



THE CITY OF SAN DIEGO

Report to the Planning Commission

DATE ISSUED: January 2, 2025 REPORT NO. PC-25-007

HEARING DATE: January 9, 2025

SUBJECT: Garcia Residence, 812 Havenhurst Point, Coastal Development Permit and Site Development Permit, Process Three Decision Appeal

PROJECT NUMBER: [PRJ-0697754](#)

REFERENCE: Hearing Officer Report [HO-24-029](#)

OWNER/APPLICANT: Luis H. Garcia, Owner / Jess Gonzales (CDGI), Applicant

SUMMARY

Issue: Should the Planning Commission grant or deny the appeal of the Hearing Officer's decision (Resolution HO-7580), to approve a Coastal Development Permit and a Site Development Permit for the demolition of a 3,723-square-foot existing single-dwelling unit and the construction of a new two-story 9,394-square-foot single-dwelling unit with a 1,648-square-foot basement, an attached 408-square-foot Junior Accessory Dwelling Unit (JADU), an attached 1,200-square-foot Accessory Dwelling Unit (ADU), an attached 888-square-foot garage, exterior decks, a pool, a spa, landscaping and associated site improvements on a 0.51-acre site located at [812 Havenhurst Point](#) within the La Jolla community planning area?

Staff Recommendation: DENY the appeal and affirm the Hearing Officer's decision to approve Coastal Development Permit (CDP) Permit No. PMT-2586783 and Site Development Permit (SDP) No. PMT-2586785.

Community Planning Group Recommendation: On May 4, 2023, the La Jolla Community Planning Association voted 12-1-1 to recommend denial of the project, stating that the scale and massing of the proposed development is inconsistent with the established neighborhood character.

Environmental Review: This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15302 (Replacement or Reconstruction). The environmental determination for this project was made on May 29, 2024, and the opportunity to appeal that determination ended on June 12, 2024 (Attachment 7).

Fiscal Impact Statement: None. The applicant funds a deposit account that recovers all costs associated with processing the application.

BACKGROUND:

The 0.51-acre site is an existing legal lot located at 812 Havenhurst Point in the RS-1-4 zone (Residential -Single Unit). The La Jolla Community Plan designates this site as Very Low Density Residential which allows zero to five (0-5) dwelling units per acre (DU/AC). The site is also within the Coastal (non-appealable) Overlay Zone (COZ), Coastal Height Limit Overlay Zone (CHLOZ), and within a Transit Priority Area (TPA) within the La Jolla community planning area.

The site contains an existing 3,723-square-foot single-story dwelling unit built in 1955. It is located on the north side of Havenhurst Point, which is a short public street with a cul-de-sac, east of La Jolla Boulevard and west of Havenhurst Drive in a developed, single-dwelling unit residential neighborhood. Adjacent to the development, within the cul-de-sac, are one- and two-story single dwelling units immediately to the south, east and west, while multiple one-, two and three-story dwelling units exist within 1/4 mile of the project site.

On September 18, 2024, the proposed project was presented to the Hearing Officer pursuant to [San Diego Municipal Code \(SDMC\) Section 112.0501](#), for a Process Three decision for a Coastal Development Permit and a Site Development permit. The Hearing Officer approved the project with modifications to the permit conditions per the issued staff memorandum to the Hearing Officer (Attachment 2).

DISCUSSION

Project Description:

The project proposes the demolition of a 3,723-square-foot existing single-dwelling unit and the construction of a new two-story 9,394-square-foot single-dwelling unit that includes a 1,648-square-foot basement, an attached 1,200-square-foot Accessory Dwelling Unit (ADU), an attached 408-square-foot Junior Accessory Dwelling Unit (JADU), and an attached 888-square-foot garage. The proposed dwelling unit would include several exterior decks totaling 3,651 square feet (a 1,715-square-foot main level deck, a 1,454-square-foot lower-level deck and a 482-square-foot upper-level deck). The proposed project also includes a new pool, spa, landscaping and associated site improvements.

Permits Required:

- A Process Two Coastal Development Permit (CDP) issued by the City per SDMC Section [126.0702\(a\)](#) is required for coastal development on a property that is within the non-appealable area of the Coastal Overlay Zone.
- A Process Three Site Development Permit (SDP) per SDMC Section [126.0502\(a\)](#) is required for development on a property that contains Environmentally Sensitive Lands (ESL). ESL within the project site, are in the form of Sensitive Biological Resources and Steep Hillside.

Community Plan Analysis:

Land Use:

The La Jolla Community Plan and Local Coastal Program Land Use Plan (LJCP), Figure 1, designates the site as Very Low-Density Residential allowing zero to five dwelling units per acre (0-5 DU/AC). The residential designation is characterized by large, single-dwelling unit estate homes built on 10,000 to 40,000-square-foot parcels with steep slopes and/or open space areas. The proposed project is consistent with the residential density identified in the land use plan by demolishing an existing single dwelling unit and replacing it with a new single dwelling unit on a 0.51-acre site. In accordance with the land use designation of the LJCP the project site is allowed zero to five dwelling units (DUs) per acre (AC). With a site area of 0.51-acres the project site is allowed up to three dwelling units ($0.51 \times 5 \text{ DU/AC} = 2.5 \text{ DUs}$) rounded up from 2.5 DUs. In accordance with SDMC Section 141.0302(b)(1)(A) one ADU and one JADU are permitted on a premises located within a Single Dwelling Unit Zone with an existing or proposed single dwelling unit and in accordance with SDMC Section 141.0302(b)(2)(B) ADUs and JADUs are not subject to the density limitations for the premises. Therefore, the proposed single dwelling unit with an ADU and a JADU are consistent with the Single Dwelling Unit Zone and with the residential land use designation and allowed density of the LJCP.

Legal Standard for Appeal of Planning Commission Decision:

An appeal of a Hearing Officer decision may only be granted with evidence supporting one of the following findings:

- (1) Factual Error. The statements or evidence relied upon by the decision maker when approving, conditionally approving, or denying a permit, map, or other matter were inaccurate; or
- (2) New Information. New information is available to the applicant or the interested person that was not available through that person's reasonable efforts or due diligence at the time of the decision; or
- (3) Findings Not Supported. The decision maker's stated findings to approve, conditionally approve, or deny the permit, map, or other matter are not supported by the information provided to the decision maker; or
- (4) Conflicts. The decision to approve, conditionally approve, or deny the permit, map, or other matter is in conflict with a land use plan, a City Council policy, or the Municipal Code.

