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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: Redevelopment of an existing one-story over basement, approx. 5,524 sq. ft. single family residence and two detached garages and construction of a new approx. two-story, 8,916 sq. ft. single family residence over 440 sq. ft. basement and detached 1,383 sq. ft. and 1,432 sq. ft. garages on a 1.37 acre bluff top lot.

Staff Recommendation: Denial

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. Staff recommends that the Commission, after public hearing, **deny** the project with respect to the findings below.

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 private stairs leading partially 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 approval 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 as a form of shoreline protection and an erosion control device under the LCP. The LCP requires that new development on a site containing erosion control measures or 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.

Subsequent to the Commission's finding that the original locally approved project raised a substantial issue, the applicant revised the project to instead propose to remove the existing 5,254 square foot single family residence and 440 square foot basement and 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 square feet and 181 square feet of the non-conforming portions of the existing northern and southern detached garages, respectively. That revised proposal would have resulted in a newly constructed 10,385 square foot single family residence with a 4,632 square foot first floor and 824 square foot basement located landward of the 40 ft. blufftop setback, and a 4,929 square foot second story cantilevered between the 25- and 40-foot blufftop setbacks.

The revised project was brought before the Commission on de novo on November 19, 2021. After expressing concerns regarding bluff impacts from runoff from the site, the Commission continued the item to a future hearing. Subsequent to this continuance, the applicant informed Commission staff that they were rejecting staff's recommendation of approval of the revised project and instead reverting their proposal to the original locally-approved project.

As a result of the applicant's reversion to the locally-approved project, the inconsistencies with the LCP for which the Commission found significant issues have not been resolved. The current proposal has several non-conformities with the certified LCP. The rear wall on the western side of the bluff top developed area constitutes an erosion control measure, which under the LCP requires that the applicant's redeveloped single family residence observe at least a 40-foot setback from the bluff. Furthermore, the LCP prohibits any reduction of the setback of less than forty feet if shoreline protection is already present, as the presence of the shoreline protection is evidence that the site is already at risk from coastal hazard. As hard armoring that may impact coastal processes, the Commission considers the retaining wall to be a shoreline protection device. As proposed, the redeveloped residence would be located only 25 feet back from the bluff despite still retaining its shoreline protection.

The applicant argues that the wall is not an erosion control measure nor shoreline protective device because it is primarily retaining the rear yard area and does not experience wave action due to its elevation. However, the Commission's staff geologist, Dr. Joseph Street, has visited the site and determined that the wall and lawn area buried the natural bluff face and the wall has and continues to prevent natural erosive processes from occurring there. Furthermore, the LCP specifically states that if a seawall **or other erosion control measure** has been installed due to excessive erosion on a site, the site shall not qualify for a reduction of the required 40-foot distance to the coastal bluff edge. A retaining wall is specifically listed in the LCP as an erosion control device, and thus, the LCP requires that new development on the subject site be set back a minimum of 40 feet from the bluff edge.

Alternatively, if the rear wall were to be removed, as previously proposed, the home could potentially be sited closer than 40 feet from the bluff edge. However, the geotechnical evidence provided does not demonstrate that the 25 foot setback currently proposed will be adequate to protect against erosion hazards over the full project life. Furthermore, the applicant is proposing to retain the existing basement located 25 feet from the bluff edge. Structures in hazardous areas should be able to be removed when threatened, and removal of basements can result in bluff cave-ins. At 25 feet from the bluff edge, the basement could potentially be threatened within the lifetime of the structure, and thus, is not consistent with the hazards policies of the LCP.

Regardless of the siting of the residence, because the subject property would be redeveloped under the proposed project, the existing non-conformities on the site must be removed or corrected. The existing garages would be brought into conformance with front yard setbacks, but the rear wall, lawn area, and private staircase would all remain, inconsistent with the bluff development policies and requirements of the certified LCP.

