



THE CITY OF SAN DIEGO

## Report to the Planning Commission

DATE ISSUED: February 20, 2025 REPORT NO. PC-25-004  
HEARING DATE: February 27, 2025  
SUBJECT: Hermanny House, Process Three Decision  
PROJECT NUMBER: PRJ-1099348  
OWNER/APPLICANT: Paula Hermanny

### **SUMMARY**

#### Issue:

Should the Planning Commission grant or deny an appeal of the Hearing Officer's approval of a Coastal Development Permit (CDP) and Site Development Permit (SDP) for the construction of a new two-story, single dwelling unit with a basement, garage, pool, and associated site improvements on an empty lot located at 2538 Ruelle Nicole in the La Jolla Shores Planned District-Single Family (LJSPD-SF) zone, the Coastal Height Limit Overlay Zone, the Coastal Overlay Zone (Non-Appealable Area), and the Parking Impact Overlay Zone within the La Jolla community planning area?

Staff Recommendation: Deny the appeal and affirm the Hearing Officer's decision to approve Coastal Development Permit No. PMT-3242482 and Site Development Permit No. PMT-3242483.

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

Community Planning Group Recommendation: On January 4, 2024, the La Jolla Community Planning Group Voted 16-0 to recommend approval of the proposed project without conditions (Attachment 7).

La Jolla Shores Planned District Advisory Board Recommendation: On November 15, 2023, the La Jolla Shores Planned District Advisory Board voted 5-0 to recommend approval of the project without conditions (Attachment 6).

Environmental Impact: This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303, New Construction or Conversion of Small Structures. This project is not pending an appeal of the environmental determination. The

environmental exemption determination for this project was made on August 9, 2024, and the opportunity to appeal that determination ended on August 23, 2024 (Attachment 8).

## **BACKGROUND**

The 0.4-acre site is an undeveloped lot located at 2538 Ruelle Nicole within a fully developed residential neighborhood approximately 0.4 miles east of the Pacific Ocean. The site is an irregularly shaped lot at the end of a cul-de-sac (Ruelle Nicole) in a gated community, bordered by residential development to the west, east, and south, and an undeveloped canyon to the north. Ruelle Nicole is a private drive in the Montoro Homeowner's Association (HOA). The project site is located in the La Jolla Shores Planned District-Single Family (LJSPD-SF) zone, the Coastal Height Limit Overlay Zone, the Coastal Overlay Zone (Non-Appealable Area), and the Parking Impact Overlay Zone within the La Jolla Community Plan.

## **DISCUSSION**

### Project Description

The project is for a Coastal Development Permit (CDP) and Site Development Permit (SDP) for the construction of a new two-story 8,797 square-foot single-dwelling unit with a 3,672 square-foot basement, garage, and associated site improvements. The 0.4-acre site is an undeveloped lot within a fully developed residential neighborhood. The project site does not contain any environmentally sensitive lands. According to San Diego Municipal Code (SDMC) Section 113.0103, "Environmentally sensitive lands means land containing steep hillsides, sensitive biological resources, coastal beaches, sensitive coastal bluffs, or Special Flood Hazard Areas." None of these types of land exist on the project site.

### Permits Required

A Process 3 Site Development Permit (SDP) is required for the development of a new single-family residence in the La Jolla Shores Planned District pursuant to San Diego Municipal Code (SDMC) Section [1510.0201\(a\)](#).

A Process 2 Coastal Development Permit (CDP) is required for the development within the Non-Appealable area of the Coastal Overlay Zone pursuant to San Diego Municipal Code (SDMC) Section [126.0704\(a\)\(3\)](#).

These permits are consolidated for a decision by the Hearing Officer per SDMC Section [112.0103](#), with appeal rights to the Planning Commission.

## **APPEAL**

### Legal Standard for Appeal of Department of Development Services Decision

Pursuant to SDMC Section [112.0506\(c\)](#), an appeal of a Process Three 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.

The Planning Commission can only deny the appeal and uphold approval of the project if none of the above-mentioned findings are supported by sufficient evidence or grant the appeal and deny approval of the project if the Planning Commission finds that one of the above-referenced findings is supported by sufficient evidence.

#### Timeline

On November 20, 2024, the Hearing Officer of the City of San Diego granted a CDP and SDP to Paula Hermanny, Trustee of the Hermanny Trust dated December 20, 2012, pursuant to SDMC sections [126.0505](#) (SDP) and [126.0708](#) (CDP).

On December 4, 2024, Attorney Julie Hamilton submitted an appeal application (Attachment 12) on behalf of her client, Dawn Grob, hereinafter referred to as the appellant. The appeal application listed factual error and findings not supported as grounds for appeal. A letter (Attachment 13) attached to the appeal application listed issues with several of the findings as required by SDMC sections [126.0505](#) and [126.0708](#). On December 5, 2024, the application fee was paid.

The appellant's appeal issues (Attachment 13) are discussed below along with Development Services Department staff's evaluation and response.