Pursuant to SDMC [section 112.0506\(c\)](#), the Planning Commission can only deny the appeal and affirm approval of the project if none of the above findings are supported by sufficient evidence or grant the appeal and reverse approval of the project if it finds one of the above findings is supported by sufficient evidence. The below analysis demonstrates how the appellant does not

provide facts to support one of the above findings.

PROJECT APPEAL DISCUSSION

Hamid Kharrati appealed the project on September 30, 2024. The grounds for appeal were "Factual Error," "Findings not Supported," and "Conflicts with Other Matters" (Attachment 4).

The issues raised, and staff responses are discussed below.

Appeal Issue #1: *The proposed plan is massively out of scale and character for our neighborhood.*

1. *The following numbers are from the plans that are included in the City report to the hearing officer for this construction:*
 - *The living space is 9,394 sq. Ft.*
 - *There are three levels of decks for a total of 3,651 sq. ft.*
2. *The average home size in the Muirlands Point development is 3,095 sq. Ft.*
3. *My house is about 1750 sq. ft. and including the detached garage and structure is less than 3,000 sq. ft.*
4. *The house on my other side is even smaller than mine with a detached garage The decks on the proposed property are bigger than combined structures on each property for me and my neighbor on my other side. Include the living space, and the proposed property is more than four times the size of all structures on my property. There is a declaration of restrictions permanently attached to the deed and title of every lot in Muirlands Points community that requires no building shall be constructed unless plans are reviewed and approved by the committee elected by the homeowners. This plan has been rejected by this committee.*
5. *Members of La Jolla Community Planning Association met with the neighbors, visited our neighborhood, reviewed the proposed plans, and overwhelmingly rejected the plan.*
6. *The hearing officer received 21 "webform" comments from the public, 20 of which requested the plan to be rejected. Many of these people had taken time off their busy daily lives, and were present at the hearing officer meeting, either in-person or on the Zoom call.*
7. *Those of us living in our community, and LJCPA that is familiar with the La Jolla region, have strongly rejected the proposed plan. It is easy to look from the outside and take things out of the context and come up with reasons why the proposed plan is consistent with our neighborhood, and that is happening here. Please talk to the neighbors, talk to the LJCPA staff, and come visit our neighborhood for yourself.*

Staff Response to Appeal Issue #1: The appeal states that the project is massively out of scale and character for the neighborhood. However, the appeal does not support this statement with analysis

that relates to the Municipal Code, Community Plan, or the findings made to approve the project. Furthermore, the project conforms to the requirements of the RS-1-4 zone and the La Jolla Community Plan, as outlined below.

1. The total square footage of the proposed development at 812 Havenhurst Point would be 9,394 square feet (SF) excluding a total of 3,651 SF of exterior decks. The following is a breakdown of the floor areas for each component of the proposed structure:

- A 5,250 square-foot single dwelling unit;
- A 1,200 square-foot ADU;
- A 408 square-foot attached JADU;
- A 1,648-square-foot basement; and
- A 888-square-foot garage

Zoning Compliance: The project complies with all RS-1-4 (Residential-Single Unit) zone development regulations per San Diego Municipal Code ([SDMC Section 131.0431, Table 131-04D](#)) for the RS-1-4 zone including (but not limited to) the following:

Table 1: Zoning Compliance			
SDMC 131.0431 RS-1-4 Base Zone Regulations	Minimum	Maximum	Proposed
Front Yard Setback	20 feet	No maximum	Range between 20 – 143 feet
West Side Yard Setback	10 feet (8% of lot width)	No maximum	Range between 10 – 83 feet
East Side Yard Setback	10 feet (8% of lot width)	No maximum	Range between 10 – 37 feet 10 inches
Rear Yard Setback	20 feet	No maximum	Range between 81 – 127 feet
Height	No minimum	24 feet (angled plane) / 30 feet	Conforms to angled plane starting at a 24-foot height with a 27-foot maximum height beyond the angled plane which is below the maximum 30-foot height limit
Floor Area Ratio (FAR)	No minimum	0.45	0.43
Minimum Lot Size	10,000 SF	No maximum	22,355 SF (existing, no subdivision proposed)

Community Plan Compliance: The La Jolla Community Plan contains goals and policies related to the bulk and scale of residential projects. The project conforms to these goals and policies, as stated below and in permit findings approved by the Hearing Officer.

Based on a submitted photographic and neighborhood survey of the existing development bulk and

scale comparisons, the proposed residence was found to be in general conformity with setbacks, bulk and scale, and character of the surrounding neighborhood and vicinity.

While five of the six immediate neighbors' homes on this short cul-de-sac are single story, within the vicinity (1/4 mile) there are multiple one, two and three level home ranging in size from 1,500 square feet to 14,768 square feet, including over 80 homes that are either two or three level homes. Within a half-mile radius there are 100 homes that are over 4,500 square feet. The proposed replacement home will be approximately 5,250 SF (not including a 1,200 SF ADU, a 408 SF JADU, an 888 SF garage, and excluding the FAR exempt basement).

The Residential Element of the LJCP recommends maintaining the character of La Jolla's residential areas by ensuring that redevelopment occurs in a manner that protects natural features, preserves existing streetscape themes, and allows a harmonious visual relationship to exist between the bulk and scale of new and older structures.

The proposed development has taken the adjacent properties into consideration. The second story has a setback of nearly 23 feet from the front façade of the first floor building envelope adjacent to Havenhurst Point and is located near the rear and center of the first floor footprint. By incorporating a greater step back at the front façade, the building design provides a dominant single-story appearance. On the easterly elevation, the second level will also be stepped back eight feet from the first floor building envelope. With the proposed step backs the proposed design provides visual consistency with the adjacent existing single-story structures, is more inviting and provides articulation to address bulk and scale recommendations of the LJCP. The proposed building design has a more prominent presence on the northwestern side facing the canyon to the north and the newer developed two and three level homes across the canyon.

Page 68 of the LJCP states in its Community Character section:

"Single dwelling unit residential in La Jolla covers a spectrum of densities and architectural styles and expressions. One of the more critical issues associated with the single dwelling unit is the relationship between the bulk and scale of infill development to existing single dwelling units. New construction of single dwelling unit homes tend to be larger in size than the traditional development in some neighborhoods."

The LJCP (Residential land use section) acknowledges the change occurring with new development and recommends, that in order to promote development compatible with the existing residential scale one of the policies that should be implemented would be the following: "The City should apply the development recommendations that are contained in this plan to all properties in La Jolla in order avoid extreme and intrusive changes to the residential scale of La Jolla's neighborhoods and to promote good design and harmony within the visual relationships and transitions between new and older structures."