The insufficient bluff setbacks of the primary structure and accessory structures are also not in conformity with the certified LCP's visual resources policies. Allowing the encroachment of development into the bluff setbacks and bluff face would create a precedent for shifting the pattern of development along these bluffs seaward, representing a significant change in the community character and scenic quality of La Jolla, as other blufftop residences in the area would then apply to keep their non-conforming erosion control measures, shoreline protection, and bluff stairs while still being able to redevelop their primary residences closer to the bluff than allowed under the LCP. Thus, the non-conformity of the project in this respect could create substantial adverse precedent.

Finally, while the property contains an existing storm water system consisting of inlets connected to a below-grade sump pump that redirects runoff east to Camino de la Costa, a Preliminary Drainage Study by Coffey Engineering, Inc. identified that the existing system may not be adequate to process runoff from a 100-year storm. Because the proposed development will increase the footprint of residence and both detached garages, a major storm event could send substantial volumes of runoff from the site, and the inability to property capture, treat, and redirect such runoff could have adverse impacts to the adjacent bluff face and coastal waters. The applicant is making minor changes to the drainage plan to abandon the existing sump pump seaward of the bluff

edge and install a new sump pump with a backup generator landward of the bluff edge. This is in conformity with the water quality policies of the certified LCP.

However, as proposed, the overall project will not be in conformity with several provisions of the City's certified LCP and must be denied. The motion to approve the coastal development permit application is on **Page 5**.

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EXHIBITS

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I. MOTION AND RESOLUTION ON DE NOVO

Motion:

I move that the Commission approve Coastal Development Permit A-6-LJS-20-0008 for the development proposed by the applicant.

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform with the City of San Diego's certified Local Coastal Program. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS

A. Project Description and Background

The subject 1.37-acre bluff top site at 6340 Camino de la Costa in the San Diego community of La Jolla consists of two adjacent parcels containing a 5,524 square foot single-family residence, two detached garages, extensive landscaping and a pool on the inland side of the residence, a small western lawn area supported by a 110-foot long concrete wall seaward of the residence, and stairs down the bluff face. The existing structures were 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 within the required 20-foot 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 approved construction of a 214 square foot 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 feet to the natural bluff edge would be demolished, resulting in a two-story over basement, approximately 9,176 square foot single family residence. The portions of the two garages closer than 20 feet to Camino de la Costa would be demolished and an

approximately 552 square foot addition to the northern garage and an approximately 539 square foot addition to the southern garage would be constructed, increasing their size to 1,383 square feet and 1,432 square feet, respectively. 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 LCP, and as such, the residences and garages are required to conform to current development standards. As approved by the city, the westernmost existing development beyond or along the bluff edge, consisting of a 110-foot long retaining wall, patios, and private access stairs would remain.

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 as an erosion control measure. The LCP requires that new development on a site containing erosion control measures or 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.

Subsequent to the Commission’s finding that the original locally approved project raised a substantial issue, the applicant worked with Commission staff to revise the project to propose to remove and replace the existing residence and basement, and remove the existing improvements located seaward of the 25 ft. blufftop setback, including 52 ft. of the retaining wall and a stairway seaward of the bluff edge. As with the original approval, the revised project included removing 112 square feet and 181 square feet of the non-conforming portions of the existing northern and southern detached garages, respectively. That revised proposal would have resulted in a newly constructed 10,385 square foot single family residence with a 4,632 square foot first floor and 824 square foot basement located landward of the 40 ft. blufftop setback, and a 4,929 square foot second story cantilevered between the 25- and 40-foot blufftop setbacks.

The revised project was brought before the Commission on de novo on November 19, 2021. Removal of a portion of the retaining wall seaward of the bluff edge would have opened up new bluff area. Questions were raised at the hearing as to how runoff from this area might potentially impact bluff stability and water quality, and the project was continued to a future hearing. Subsequent to this continuance, the applicant informed Commission staff that they were abandoning the revised project and instead reverting their proposal to the original locally-approved project.