Appeal Issue 1 – Findings are factually incorrect and not supported by substantial evidence - Site Development Permit – Finding b – The proposed development will not be detrimental to the public health, safety, and welfare:

*“City staff and the applicant wrongly represented there will be no increase in runoff from the improved land when the applicant's own drainage study showed an increase in runoff. Any increase in runoff will exacerbate an intolerable situation. The western portion of the project drains down a very steep, poorly vegetated slope. The Grob property has already suffered significant damage due to this runoff. The project does not contain specific requirements to ensure compliance with the construction best management practices and stormwater management practices necessary to protect the Grob property or the public health, safety and welfare. The project fails to address the risks of allowing sheet flow to continue down*

*the west side of the property onto the adjacent properties. There is no evidence to support a conclusion the runoff will be controlled in a manner that does not continue or exacerbate the damage to the Grob property as a result of the sheet flow from the west side of the Hermanny property. The proposed project may be a significant detriment to the public health, safety and welfare due to uncontrolled runoff from the west side of the project site."*

#### Staff Response to Issue 1

##### EXISTING CONDITION

The site consists of a 0.4-acre project located on Ruelle Nicole in the Montoro Subdivision in the City of San Diego. The existing condition consists of an undeveloped residential lot within a fully developed subdivision. According to the drainage report provided by K&S Engineering (Attachment 14), off-site runoff from the easterly side is currently being captured by an existing concrete ditch that directs runoff to the existing underground storm drain system. The on-site runoff is divided into two basins; Basin One (from the existing pad) sheet flows towards the street and Basin Two (the slope area) sheet flows to the westerly side. The calculated flows for existing condition are based on Rural Land. The existing condition does not have any impervious area and is considered 100% pervious.

##### PROPOSED CONDITION

The proposed development consists of a new single dwelling unit with a basement that will serve as a garage area, and a two-story house, pool, wood deck and grass patio. According to the drainage report provided by K&S Engineering (Attachment 14), the house will be constructed with a green roof to reduce the proposed impervious area. The off-site drainage will remain as the existing condition. The project on-site drainage will maintain the existing patterns and basin areas, therefore there will be no diversion of flow on the proposed condition.

##### SUMMARY

According to the drainage report, the increase in runoff directed towards the westerly slope is negligible, suggesting no impacts to the downstream conditions. With only a 0.11 Cubic Feet per Second (CFS) increase to the street, and considering it is fully paved, there should be no significant concerns regarding downstream erosion. The findings within the Permit Resolution (Attachment 4) rely on permit requirements, including implementation of construction best management practices and compliance with the City's drainage regulations and standards. The Hearing Officer has considered all these factors and determined that the findings are supported by substantial evidence and the proposed project will not be detrimental to the public health, safety, and welfare.

Appeal Issue 2 - Findings are factually incorrect and not supported by substantial evidence - Coastal Development Permit - Finding b - The proposed coastal development will not adversely affect environmentally sensitive lands.

*"The findings in support of the coastal development permit wrongly state the site does not contain environmentally sensitive lands. San Diego Municipal Code §113.0103 defines environmentally sensitive lands as land containing steep hillsides, sensitive biological resources, coastal beaches, sensitive coastal bluffs, or Special Flood Hazard Areas. The project site contains steep slopes vegetated with native*

vegetation that connects to an open space easement recorded as a condition of the original subdivision. This open space easement is part of a natural canyon that connects to open space on the UCSD property and is shown as open space in the La Jolla Community Plan and Local Coastal Program Land Use Plan ("LCP").

*"The findings assume there will be no disturbance of this habitat, however the plans show differently. The plans show vegetation removal of portions of the habitat for fire protection. The plans also show a pool on the west side that appears to hang over the steep slopes with some disturbance of those steep slopes. The plans fail to show or discuss disturbance of the habitat during construction. Given the size of the house, the size of the basement and the method of construction; it is likely construction impacts will extend beyond the limits of the structure's walls. The limits of the walls of the new home abut existing environmentally sensitive habitat, but there is no discussion as to how much habitat will be disturbed during construction. This disturbance could exacerbate the runoff problems that occur on this site and may adversely affect environmentally sensitive lands."*

#### Staff Response to Issue 2

##### ENVIRONMENTALLY SENSITIVE LANDS (ESL)

According to San Diego Municipal Code (SDMC) Section 113.0103, "Environmentally sensitive lands means land containing steep hillsides, sensitive biological resources, coastal beaches, sensitive coastal bluffs, or Special Flood Hazard Areas." None of these types of land are within the proposed project site.

According to a biological letter report provided by Klutz Biological Consulting (Attachment 15), the project site only contains Developed Lands (Tier IV non-sensitive habitat) and lacks sensitive biological resources. The proposed project would only impact developed lands, would not impact sensitive plant or wildlife species, would not impact any jurisdictional waters or wetlands, and would not result in significant impacts to any sensitive biological resource.

A geological report provided by the Christian Wheeler Engineering (Attachment 17) supports the evidence that the site was legally disturbed at the time of subdivision. Therefore, no natural steep hillside is contained within the existing site perimeter. Steep hillsides are defined by San Diego Municipal Code (SDMC) Section 113.0103 as "...all lands that have a slope with a natural gradient of 25 percent (4 feet of horizontal distance for every 1 foot of vertical distance) or greater and a minimum elevation differential of 50 feet, or a natural gradient of 200 percent (1 foot of horizontal distance for every 2 feet of vertical distance) or greater and a minimum elevation differential of 10 feet." The project site is flat, and therefore the proposed project does not impact lands that meet this definition.