These Community Character policies are addressed through elements of the proposed home that address bulk and scale (as viewed from the public right of way and from parks and open space), street landscape, hardscapes, site fixtures (like fencing, walls, and materials), preserving identified

natural resources and visual resources, and maintaining setbacks, height, offsetting and angled planes, and structure articulation.

As viewed from Havenhurst Point, or from across the canyon, the dwelling unit specifically addresses each of the LJCP recommendations, design guidelines, and policies including community character, dealing with the avoidance of extreme and intrusive changes to residential scale, bulk, the design and harmony of the visual relationship in transitions between newer and older structures, landscape and streetscape, sensitive design, and building setbacks. Additionally, the project proposes separation distance between structures on adjacent properties by proposing varying side yard setbacks that meet and exceed the setback requirements.

The proposed structure's setbacks, massing, scale, variation in building materials, and roofing design all provide visual balance for the proposed second-story element, transitioning and complementing the existing single-story houses on Havenhurst Point. The architectural design supports a streetscape that provides continuity and visual harmony between the proposed development and the existing surrounding dwelling units.

The LJCP further addresses Community Character starting on Page 76. The following are the LJCP Community Character recommendations related to appellant issues (language from the LJCP is in **bold italics**):

2. Community Character

a. In order to maintain and enhance the existing neighborhood character and ambiance, and to promote good design and visual harmony in the transitions between new and existing structures, preserve the following elements:

- 1) Bulk and scale - with regard to surrounding structures or landform conditions as viewed from the public right-of-way and from parks and open space;***

Staff Analysis: The proposed project conforms with the angled building envelope plane requirement adjacent to the front/street side setback and the side setbacks. The angled building envelope plane starts at a height of 24 feet at the setback line and angles inward at 45 degrees toward the structure to the maximum 30-foot height limit in accordance with SDMC Section 131.0444 and Table 131-04D. Additionally, the second floor incorporates articulation and a stepped-back façade between the first floor and second floor.

The second floor would be approximately 1,721 SF, (33 percent of the size of the first-floor level [1,721 SF/5,137 SF]). The second floor is set back approximately 23 feet from the first-floor front façade with an open rail design enclosing the second-floor balcony which is the element closest to the face of the front facade. The project maintains a single-story linear appearance from the public right-of-way along Havenhurst Point, as shown in the applicant-provided renderings (Attachment 14). The building elevations and site sections, as shown on the Exhibit "A" development plans (Attachment 8), illustrate

how the proposed structure follows the contours of and respects the relationship of the natural landform by stepping the building bulk and scale as it continues down the grade of the existing hillside.

By proposing a building design that conforms to the RS zone regulations of the SDMC without requesting any deviations or variances and a second-floor level that has a smaller footprint than the first-floor level, the project provides consistency with and respects the bulk and scale of adjacent existing residential dwelling units.

The project site as stated above is a 0.51-acre (22,355) site which is on average 1.5 times larger than the average of the homes identified in the figures provided by the appellant about the size of the lots within the Muirlands Point neighborhood. In accordance with the FAR limits of the RS-1-4 as described above the project proposes a FAR of 0.43 where a maximum of 0.45 is allowed. By providing a structure with a linear horizontal design with parapets and flat roofs the project design maintains a consistency with similar existing homes located at 936 Havenhurst Drive (Figure 1 below) and 1034 Havenhurst Drive (Figure 2 below) which both have a two-story appearance from the public right-of-way. 936 Havenhurst Drive has a floor area of 5,387 SF on a lot size of 10,321 SF resulting in a FAR of 0.52. 1034 Havenhurst Drive (Figure 2 below) has a floor area of 3,588 SF on a lot size of 10,864 SF resulting in a FAR of 0.33). Another home within the neighborhood located at 1025 Havenhurst Drive has a floor area of 6,757 SF on a lot size of 12,593 SF resulting in a FAR of 0.53. The three homes identified were listed in the appeal documents provided by the appellant as examples of homes with the Muirlands Point Neighborhood. Two homes are similar in that they are two story homes as viewed from the public right-of-way and two of the homes compared exceed the floor area ratio of the proposed structure. Therefore, the design of the proposed development is consistent with that of other homes within the neighborhood thus supporting how the proposed project contributes to the visual harmony and established character of the Muirlands Point Neighborhood.



Figure 1- 936 Havenhurst Drive (Source: Google Street View Jul 2022)



Figure 2 - 1034 Havenhurst Drive (Source: Google Street View Jul 2022)

7) Public physical and visual access as identified in Figure 9 and Appendix G.

2. Visual Resource

- 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 (see Figure 9 and Appendix G).**

Staff Analysis: The project site sits below and west of the identified Scenic Overlook along Newkirk Drive. The project site is adjacent to a canyon and would be developed on a hillside. The proposed main building footprint extends less than 10 feet beyond the existing building footprint with exterior decks and roof overhangs that extend approximately an additional 10 to 16 feet beyond the building footprint. Although the proposed structure, overhangs and decks extend further down the slope of the hillside the development is contained within the previously disturbed hillside as shown in Figure 3 (Page 11) of the Biological Technical Report dated April 2024, prepared by Leopold Biological Services (Attachment 9). The proposed structure may be visible from the Scenic Overlook along Newkirk Drive. By conforming to the 30-foot height limit the project protects the Scenic Overlook across the private property toward the coast.

The project is conditioned to record a Covenant of Easement (COE) for the preservation of Environmentally Sensitive Lands (ESL) located outside of the allowable development area on the premises. By recording the COE the project will be assisting in meeting the policy of retaining public views along the canyon. Additionally, the canyon is mapped as a Designated Open Space area as shown in

Figure 7 of the LJCP (Page 33). Designated Open Space areas are those areas intended for park and/or open space uses which may be privately or publicly owned. By recording the COE the project would contribute to the protection of the Designated Open Space as shown in Figure 7.

- c. *The scenic value and visual quality of Mount Soledad Park, La Jolla Heights Park and habitat linkages through steep slopes and canyons shall be protected from developments or improvements that would detract from the scenic quality and value of these resources.***

Staff Analysis: As stated in the response to item a. above the project is conditioned to record a COE for the ESL areas located outside of the allowable development area. Therefore, by recording the COE the project will assist in meeting this policy from the LJCP and ensure the protection of the slopes within the project site that are part of the adjacent canyon from future development.

Additionally, as previously described above, the proposed structure is consistent with other existing homes within the neighborhood and respects the adjacent single-story structures by proposing a reduced second-story footprint that is stepped back from the first-floor footprint thus reducing the presence of the second story, as shown in the applicant's artistic rendering provided below (Figure 3).