Under the current proposal then, the renovations and expansion to the home would result in redevelopment of the residence. The new structure would be located 25 feet from the bluff edge, including a basement. The existing retaining wall located partially seaward of the bluff edge and within 5 feet of the bluff edge would remain, as would the private stairway on the bluff. The non-conforming portions of the existing detached garages would be removed.

The existing residence straddles two legal parcels, and currently does not have a Lot Tie Agreement, which requires the owner to hold the applicable parcels as one and maintain common ownership and control, recorded against them. Under the certified LCP, a Lot Tie Agreement is required by the City prior to issuance of construction permits when a lot consists of two or more parcels held by the same owner. The City has indicated to staff that at the time the applicant applies to the City for a construction permit, the City Building Official or Engineer will make a final determination under their ordinance as to whether a Lot Tie Agreement is required, and one would likely be required.

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 relevant policies and requirements of the certified LUP and IP (the Land Development Code and related Land Development Manual) are listed below for reference.

Section 143.0143(f) of the LDC contains development regulations for sensitive coastal bluffs and states, in relevant part:

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

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

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

- A. An analysis of bluff retreat and coastal stability for the project site, according to accepted professional standards;

- B. An analysis of the potential effects on bluff stability of rising sea levels, using latest scientific information;
- C. An analysis of the potential effects of past and projected El Niño events on bluff stability;
- D. An analysis of whether this section of coastline is under process of retreat.

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

[...]

The LUP states on Page 48, in Policy 4b, the following in relevant part:

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

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

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

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

For structures located partially or entirely within the bluff edge setback, require all additions (at grade and at upper floors) to be landward of the bluff edge setback line. Additions that increase the size of the structure by 50 percent or more, including all

authorized additions that were undertaken after March 17, 1990 (effective certification of the LCP), shall not be authorized unless such structures are brought into conformance with the policies and standards of the Local Coastal Program.

The LUP states on Page 70 for “Development Near Coastal Bluffs,” that:

- a. The City should ensure that residential projects along the coastal bluff maintain yards and setbacks as established by the underlying zone and other applicable regulations in the Land Development Code in order to form view corridors and to prevent a walled-off appearance from the street to the ocean.
- b. The City should ensure that bluff stability is a foremost consideration in site design. New development on or near the coastal bluff will be designed in a manner that will protect the bluff from erosion.

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

Section II: Description of Regulations

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

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

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

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

[...]

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

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

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

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

3. 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.

4. 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.

D. 143.0143(g) Erosion Control Measures

Erosion control measures include, but are not limited to, retaining walls, air-placed concrete, and other structures, devices or methods appropriate for controlling or minimizing erosion of the sensitive coastal bluff. All feasible methods of erosion control shall be considered, including sandbags, revegetation, and drainage diversion and improvements.

Erosion control measures do not include those preventive measures required for soil stabilization or drainage.

Air-placed concrete, retaining walls, and buttress fills shall only be used to protect existing principal structures, or public improvements not capable of being relocated, and if it is determined that no other feasible less impacting method will accomplish the erosion control. Alternatives may include relocation or removal of existing improvements, if feasible, to avoid significant alteration of the bluff. Such measures shall not be used to accommodate proposed development nor increase the area of the top of bluff.

The installation of erosion control measures shall not affect the location of the coastal bluff edge.

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 hazard 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 bluff erosion and instability without requiring erosion control measures or shoreline protection.

The existing single family residence is currently non-conforming regarding the geological setback, being located less than ten feet from the natural bluff edge to the west. Since the residence is proposed to increase 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 proposed, all portions of the single family residence closer than twenty-five feet to the natural bluff edge would be demolished, and all new additions would be located behind those setback lines.

Under the LCP, bluff top structures must be set back a minimum of 40 feet from the bluff edge, except that the setback may be reduced to 25 feet upon a geological survey showing that the structure would be safe at the reduced setback for its economic life without the need for erosion control measures or shoreline protection. However, the LCP prohibits any reduction of the setback of less than forty feet if an erosion control device or shoreline protection is already present, as the presence of them is evidence that the site is already at risk from coastal hazard.

