to include dedicated stairways.

Despite the site's location within a subarea identified in the La Jolla Community Plan as needing vertical accessways, the subject site, developed with a private residence, is not a feasible location for construction of a new public accessway due to the fragility of the bluff. Though a stairwell is currently located along part of the bluff face, the stairwell is not accessible to the public from the nearest street, Camino de la Costa; it merely leads to and from the subject property and the lower terrace, where there is not currently beach access.

To be consistent with LCP and Coastal Act policies that limit development along bluff faces, allow for variances in providing public accessways if new accessways will impact fragile coastal resources (such as sensitive bluff habitat), and require removal of all accessory structures within 5 ft. of the bluff edge, the applicant has agreed to remove the existing stairwell that lies along the bluff face. This will allow for natural restoration of the sensitive coastal bluff face. Therefore, as conditioned, the proposed development is consistent with both LUP policies and sections 30211 and 30212 of the Coastal Act, and it will not have an impact to public access or recreation.

### **D. Visual Resources**

Page 5 of the La Jolla Community Plan (LJCP) states 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.

On page 31, under “Visual Resources,” the LJCP states 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.

Under “Shoreline Areas and Coastal Bluffs” on Page 31, the LJCP 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.

On Page 39, under “Visual Resources,” the LJCP 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.

On Pages 45-46 under “Plan Recommendations” for “Visual Resources” the LJCP states:

[...]

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.

[...]

g. Plant and maintain landscaping or vegetation so that it does not obstruct public views of coastal resources from identified public vantage points [...].

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.

On Pages 70-71 for “Development Near Coastal Bluffs,” the LJCP states 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.

**Section 132.0403** of the Land Development Code (LDC) 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 access ways, provided such improvements do not significantly obstruct public

views of the ocean. Landscaping shall be planted and maintained to preserve public views.

### Analysis

La Jolla is a popular scenic coastal community characterized by its miles of coastal bluffs along its seven miles of coastline. This stretch of coast includes scores of single family residences, a substantial percentage located on bluff top lots. Setbacks provide visual relief from the cluster of development lining the majority of La Jolla's shoreline, stepping it back in a measured, consistent manner while preserving open space and the scenic vistas as viewed from the numerous public access points.

The subject property is located on a 1.37 ac blufftop with views between the first public roadway, Camino de la Costa, and the ocean as well as from the ocean via boat. As proposed, the development will be set back from the bluff edge 25 feet as required. There are currently northern and southern side yard setbacks on the property that could potentially provide public view corridors to the ocean, if they are protected from view blockage by fencing or landscaping.

City approval of the subject project required 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. **Special Condition # 2** requires submittal of a Final Landscaping/Yard Plan that demarcates required side yard view corridors, encourages the use of drought tolerant and native vegetation, limits all vegetation to a maximum height of 3 ft., and mandates a monitoring report to be submitted to the Commission 5 years after the date of CDP issuance.

As mentioned in Section B, Coastal Hazards, there is some potential for the cantilevered second story of the residence to overhang the bluff edge later in the life of the development as the bluff naturally erodes, particularly if the bluff edge retreat accelerates due to the effects of sea level rise. Because bluffs are a sensitive coastal resource and a key characteristic of the La Jolla area, an overhanging cantilevered structure could disrupt the natural scenic character of the landscape. As such, **Special Condition # 7** requires removal of all or portions of the most seaward components (e.g. the cantilevered second story) of the residence if or when the bluff recedes within 10 ft. of any portion of the structure. The 10 ft. trigger should allow the applicant to have adequate time to remove the portion(s) of the structure that would otherwise overhang the bluff edge, resulting in visual resource impacts. Thus, as proposed and conditioned, the project is consistent with the view protection policies of the LCP.

## **E. Biological Resources**

**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.

### Analysis

The proposed development would occur on a blufftop lot where the majority of work will take place landward of the bluff edge. The only portion of development that will take place seaward of the bluff edge is the removal of a small portion of the existing wall and an existing stairway ([Exhibit 3](#)). Removal of both the wall section and stairwell will ultimately contribute to the protection and enhancement of the sensitive bluff habitat along the bluff

face. As such, the project will not have any adverse impacts to biological resources and is consistent with LUP policies.