Figure 3 – Building Articulation from easterly side (Source: Applicant's artistic rendering)

b. In order to regulate the scale of new development, apply development regulations to all residential properties in La Jolla that proportionally relate the building envelope to the existing lot dimensions. Apply minimum side and rear yard setback requirements that separate structures from adjacent properties in order to prevent a wall effect along the street face as viewed from the public right-of-way. Side yard setbacks should be incrementally increased for wider lots.

Staff Analysis: The proposed project conforms to SDMC regulations applicable to properties within the RS-1-4 zone as described in the zoning section above. The project applies side yard setbacks that are proportionate to the lot dimension by applying side setbacks that are eight percent of the lot width. Front and rear setbacks range from the minimum setbacks applicable to the zone to distances that well exceed the minimum setback requirement. By proposing side setbacks that are a percentage of the lot width this increases the distance between adjacent structures thus conforming to this recommendation.

Conformance to the proportionate bulk and scale are described in Plan Recommendation 2.a.1) above. As described above the project conforms to FAR, the 30-foot Coastal Height Limit, building setbacks, angled building planes and stepped back façades that respect the context of the existing neighborhood and the natural slope of the existing hillside. Therefore, by conforming to the established regulations related to bulk and scale the proposed project provides additional support for this recommendation.

c. In order to promote transitions in scale between new and older structures, create visual relief through the use of diagonal or off-setting planes, building articulation, roofline treatment and variations within front yard setback requirements.

Staff Analysis: The proposed project conforms with this recommendation by proposing articulation in conformance to the applicable building setbacks, angled plane regulations for building height, overall 30-foot height limit and the FAR regulations by proposing a structure that does not utilize all its allowed FAR. Additionally, the proposed project provides additional features that create visual relief to minimize the bulk and scale of the proposed structure in the form of balconies, roof decks, varying rooflines, and a stepped- back second floor that is approximately 33 percent in square footage of the main level of the structure thus maintaining a single story as viewed from the public right-of-way for a majority of the proposed structure. Lastly, the building setbacks proposed by the project range in size from the applicable minimum to setbacks that are significantly wider as previously addressed in the zoning section above. Therefore, the proposed project provides additional articulation using varying setbacks and would create additional separation to adjacent dwelling units and the public right-of-way.

d. For large lots in single dwelling unit areas, apply development regulations that will limit the perceived bulk and scale differences relative to surrounding lots. Apply a sliding scale for floor area ratios that will decrease building scale as the lot size increases.

Staff Analysis: As described in the prior recommendations above the project conforms to the applicable zoning regulations and the applicable recommendations and policies described above from the LJCP. By applying those regulations to this project, the overall bulk and scale has been

limited and the perceived bulk and scale difference relative to the surrounding lots has been taken into consideration. The project proposes a design that respects the adjacent homes by providing articulation to the structure that limits the height of the structure and reduces the area of the second floor as shown in Figure 4 (above) and Figure 5 (below). By significantly reducing the size of the second floor the proposed design is respecting the relationship to the adjacent single story dwelling units thus proposing a gradual transition from the adjacent lots within the neighborhood. The size of the project site as previously described is larger than most of the lots within the Muirlands Point Neighborhood thus resulting in a larger allowed building in accordance with the applicable FAR regulations which allows an FAR of 0.45 where the proposed project is utilizing a FAR of 0.43 this applies the recommended sliding scale for floor area ratio to decrease the allowable building scale on the project site.



Figure 4 – Building articulation (Source: Applicant’s artistic rendering)

- d. In order to address transitions between the bulk and scale of new and older development in residential areas, maintain the existing 30-foot height limit of the single dwelling unit zones and Proposition D. Structures with front and side yard facades that exceed one story should slope or step back additional stories, up to the 30-foot height limit, in order to allow flexibility while maintaining the integrity of the streetscape and providing adequate amounts of light and air.***

Staff Analysis: As described previously, the project conforms to the 24-foot height limit to the commencement of the angled plane which extends to the overall 30-foot height limit as shown on the applicant’s development plans (Attachment 8). By proposing a structure that has a height of 27 feet as measured in accordance with technical bulletin BLDG-5-4, Determination of Building Height in the Coastal Height Limitation Overlay Zone the project conforms to the overall coastal building height limit of 30 feet. In accordance with this recommendation, the proposed project conforms to the angled plane regulations previously described and steps back the second floor from the first

floor. The second story is setback approximately 23 feet from the front façade of the first floor adjacent to Havenhurst Point. The second story is located at the center rear of the first-floor footprint, minimizing the visual impact of the second story, as shown in the figure below. By stepping back the second floor the proposed project maintains a linear consistency with the adjacent single-story structures and articulates the bulk of the streetside front facade.

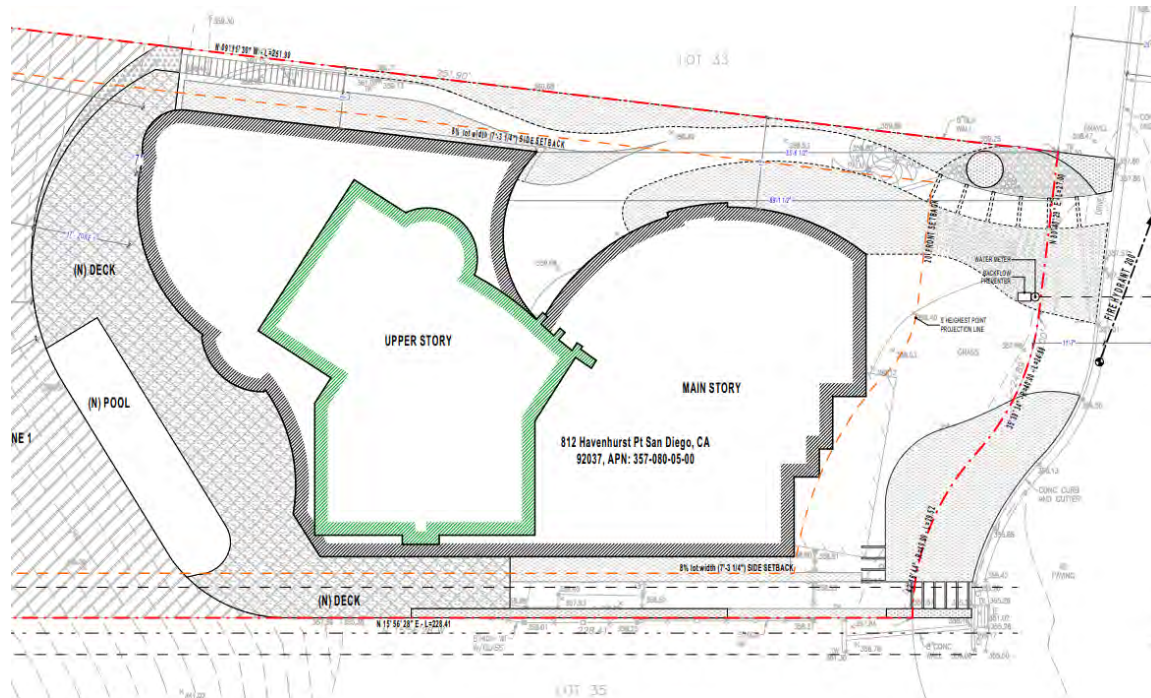


Figure 5 - 1st floor and 2nd floor overlay

COMMUNITY ASSOCIATION COMMITTEE:

Although the property is located within the Muirlands Point Neighborhood which consists of 59 lots, the Development Services Department reviewed the proposed project for conformance with the SDMC regulations of the RS-1-4 (Residential-Single Unit) zone and conformance with the LJCP recommendations and policies. The Development Services Department does not review the requirements of community association regulations, which are private regulations not governed by the City. Staff did receive the information provided by the appellant and considered the issues raised by the Community Association Committee when reviewing the project against the applicable regulations of the SDMC and the recommendations and policies of the LJCP.

The City of San Diego does not recognize nor enforce declarations of restrictions on deeds and titles, as such and any recorded restrictions on title are a civil matter between the property owner and either the committee or homeowner association that oversee such restrictions.

LA JOLLA COMMUNITY PLANNING ASSOCIATION:

As previously stated, the La Jolla Community Planning Association voted 12-1-1 to recommend denial of the project, stating that the new development's scale and massing are inconsistent with the established neighborhood character.

Development Services Department (DSD) staff acknowledges receipt of the vote and the recommendations from the La Jolla Community Planning Association and took into consideration the recommendation of denial due to the proposed scale and massing of the proposed project. As previously stated, the project is in conformance to the applicable regulations and the proposed project design has implemented the LJCP recommendations discussed above to ensure the proposed project maintains a harmonious visual relationship between the bulk and scale of new and older structures.

The project would protect the adjacent hillside and open space through the implementation of the previously discussed COE which will protect ESL located within the project site and thus protect the area shown as Designated Open Space in Figure 7 of the LJCP (Page 33). By recording the COE the project would meet the community plan goal of respecting the relationship to the hillside and to open space and additionally would respect its relationship to the sea by maintaining and protecting the view from the Scenic Overlook along Newkirk Drive located easterly of the project site.

The project would meet the goal of promoting the development of a variety of housing types and styles in La Jolla by proposing a modern building design that utilizes a linear horizontal design, thus minimizing the overall height of the proposed structure. In addition, by proposing an ADU and a JADU the project would also meet the goal of introducing opportunities for the production of more affordable housing within La Jolla to meet the housing needs of all income levels.

PUBLIC COMMENT:

DSD staff acknowledges receipt of public comments before and during the September 19, 2024, Hearing Officer Meeting. Members of the public submitted comments via email, the City's Agenda Comment Form before the hearing. The Hearing Officer also took public testimony during the hearing where both proponents and opponents of the project were given the opportunity to speak. Other members of the public participated virtually (by telephone or internet streaming) and provided testimony during the hearing. Additionally, DSD Staff acknowledge receipt of the appeal application and the letters and documents attached to the appeal application dated September 29, 2024 (Attachment 4).

Appellant Issue #2: *The proposed plan violates the protected open-space canyon on the northside.*

1. *The canyon behind the property is a Designated Open Space/Park as can be seen in Figure 7 of the La Jolla Community Plan (LJCP): "Areas intended for park and/or open space uses (May be privately or publicly owned)". This is an excerpt from "Open Space Preservation and Natural Resource protection" section on page 29 and 30: "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 the park, recreation, scenic and open space values. The location of the public and private dedicated and designated open space and park areas in La Jolla are shown on Figure 7 and include, but are not limited to, all lands designated as sensitive slopes, ...”.

- 2. The proposed property is extended more than 30 feet down the canyon from its current limit on the north side. As shown in pictures on the next pages, this goes into the natural vegetations in the canyon. In addition, the brush management plan shows another 30 feet beyond the construction zone where at least 50% of the plants need to be cut down to 6 inches. The remaining 50% shall be pruned to reduce fuel loading in accordance with the landscape standards. This is nothing short of destroying the designated and protected Open Space as declared by the City of San Diego.*
- 3. I have seen wild animals (coyotes, racoons, foxes, rabbits, etc.) come up and go down through the planned construction area into my back yard. You can see birds flying into our backyards from this area. You can hear the birds down in the canyon. I have no doubt that this construction goes against protection of wildlife habitat for this canyon.*
- 4. The mandate of the designated Open Space Canyon is also to preserve and protect the open space values. As I have shown in the pictures on the next pages, the proposed structure destroys the open canyon view that I have enjoyed for over 27 years or so. It will have a similar impact on a lot of neighbors that have rejected this plan, and in general, anyone that lives around this canyon. Why is the city allowing a newly built structure and three levels of decks (that add up to a total of 3,651 sq. ft.) to go so far into a protected open-space designated canyon?*
- 5. The brush management section of the report from the City to the Hearing Officer indicates that “Off-site brush management shall be the responsibility of the adjacent property owners”. I suspect the native vegetation on my property is within the mandated brush management for the proposed property. Nobody has contacted me, and I have not agreed to any brush management plan on my property in order for this property to be built. I am hereby informing the City that this is a protected open space with sensitive vegetation and habitat, and I do not permit anyone to damage it on my property. The brush management plan needs to be approved assuming that the nature (including existing vegetation and any future growth) is left alone on my property.*
- 6. Just imagine every homeowner on this canyon proposing a similar plan, which will happen if this one is approved. There will be little left of the elements that are supposed to be protected by the Designation of the Open Space of this canyon.*
- 7. I request the City to deny any construction plan on this property that goes beyond its current limit on the north side into the canyon. The damage caused by this plan is irresponsible and will be irreversible.*

Staff Response to Appeal Issue #2: The appeal states that the project will violate the canyon open space but does not specify how this would occur. The LJCP recognizes (Pages 29 and 30) that the community contains a number of private open space areas protected with easements or other mechanisms, some of which exclude the development of structures. However, these areas are

privately owned and thus generally zoned for very low-intensity residential development (0-5 DU/AC) to provide reasonable use while preserving portions of the site in open space.