The subject site has an approximately 110-foot long retaining wall located in the rear yard, built prior to passage of the Coastal Act. The wall is up to 14 feet in height and runs almost the entire length of the western side of the bluff top building pad. When the bluff top portion of the property was developed, fill was placed along the natural bluff edge, burying portions of it, and the subject rear wall was constructed to retain the fill for the rear lawn area ([Exhibit 3](#)). As shown on site plans ([Exhibit 4](#)) 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 one quarter of the wall is located seaward of the bluff edge. In addition to the middle quarter of the wall being located seaward of the bluff edge, approximately another quarter of the wall does not observe the required 5-foot minimum bluff setback required for accessory structures.

During the City's local review of the applicant's permit application in 2018, City staff solicited Commission staff for their input on the project, as the property is located in the City's jurisdiction, appealable to the Commission. After review of the proposed plans and a site visit, Commission staff provided a comment letter to the City identifying the presence of the rear wall and its location on the bluff face and along the bluff edge and informed the City that the portion of the wall located seaward of the bluff edge should be considered a form of shoreline protective device. ([Exhibit 7](#))

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

However, the Commission's geologist, Dr. Joseph Street, visited the site and reviewed the approved project. Dr. Street notes that the presence of the wall has protected the bluff by slowing or limiting the rate or extent of subaerial erosion that would otherwise have occurred on the natural bluff face, affecting both the profile of the bluff and, at least marginally, the amount of sand that reaches the beach. Thus, the retaining wall functions in part as an erosion control measure 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.

In addition, the Land Development Manual of the certified LCP specifically includes retaining walls in its definition of "erosion control measures," the presence of which means the site shall not qualify for a reduction of the required 40-foot distance to the coastal bluff edge. Thus, regardless of whether the rear yard retaining wall is a shoreline protective device, it is an erosion control measure that per the LCP, requires the applicant's redeveloped single family residence to observe at least a 40-foot setback from the bluff.

Alternatively, if the site could be found safe for development closer than forty feet to the bluff edge without the wall, the wall should be removed, brought into conformance with the development standards for accessory structures on bluff top sites – that is, set back at least five feet from the bluff edge. Therefore, the proposed siting of the primary residence only twenty-five feet back from the bluff edge is inconsistent with the hazard protection policies of the LCP.

Furthermore, neither the twenty-five foot nor the forty-foot setback are automatically allowed. Even if the wall was removed, the LCP requires new structures be sited based on geologic conditions on the site. Specifically, a project still demonstrate that any new primary structure is safe on the site for the lifetime of the structure (no less than 75 years) without the need for erosion control measures or shoreline protection. 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 forty-foot 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 geotechnical evidence does not support a twenty-five foot setback on the site.

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 twenty-five foot 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-year 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 one to three feet 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 conclusion is not sufficiently protective of the site. For bluff edge recession to approach 25 feet over the next 75 years, the observed historical upper bluff retreat rate (0.23 ft/yr) would need to increase by just 0.1 ft/yr, or 8 feet in 75 years. From this perspective, the proposed 25-foot setback for the new residence provides only a very limited "buffer" against future increases in the bluff retreat rate driven by SLR.