## **F. Water Quality**

**The La Jolla Community Plan** states on Page 39 under Policy 3a for “Shoreline Areas and Coastal Bluffs” that:

Coastal bluffs are formed by constant wave action eroding the base of the cliffs, and causing the shoreline to move landward. This coastline retreat is rapid in some areas, slower in others, and can be greatly accelerated by human activities. To protect the natural beauty of the coastline while allowing the natural shoreline retreat process to continue, the City and the state aggressively regulate coastal development to prevent activities such as misdirected drainage from increasing natural erosion. Only appropriate erosion control measures that maintain the natural environment, yet allow for the effective drainage of surface water shall be permitted. Surface water drainage shall not be allowed to drain over or near the bluff, but rather shall be directed towards the street or directed into subterranean drainage facilities with energy dissipating devices. Where street drainage systems erode bluffs, the drainage system should be redesigned to prevent bluff erosion.

**The La Jolla Community Plan** states on Page 49, the following with regards to runoff and drainage:

f. Require indigenous, native, non-invasive and drought tolerant plants in all new developments and significant additions along coastal bluffs, to reduce the need for underground irrigation systems that contribute to the erosion of the bluff face due to water runoff over the bluff.

g. Direct roof and surface drainage away from the bluff towards the street or into special drainage facilities that have been equipped to divert water runoff from flowing over the bluff.

## **Analysis**

Due to the site’s particular blufftop location, maintaining water quality and proper drainage are especially critical for any proposed development. Runoff on the site flows within three drainage basins that drain water westward from the bluff edge to the ocean, eastward from the blufftop to Camino de la Costa, or westward from the blufftop to drainage pipes, which flow to the sump pump and ultimately eastward to the street ([Exhibit 4](#)). The proposed development maximizes use of the existing drainage pattern and system but also includes the following improvements: larger 6 in PVC drain lines, a new pump system capable of handling a 100-yr. storm flow, and a D-25 curb outlet. All runoff will be routed through landscaping or planter boxes prior to entering the public drainage system at Camino de la Costa.

In letters dating March 10, 2021 and June 8, 2021, the appellants contend that all runoff should be diverted from flowing over the bluff edge, that the old system was insufficient

to account for the anticipated water flow, and that the new system and necessary grading associated with removal of the wall will result in an increased impermeable square footage, ultimately leading to bluff degradation. Despite the increase in total square footage of the reconstructed residence however, the new development will result in a 3 percent decrease in impervious area according to the Preliminary Drainage Study dated April 26, 2021. Since impervious drainage can contribute to increased runoff and poorer water quality, the proposed project will result in improvements to water quality and runoff as compared to the existing condition. However, the project will also contribute an approximately 1,100 s.f. increase in the pervious area drained directly to the ocean. This increase in pervious drainage is due to the necessary grading of the fill inland of the section of retaining wall that is to be removed in the central portion of the property ([Exhibit 5](#)). The upper bluff section will be regraded at a 2 to 1 slope and include a small berm at the top that will divert runoff from the property to the drainage pipes and pump system and thus prevent the majority of runoff from going over the bluff face, though some water will still run down the face of the newly graded section during rainfall. While LUP policy requires surface drainage to flow to the street or into drainage facilities that divert water from going over bluffs, in the case of the proposed project, the slight increase in runoff over the bluff face is unavoidable due to the need to regrade and stabilize the back yard area inland of the removed wall, lest the upper slope of the bluff face erode away without any stabilization or grading. The applicant considered alternatives; however, no other feasible, less environmentally damaging alternatives exist to prevent runoff over the bluff face during rainfall that would meet LUP and Coastal Act requirements, which mandate removal of the retaining wall, and ensure proper drainage. Removal of the existing shoreline protection/retaining wall is a significant feature of the proposed project, eliminating an encroachment onto the bluff and allowing natural retreat to occur. The Commission's water quality staff, geologist, and engineer reviewed the proposed plans, and agree the slight increase in runoff towards the bluff is unavoidable and not expected to have any significant adverse impact on bluff stability.

To minimize effects to water quality during and after construction, **Special Conditions #3 and # 4** require the submittal of a Construction and Pollution Prevention Plan as well as a Post-Development Runoff Plan for Executive Director review and approval. Both plans require the applicant to incorporate erosion control measures and BMPs that will minimize erosion, sediment, and pollution discharge to nearby waters. In addition, **Special Condition # 2** requires submittal of a Final Landscape/Yard Plan that will incorporate the use of drought tolerant, native species, as required by the LUP. As conditioned, the proposed development is consistent with LUP policies and goals.