Although this site currently does not have any restrictions over the environmentally sensitive areas the project site is adjacent to a canyon area just north of the project site that is identified as Designated Open Space/Park in Figure 7 (Page 33) of the LJCP. Designated Open Space/Park are areas intended for park and/or open space uses that may be privately or publicly owned. The canyon area is not a dedicated open space and is not mapped as being within the Multi-Habitat Planning Area (MHPA) of the City's Multiple Species Conservation Program (MSCP). As previously addressed, the project is conditioned to record a COE over portions of the site that will not be impacted by development and will include a Brush Management Zone (BMZ) area within the project site. By recording the COE, the project would accomplish the goals of protecting the existing areas of ESL and preserving designated open space while providing for reasonable use of the project site. Therefore, the project would in fact be supporting the goal of the LJCP by dedicating private lands for open space as intended under the designation shown in Figure 7 (page 33) of the LJCP.

The following is an excerpt from "Open Space Preservation and Natural Resource protection" section on page 29 and 30 of the LJCP:

"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 park, recreation, scenic and open space values. The location of the public and private dedicated and designated open space and park areas in La Jolla are shown on Figure 7 and include, but are not limited to, all lands designated as sensitive slopes, viewshed or geologic hazard on City of San Diego Map C-720 dated 12/24/85 (last revision)."

As presented in the Hearing Officer Report No. 24-029, dated September 18, 2024, the area of open space designation is located at the rear of the lot, which contains ESL in the form of sensitive biological resources as shown in the Biological Technical Report (BTR) prepared by Leopold Biological Services dated April 2024 (Attachment 9). The BTR illustrates in Figure 3 - Vegetation Communities and Sensitive Species map that the proposed development is within previously disturbed lands as shown in Figure 6 below also shown as BMZ Two (BMZ-2).



Figure 6 – Enlarged portion of Leopold BTR Figure 3 dated April 2024

The BTR found that no sensitive flora, wildlife species, nor critical habitat were detected. As previously stated, the project has been conditioned to place a COE over the undeveloped portion of the premises that covers the ESL on site. By recording the COE, the project would further the protection of on-site ESL, and ensuring that the designated open space area is not encroached upon with development.

BRUSH MANAGEMENT:

The proposed development is within the Very High Fire Severity Zone (VHFSZ) subject to the City’s Brush Management regulations SDMC 142.0412, the California Building Code, and the California Fire Code regulations. Where brush management is required, a comprehensive program shall be implemented that reduces fire hazards around structures by providing an effective fire break between all structures and contiguous areas of native or naturalized vegetation. This fire break shall consist of two distinct brush management areas called BMZ “Zone One” and “Zone Two” as shown in Diagram 142-04E, SDMC Section 142.0412. Brush Management Zone One is the area adjacent to the structure and consists primarily of the pool deck area at the rear of the proposed structure as shown in Figure 6 (above) and Figure 7 (below), shall be the least flammable, and shall typically consist of pavement and permanently irrigated ornamental plantings and landscaping.

For the proposed project BMZ One (BMZ-1) varies between 12 feet to 22 feet and will be maintained in BMZ-1 conditions as shown in the Brush Management Plan which is part of proposed development plans, Exhibit “A”. Per the BTR provided by Leopold Biological Services (April 2024), the residence and BMZ-1 is within the previously disturbed and developed areas (See Figure 6 above) and does not encroach into existing the ESL vegetation community. BMZ-2 for this project extends toward the rear property line an additional 78 feet to 83 feet equaling approximately 100 feet of defensible space measured from the main building envelope of the proposed structure. BMZ-2 is

defined as the area between BMZ-1 and any area of native or naturalized vegetation and typically consists of thinned, native or naturalized non-irrigated vegetation. In accordance with the City's Brush Management regulations the BMZ-2 area would require the thinning of plants over two feet in height to a height of six inches and requires avoiding the clearing of sensitive vegetation.

As outlined in the thinning section of the regulations as shown in Bulletin #1, Brush Management Guide, the goal is to create a "mosaic" or more natural look. Leaving uncut plant groupings up to 400 SF (20x20-foot area or an area that can be encircled by an 80-foot rope), separated by groupings of plants cut down to six inches. Thinning should be prioritized as follows: 1) invasive non-native species; 2) non-native species; 3) flammable native species; 4) native species; and 5) regionally sensitive species. This project shall conform to the City's Brush Management regulations, SDMC Section 142.0412, and shall be developed consistent with the Brush Management plan which is part of the Exhibit "A". In accordance with SDMC Section 142.0412(a), brush management activity is permitted within ESL that are located within 100 feet of an existing structure. As previously stated, the project is conditioned to record a COE for the conservation of lands that are outside of the development area and within the BMZ-2 area located on-site. By recording the COE the project would further the protection of on-site ESL, and ensuring that the designated open space area is not encroached upon with development.

Regarding the extension of the proposed structure beyond the existing footprint, Figure 7 below is an overlay of the existing building footprint and the proposed footprint of the building envelope. The figure shows that the proposed footprint extends less than 10 feet further down the slope at the northeast corner of the existing building footprint. The proposed exterior decks and roof overhangs extend approximately an additional 10 to 16 feet beyond the building envelope footprint and are stepped back from the lower levels to reduce the bulk and scale of the structure. Although the proposed structure, overhangs and decks extend further down the slope of the hillside the development is contained within previously disturbed hillside as shown in Figure 3 (Page 11) of the BTR dated April 2024, prepared by Leopold Biological Services (Attachment 9) as shown in Figure 6 above.