In order to provide an independent check on the adequacy of the proposed twenty-five foot setback, the Commission's staff geologist evaluated several precautionary scenarios for future bluff retreat at the site factoring in SLR, 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 (40 – 130%) above the historical baseline. Applied to the applicant's historical upper bluff retreat rate of 0.23 ft./yr, a 1.4 factor of increase (with 3.3 feet of SLR in 2100) suggests an average retreat rate of 0.32 ft/yr, or 24 feet of retreat in 75 years. A 2.3 factor of increase (with 6.6 feet of SLR in 2100) yields an average retreat rate of 0.53 ft/yr and 40 feet of retreat in 75 years. The results of this analysis suggest that the proposed 25-foot setback would likely be adequate to protect against erosion with less than three feet of SLR, but that that the seaward portion of the residence could be at risk under the higher end SLR scenarios (i.e., 3 – 7 ft. by 2100). Based on the projections contained in the 2018 State Sea Level Rise Guidance (OPC 2018), there is an estimated 8-33% chance that three feet of SLR will occur by 2100.¹ Thus, there is a significant likelihood that future bluff retreat could threaten a structure located 25 feet from the current bluff edge, and the Commission's geologist has concluded that a setback larger than the proposed 25 feet is required to assure protection against erosion hazards over the full project life.

Furthermore, the subject project includes retention of the existing basement, currently set back twenty-five feet 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. Redeveloping the structure while retaining the existing basement located twenty-five feet from the bluff edge, where the basement would be vulnerable to hazards and could become exposed within the lifetime of the structure is not consistent with the hazardous policies of the certified LCP.

Accessory Structures

In addition to the primary residence, garages, and the rear wall, the property contains non-conforming development in the form of a private staircase down the bluff face ([Exhibit 3](#)). The certified LCP requires all accessory development to be no closer than five feet from the bluff edge, and because this property is redeveloping, the entire property, including the bluff stairs, should be brought into conformance with the certified LCP through their removal. Instead, the applicant is proposing to retain the bluff stairs. In addition, the proposed project would retain all of the accessory development within five feet of or seaward of the bluff edge, in non-conformity with the LCP.

The property contains an existing sump pump located approximately three feet from the bluff edge to capture runoff from the developed site and redirect it east to Camino de la Costa. Because a drainage study by Coffey Engineering identified the existing sump pump as inadequate to process runoff from a 100-year storm, the applicant is slightly modifying the City-approved plan so as to abandon the existing sump pump and install a new sump pump landward of the bluff edge with a backup generator. While below-

¹ Range in probabilities reflects projections for both "high emissions" (33%) and "low emissions" (8%) scenarios.

grade improvements are not typically permitted closer than twenty-five feet from the bluff edge, in this case, the applicant has stated that no other feasible, less environmentally damaging alternatives exist to siting 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 sump pump are not anticipated to have any adverse effects to geologic stability of the site. If anything, the improved drainage should support geologic stability.

Alternatives

There are several projects that would be consistent with the certified LCP. The subject site is two adjacent parcels totaling almost 60,000 square feet in size, and the proposed home is over 9,000 square feet. There is more than adequate space on the site to locate a residence at least 40 feet from the bluff edge, as required for sites with existing erosion control measures or shoreline protection. This would require a significant redesign of the project but is clearly feasible due to the size of the combined lots. Another alternative would be to remove the portions of the rear wall functioning as a bluff retention device, bring the other accessory structures located on the bluff into conformance, and site the development in a safe location as identified by geologic review. The applicant previously proposed such a revised project, but several outstanding questions regarding drainage on the site were raised during the Commission's de novo portion of the appeal hearing. Specifically, it was unclear whether the bluff area exposed by removal and relocation of the rear yard wall would be consistent with the drainage requirements of the LCP, which requires drainage be directed toward the street, not over the bluff. Commission staff were in the process of reviewing this alternative project design with staff at the City of San Diego, when the applicant withdrew the alternative proposal and declined to have City staff finalize their review of the revised design. Because consistency with the LCP drainage policies have not been resolved, the Commission cannot recommend approval of the project with the revised design through this action at this time. However, geotechnical reports submitted thus far do indicate that removal of the wall is feasible, and there appear to be various drainage options available that would be consistent with the LCP requirements. Thus, there are alternatives to the proposed project.