## **G. Local Coastal Planning**

Section 30604(a) of the Coastal Act requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

The City of San Diego has a certified LCP and issues permits for development within its jurisdiction. The subject project is located in the City's original jurisdiction and the Commission's appealable jurisdiction, wherein the Commission retains permanent permit authority. The City's original permit was appealed to the Commission on February 7, 2020. Thus, both the City's certified Local Coastal Program (LCP) and the public access and public recreation policies in Chapter 3 of the Coastal Act are the legal standards of review.

As conditioned, the proposed development is consistent with the public access policies of Chapter 3 of the Coastal Act as well as with the certified LCP which the Commission uses as guidance for the subject area. Approval of the project as conditioned will not prejudice the ability of the City of San Diego to continue to implement its certified LCP for the La Jolla community.

## **H. California Environmental Quality Act**

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The City of San Diego determined that the project would not have a significant effect on the environment and issued a Negative Declaration (No. 538814), adopted on August 7, 2019.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 public access and recreation policies of the Coastal Act as well as City's LCP. Mitigation measures, including conditions addressing water quality, visual resources, and coastal hazards will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

## **APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

1. Report of Preliminary Geotechnical Investigation from Christian Wheeler (CWE 2170156.01), May 30, 2017.
2. Addendum Geotechnical Report and Response to LDG-Geology Cycle 4 LDR-Geology Review Comments, Proposed Abbott Residence Additions from Christian Wheeler (CWE 2170156.03), November 1, 2017.
3. Addendum Geotechnical Report and Response to Cycle 5 LDR-Geology and Coastal Commission Review Comments, Proposed Abbott Residence Additions from Christian Wheeler (CWE 2170156.04), January 27, 2018.
4. Letter from Neil Hyytinen to Glen Gargas, March 30, 2018.
5. Addendum to Report of Preliminary Geotechnical Investigation from Christian Wheeler (CWE 2170156.07), June 19, 2018.
6. Third-Party Review Geotechnical Investigation and Response to City of San Diego Review Comments from TerraCosta Consultants, Inc., June 29, 2018.
7. Geotechnical Response to Letter dated March 30, 2018, Proposed Abbott Residence Additions from Christian Wheeler (CWE 2170156.05R), July 5, 2018.
8. Cycle 6 California Coastal Commission and City of San Diego, LDR-Geology and Planning Reviews: Geotechnical Exploration, Inc., August 28, 2018.
9. Response to Coastal Commission Comments from TerraCosta Consulting Group (Project No. 3018), September 13, 2018.
10. Review of TerraCosta Consulting Group Response to Coastal Commission Comments Proposed Abbott Residence Additions from Christian Wheeler (CWE 2170156.08), September 15, 2018.
11. Wave Runup and Overtopping Analysis, 6340 Camino de la Costa, La Jolla from Geosoil, Inc., January 28, 2019.
12. Sea Level Rise and Wave Run-up Erosion and Stability Evaluation from Geotechnical Exploration, Inc., August 5, 2019.
13. Comments Regarding Geotechnical Exploration, Inc.'s August 5, 2019 Sea Level Rise (SLR) and Wave Runup Erosion and Stability Evaluation Proposed Abbott Residence Project 6340 Camino de la Costa, La Jolla, California from TerraCosta Consulting Group, November 5, 2019.
14. Abbott Residence SDP/CDP (Project No. 538814) 6340 Camino de la Costa, Neil S. Hyytinen of Hecht Solberg Robinson Goldberg & Bagley, September 19, 2017.
15. Abbott Residence SDP/CDP (Project No. 538814) 6340 Camino de la Costa, Neil S. Hyytinen of Hecht Solberg Robinson Goldberg & Bagley, March 30, 2018.
16. Cycle 6 California Coastal Commission and City of San Diego LDR-Geology and Planning Reviews, Geotechnical Exploration, Inc., August 28, 2018.
17. Geotechnical Response Letter, Civil and Storm Water Updates, Coffey Engineering, Inc., September 14, 2021.