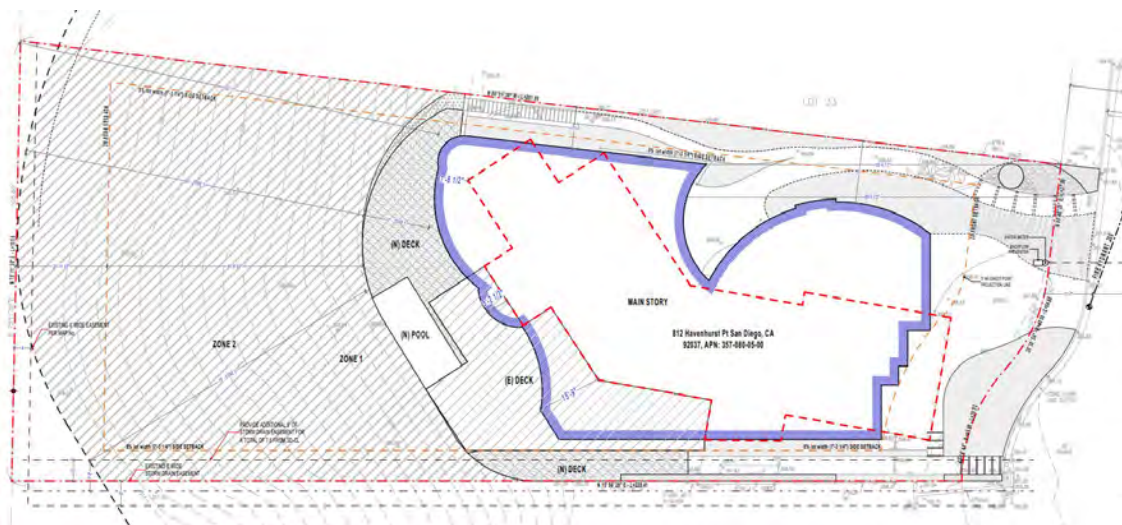


Figure 7- Existing building footprint Overlay (Applicant provided exhibit)

WILDLIFE IMPACT:

The Biology Report for the project site prepared by Leopold Biological Services identified that the Biological Survey Area (BSA) illustrated in Figure 2 of the BTR (Figure 8 below) supports 0.925-acre coastal sage scrub (Tier II), 0.03-acre disturbed land (Tier IV) and 1.665- acre developed land (Tier IV). The 0.925-acre coastal sage scrub (Tier II) area is located entirely outside of the development area, in BMZ-2. BMZ-2 is “impact neutral,” not considered an impact and not considered acceptable for mitigation. Thus, no impacts to sensitive vegetation communities would occur due to project implementation. The BTR found that no critical habitat occurs within the BSA. The closest critical habitat is approximately 4.95-miles northeast of the BSA, adjacent to Marine Corps Station Miramar. Consequently, implementation of the proposed project would not result in impacts to critical habitat. No sensitive wildlife or flora species were observed in the BSA during the reconnaissance-level surveys. Although a pair of gnatcatchers were observed foraging and contact calling approximately 20 feet to the west of the parcel boundary, the BSA is entirely outside of the MHPA.

Based on the topography, habitat connectivity and cover, identified and/or potential species within the BSA, and land uses, the BSA possess low value as a wildlife corridor. The development area is disturbed and developed land developed for over 68 years. The BSA is bound by residential development, overlooking a small canyon. Although the BSA is in the City of San Diego MSCP and Coastal Overlay Zone, the closest wildlife corridor is approximately 2.35-miles northeast of the BSA at Rose Canyon Open Space Park. Use by terrestrial animals with a north-south or east- west home-range movement would be unlikely. Consequently, no impacts to wildlife corridors would occur due to project development.



Figure 8- BTR Figure 2 (Source: Leopold BTR April 2024)

Depending on the season and time of day during which a field survey is conducted, some species may not be detected due to temporal species variability. The field survey conducted for the proposed project was performed during daylight hours in late winter, thus, some nocturnal species

may not have been detected. However, based on the literature review performed, as well as knowledge of species-specific habitat requirements, it is anticipated that any additional species potentially present in the BSA can be fairly and accurately predicted, and that the survey conducted were sufficient in obtaining a thorough review of the biological resources present within the BSA.

Twenty-seven common urban winter avian species were observed such as ruby-crowned kinglet (*Regulus calendula*), hermit thrush (*Catharus guttatus*) and yellow-rumped warbler (*Setophaga coronata*). Common coastal sage scrub bird species include California gnatcatcher (*Polioptila californica*, gnatcatcher), Bewick's wren (*Thryomanes bewickii*) and wrentit (*Chamaea fasciata*) (SDNHM 2023). Although a pair of gnatcatchers were observed, the BSA is entirely outside of the MHPA as described above. According to the City of San Diego Land Development Code, Biology Guidelines, gnatcatchers are protected within the MHPA only. Thus, no mitigation measures are required for gnatcatcher occupied habitat. One mammal species, coyote (scat), was detected during the survey. Common mammal species with the potential to occur within the BSA includes Virginia opossum (*Didelphis virginiana*), striped skunk (*Mephitis mephitis holzneri*), black rat (*Rattus rattus*), and northern raccoon (*Procyon lotor*). (Stall 1990) (Jameson 2004).

The information provided in the response to this appeal issue area are taken from the BTR dated April 2024 prepared by Leopold Biological Services (Attachment 9). DSD Staff does not contest the additional wildlife the appellant described in their appeal application as the BTR identified that the field survey for the BTR was conducted during daylight hours in late winter, thus, some nocturnal species may not have been detected. Although the survey from reviewed BTR did not identify all the wildlife species the appellant mentioned in their appeal letter as previously stated above, the survey conducted were sufficient in obtaining a thorough review of the biological resources present within the BSA. DSD staff reviewed the findings of the BTR and affirmed that no mitigation measures are required due to the BSA being outside of the MHPA and no critical habitat occurs within the BSA. Therefore, the proposed project would not result in impacts to critical habitat. The project is conditioned to protect the ESL located within the project site and part of BMZ-2 from development through the recordation of COE as previously described.

OPEN SPACE AND PRIVATE VIEWS:

As previously stated, the project is conditioned to record a COE for the conservation of lands that are outside of the development area and within the BMZ-2 area located on-site. By recording the COE, the project would further the protection of on-site ESL, and will meet goal of the Natural Resources and Open Space System by protecting environmentally sensitive resources which include the adjacent designated open space area as shown in Figure 7 (Page 33) of the LJCP. By recording the COE, the project would protect the ESL located on private property and ensure the area is not encroached upon with development. Additionally, as described in the BTR prepared by Leopold Environmental Services the adjacent canyon is not a wildlife habitat linkage.

As described above the extension of the proposed structure beyond the existing footprint, Figure 7 above, illustrates that the proposed footprint extends less than 10 feet further down the slope at the northeast corner of the existing building footprint. The proposed exterior decks and roof overhangs extend approximately an additional 10 to 16 feet beyond the building envelope footprint and are stepped back from the lower levels to reduce the bulk and scale of the structure. By stepping back

the decks, balconies and overhangs the project provides open views westerly across the structure and the project site. The openness of the project design is illustrated in Figure 4 above, which is an artistic rendering of the proposed structure provided by the applicant. Additionally, as previously described, the COE that would be recorded over the undeveloped portion of the site would contribute to the preservation of westerly views from the Scenic Overlook along Newkirk Drive located east of the project site.