In summary, the proposed development is not sited consistent with the LCP requirements for bluff top lots that have erosion control measures or shoreline protection, nor with the requirements that new development be designed to be safe over its lifetime so as to not require shoreline protective devices. The project would maintain non-conforming development on the bluff face. Thus, the proposed development is not consistent with the coastal hazard policies of the LCP. There are feasible alternatives that would be consistent. Therefore, the project must be denied.

C. Biological Resources

Page 4 of the LUP 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 LUP addresses 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 LUP states on Page 29 under "Natural Resource and Open Space System," 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 LUP 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 LUP states on Page 39, under "Shoreline Areas and Coastal Bluffs," directs:

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

Section 113.0103 of the LDC contains the definitions of various terms utilized in the LDC, and defines the following relevant terms accordingly:

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

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

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

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

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

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

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

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

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

Section 143.0143(a), (g), and (h) of the LDC state, in relevant part:

(a) No development is permitted on the face of a sensitive coastal bluff, except as permitted in Section 143.0143(g) and (h), and the coastal bluff face shall be preserved as a condition of permit approval.

[...]

(g) Coastal bluff repair and erosion control measures may occur on the bluff face only if they comply with the following:

[...]

(h) Essential public facilities including drainage facilities, stairways, ramps, and other physical beach access facilities may be permitted on a coastal bluff face only if identified in an approved land use plan or if located in an areas historically used by the public. These facilities shall be designed to minimize impacts to the bluff face and beach area.

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) 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.

[...]

Analysis

The certified LCP identifies coastal bluffs as one of the categories of environmentally sensitive lands (ESL) warranting specific protections to ensure their integrity and viability. Coastal bluffs are unique in that they only occur in a very narrow segment of the City and provide unique habitat not found elsewhere away from the coast. In order to protect this habitat, the certified LUP contains several policies highlighting the bluff's special function and the need to protect them, while the IP contains specific set back requirements for development to limit encroachment as well as limits on the type of development that can occur on the bluff face.

The subject property currently contains existing development on the bluff face consisting of the previously discussed upper bluff wall and lawn area, as well as a private staircase down part of the bluff face. The certified LCP does not allow bluff retaining devices or erosion control devices within 5 feet of the bluff edge either. Similarly, the private stairs down the bluff face are also not allowed under the LCP. Because the site is being redeveloped, all nonconformities on the site should be removed. However, the applicant is not proposing to remove any of the non-conforming development from environmentally sensitive lands and would instead continue to maintain them in their present non-conforming configuration. Allowing non-conforming structures to remain on a bluff face or other environmentally sensitive land even when a site is redeveloped would result in on-going harm to those resources, including erosion and visual impacts. Removal of these elements is feasible and would eliminate the inconsistency with the LCP.

The Commission would typically impose conditions on the project to require the removal of these elements. However, because the project must be denied due to the hazard impacts detailed earlier in this report, no conditions have been added. Thus, as proposed, the proposed development must be denied due to non-conformity with the environmentally sensitive land requirements of the certified LCP.

D. Visual Resources

Page 15 of the LUP 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.

Page 5 of the LUP 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 LUP 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 LUP 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 LUP 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 LUP 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 LUP 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 of which are 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 acre blufftop with views between the first public roadway, Camino de la Costa, and the ocean. As proposed, the non-conforming portions of the existing detached garages would be removed. However, the new residence will be set back from the bluff edge 25 feet. There are currently northern and southern side yard setbacks on the property that could provide public view corridors to the ocean if they are protected from view blockage by fencing or landscaping.

The LCP requires minimum setbacks from the bluff edge not only to avoid geologic instability and the construction of shoreline protection, but to preserve and enhance the La Jolla community's scenic vistas of the ocean and the beach and bluff areas. Consistent application of the bluff top setback requirements of the LCP helps preserve this scenic quality by minimizing geological risk, thus avoiding the installation of shoreline protection that could mar public views or vistas, as well as by protecting the visual integrity of coastal open spaces by prohibiting accessory structures within bluff open space.