The proposed project, as described in the previous responses, would be in conformance with the applicable regulations as they relate to bulk and scale, size, building articulation and building height, including the 30-foot coastal height limit. The Hearing Officer reviewed the project in accordance with the applicable regulations and can make the necessary findings to recommend approval of the project.

BRUSH MANAGEMENT RESPONSIBILITY:

The project will be conditioned to provide a brush management plan and perform maintenance as required in accordance with the brush management plan and SDMC Section 142.0412. In accordance with SDMC section 142.0412(k) and (l), for existing structures, the Fire Chief may require brush management in compliance with this section for any area, independent of size, location, or condition if it is determined that an imminent fire hazard exists. Brush management for existing structures shall be performed by the owner of the property that contains the native and naturalized vegetation. This requirement is independent of whether the structure being protected by brush management is owned by the property owner subject to these requirements or is on neighboring property.

Therefore, in accordance with the applicable regulations the project would be subject to the Brush Management Regulations of the SDMC and brush management on the subject property shall be the responsibility of the Property Owner as required per the brush management plan that shall be part of the Exhibit "A" for this project. Off-site brush management for existing structures is at the discretion of the Fire Chief in accordance with SDMC sections 142.0412(k) and (l).

Additionally, the ESL is not part of protected open space in accordance with Figure 7 of the LJCP, the area is Designated Open Space which as described may be privately owned property. As described above brush management is allowed within ESL.

Appellant Issue #3: *The proposed plan could negatively impact the moisture level on our street by diverting/blocking subterranean water flow.*

Appellant support for Appeal Issue #3

1. *Our street (Havenhurst Point) is at the bottom of two steep streets (Newkirk Drive and Havenhurst Drive).*
2. *I have heard of the term "river under our houses", pointing to the result of the water coming down the steep hill to the east side. Those who have dug into the soil at the bottom of this hill have had moisture problems.*

- 3. The proposed plan has a large basement next to my property that is going to block or at least divert the flow of subterranean water. I did not see an engineering report from the City to the Hearing Officer that shows how this is going to impact my property. What is the mitigation plan, so this basement is not going to be a source of problems for me? Is my property going to sink in a pool of water?*

I made several attempts over the last couple of years to discuss my issues about this project with the City. The lack of response led me to believe that the project was cancelled. Why else would the City not respond to emails and phone calls? We were completely surprised when we received a Notice of Hearing in the mail. Even then, we were given one minute each at the Hearing Officer meeting while I had 10 pages of notes to cover. I was not given a chance to go over these issues in a timely manner, and that is the reason why some of the issues are raised at this stage.

In Summary, I am requesting this committee to reject the construction plans for the reasons I covered in this letter. I would like the plan to be rejected until it is approved by La Jolla Community Planning Association and the Muirlands Point Committee. I request any plan disturbing the Designated and Protected Open-Space canyon to be rejected. And finally, I would like to see a report on the moisture issue.

Staff Response Appeal Issue #3: The subject site is at the low point of the cul-de-sac at the terminus of Havenhurst Point where public surface stormwater is collected in a catch basin located along the existing curb and gutter for Havenhurst Point which exists on the southwest corner of the project site. The project's geotechnical consultant did not encounter groundwater in their investigation at the subject site to varying depths of three feet to a maximum 8-foot depth of exploration (Allied Earth Technology, Geotechnical Report dated April 5, 2021) performed on March 18, 2021, and April 10, 2021. In accordance with the findings of the Geotechnical Report, no groundwater was encountered in the exploratory borings to the maximum depth of exploration at eight feet, and no seepage was observed on the steep natural slope along the north side of the property. The Geotechnical Engineer identified in the report that no major groundwater related problems, either during or after construction, are anticipated. The geotechnical report did include the following statement, "However, it should be recognized that minor seepage problems may occur after development of a site even where none were present before development." Furthermore, the Geologist identified in their report that based on the permeability characteristics of the soils and anticipated usage of the development, any seepage problems which may occur will be minor in extent and these problems can be most effectively corrected on an individual basis if and when they develop.

In response to comments from staff the Geotechnical Engineer provided a letter dated April 26, 2023, which identified the following responses to staff's comments which stated, "The Geotechnical consultant must indicate if the site is suitable for the proposed development" and "Provide a conclusion regarding if the proposed development will destabilize or result in settlement of adjacent property or the right-of-way." The responses provided stated that, "The site is suitable for the proposed development" and "The proposed development will not destabilize or result in settlement of adjacent property or the right-of-way."

Havenhurst Point runs along a ridgeline with natural slopes that descends steeply to the north,

south, and west behind the building pads along Havenhurst Point. Groundwater flow, if present, would typically follow the topography which at 812 Havenhurst Point would be in the northerly and north-westerly direction towards the canyon located north of the project site.

The appellant did not provide any evidence demonstrating high groundwater or “flow of subterranean water.” Staff reviewed the geotechnical study and concluded that any moisture problems along this ridgeline would most likely be attributed to localized poor drainage and irrigation.

CONCLUSION:

City staff have reviewed and analyzed the appeal issues and determined that the project is in conformance with the policies and regulations of the Land Development Code, the La Jolla Community Plan, and the certified Local Coastal Program. There was no evidence presented to City staff which would indicate that the findings were not supported when granted by the Hearing Officer. The appellant has not provided sufficient evidence to support any of the three grounds for appeal. Therefore, City staff recommend the Planning Commission deny the appeal and affirm the Hearing Officer's decision to approve the project.

ALTERNATIVES:

1. Deny the appeal and affirm the Hearing Officer's decision to approve Coastal Development Permit (CDP) Permit No. PMT-2586783 and Site Development Permit (SDP) No. PMT-2586785 with modifications.
2. Grant the appeal and reverse the Hearing Officer's decision to approve Coastal Development Permit (CDP) No. PMT No. PMT-2586783 and Site Development Permit (SDP) No. PMT-2586785.

Respectfully submitted,

Lara Gates on behalf of

Michael Prinz
Interim Assistant Deputy Director
Development Services Department



Martin R. Mendez
Development Project Manager
Development Services Department

Attachments:

1. Hearing Officer Report [HO-24-029](#)
2. Staff Memorandum to the Hearing Officer dated September 17, 2024
3. Figure 7 Open Space System La Jolla Community Plan
4. Appeal Application dated September 29, 2024 (received September 30, 2024) by Hamid Kharrati
5. Draft Permit with Conditions
6. Draft Permit Resolution with Findings

7. Notice of Right to Appeal
8. Project Plans
9. Biological Technical Report of Garcia Residence
10. Applicant's response to the appeal application
11. Applicant provided appeal response first floor and second floor overlay exhibits