Allowing the encroachment of development into the bluff setbacks and bluff face would create a precedent for shifting the pattern of development along these bluffs seaward, representing a significant change in the community character and scenic quality of La Jolla, as other blufftop residences in the area may then apply to keep their non-conforming shoreline protection and bluff stairs while still being able to redevelop their primary residences closer to the bluff than allowed under the LCP. Thus, the non-conformity of the project in this respect could create substantial adverse precedent.

Regarding public views across the property, the proposed project sets aside the northern 7-foot, 4-inch side yard setback and southern 7-foot, 6-inch side yard setbacks to 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. Thus, with regards to vertical public view easements across the property, the project is in conformance with the LCP.

However, because as proposed the project as proposed will still not adhere to the required bluff setback despite the presence of shoreline protection on the bluff and will

retain private development on the bluff face, the project must be denied for non-conformity with the visual resource protection policies of the certified LCP.

E. Public Access

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 LUP 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 LUP 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 within a subarea identified in the La Jolla Community Plan as needing vertical accessways. The nearest alternative existing public accessways 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 Cresta intersection. Both of these accessways include dedicated stairways to the beach. There are currently no existing public access paths through the subject property.

The site is currently developed with an existing single family residence, as are all the neighboring parcels. The proposed project will be developed entirely within private property and will not encroach upon any existing or proposed public accessways. However, there is an existing stairway currently located on the south side of the structure that leads from the subject property down to the lower terrace. As discussed above, these stairs are non-conforming structures on a bluff face and should be removed with the proposed redevelopment of the property. However, the City's approval did not require removal of the stairs, and the applicant is proposing to retain them. Since the area does lack public access as identified in the LCP, if the applicant wishes to retain the stairs, the feasibility of opening the stairs to public access as a public overlook should be analyzed, which would be a means of authorizing retention of the stairs. Given that the site is being redeveloped, access from the street could potentially be provided through the site. However, if the fragility of the bluffs makes reuse of the existing stairs or creation of a new overlook infeasible, the stairway should be removed. Without this analysis, the proposed retention of the stairs is not consistent with LCP requirements to consider a new accessway across private property.

Therefore, the proposed development cannot be found consistent with both LUP policies and sections 30211 and 30212 of the Coastal Act and must be denied.

F. Water Quality

The LUP 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 LUP 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 front lawn area to Camino de la Costa, or westward from the front lawn area to drainage pipes that flow to an existing sump pump that redirects eastward to the street ([Exhibit 5](#)). The existing drainage system includes a series of on-site storm drain inlets that capture storm water from miscellaneous hardscape features to convey it to the sump pump on the bluff face on the western side of the developed area to Camino de la Costa in the east. The purpose of the sump pump system is to prevent storm water from discharging into the bluff face. An April 26, 2021, Preliminary Drainage Study by Coffey Engineering, Inc. indicated that the sump pump may not be able to manage flows from a 100-year storm.

While the project proposes to demolish the portions of the existing residence closer than twenty-five feet from the bluff edge, it will also be constructing new additions to the structure landward of twenty-five feet, resulting in a larger overall footprint, as well as increasing the footprint of both attached garages. Because impervious drainage can contribute to increased runoff and poorer water quality, it is important that new development have the capacity to property capture, treat, and divert anticipated volumes of runoff, including during a 100-year storm. While the applicant is proposing the original, City-approved project design, they are making a minor change so as to abandon the existing sump pump and install a new sump pump and backup generator landward of the bluff edge able to handle runoff from a 100-year storm and redirect it to the street ([Exhibit 6](#)).

Thus, because the proposed development will upgrade the sump pump to adequately capture and divert runoff from the bluff edge, it can be found in conformance with the water quality protection policies of the certified LCP.

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 cannot 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 describe above, the development is not consistent with the certified LCP which serves as the standard of review. Approval of the project as proposed would 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.

As describe above, there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment that have not been incorporated into the project. Therefore, the Commission finds that the proposed project is not the least environmentally-damaging feasible alternative and cannot 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.