##### CONSTRUCTION IMPACTS

The proposed project is for a CDP and SDP for the construction of a new two-story, single dwelling unit with a basement, garage, pool, and associated site improvements on an empty lot. It does not meet the requirements for a priority project as determined by the City's Stormwater Requirements Applicability Checklist (Development Services form DS-560). Because the proposal does not meet the requirements for a priority project, it is considered a Standard Development Project and will adhere

to all the requirements of the city's Stormwater Standards Manual (Attachment 16).

Appeal Issue 3 - Findings are factually incorrect and not supported by substantial evidence – Coastal Development Permit – Finding c – The proposed coastal development permit is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation program, conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act.

*“The findings adopted by the Hearing Officer are factually incorrect and not supported by substantial evidence. The northern and western portion of the project site is designated as open space in the LCP.”*

*The project conflicts with the following policies of the LCP:*

*1. Open Space Preservation and Natural Resource Protection*

*a. The City should ensure, to the fullest extent possible, that sensitive resources such as coastal sage scrub and mixed chaparral that are located in designated, as well as dedicated, open space areas and open space easements will not be removed or disturbed.*

*c. The City should undertake an environmental assessment analysis of individual developments proposed for lands containing coastal sage or chaparral vegetation, or on steep slopes in accordance with the requirements of the California Environmental Quality Act and the City of San Diego's Multiple Species Conservation Program Subarea Plan to determine the degree to which the proposed use will affect these sensitive resources. Information obtained as part of the master Environmental Assessment Study for La Jolla Shores, Muirlands and Mount Soledad (see Plan Recommendations, Natural Resources and Open Space System Element) should also be used to assist in this determination, where appropriate.*

*f. The City shall ensure the preservation of portions of public and private property that are partially or wholly designated as open space to the maximum extent feasible. Development potential on open space lands shown on Figure 7 shall be limited to preserve the park, recreation, scenic, habitat and/or open space values of these lands, and to protect public health and safety. Maximum developable area and encroachment limitations are established to concentrate development in existing developed areas and outside designated open space. Prior to the adoption of rezonings for the open space shown on Figure 7, and in addition the Environmentally Sensitive Lands regulations, when applicable, the encroachment limitation standards taken from the OR-1-1 and OR-1-2 zone and included in Appendix L, shall be implemented for development of those portions of the property designated as open space on Figure 7.”*

Staff Response to Issue 3

The appeal states that the findings conflict with the open space policies of the La Jolla Community Plan (LJCP). However, the project site is privately owned and zoned for very low-intensity residential development (0-5 dwelling units/acre). The LJCP provides for reasonable use of privately owned lots that are designated open space.

According to Appendix L of the LJCP "If the entire site is designated open space, and if 25 percent or more of the entire site is not in its natural state due to existing development, any new development proposed shall occur within the disturbed portion of the site and no additional development area is permitted." ([LJCP, pg 164](#)). The project is proposing a new 8,797 square-foot single-dwelling unit on a 17,545 square foot disturbed site area as the site was developed at the time of the subdivision in 1976 according to Map No. 08447. The project site located at 2538 Ruelle Nicole in the La Jolla Shores Planned District-Single Family zone (LJSPD-SF) was graded and cleared as a part of the 1976 development.

The proposal meets the density allowance within the LJCP; it does not contain a view corridor within the Figures of the LJCP; there is no ESL on the premises, including Biological Resources and Steep Hillside; and the geotechnical report verifies this information with staff's analysis of ESL. Therefore, the findings are sufficiently supported and are not factually incorrect.

#### Issue 4

*"The La Jolla Shores Planned District Ordinance ("PDO") is the implementation program for the LCP. The PDO includes the following policies related to grading:*

#### *(d) Grading Regulations*

*(1) It is the intent of these regulations to preserve canyons and to prevent the cutting of steep slopes and the excessive filling to create level lots. No grading or disruption of the natural terrain shall be permitted until a permit which includes grading has been approved by the City Manager.*

*(2) Grading plans may be approved if it is concluded that:*

*(A) The development will result in minimum disturbance of the natural terrain and vegetation commensurate with the proposed use of the lot or premises.*

*(B) Grading, excavation and filling proposed in connection with the development will not result in soil erosion, silting of lower slopes, slide damage, flooding problems, or excessive cutting or scarring.*

*(C) The proposed development will strive to preserve and enhance the natural environment and any existing aesthetic qualities of the site."*

#### Response to Issue 4

The appeal describes certain code sections from the PDO but does not offer further analysis on how the project does or does not meet the intent of the regulations and does not show why or how grading plans should not be approved.

Per SDMC Section §[1510.0301](#)(d)(1), no grading or disruption of the natural terrain shall be permitted until a permit which includes grading has been approved by the City Manager. The subject property was graded during the subdivision of the lot and reviewed through geotechnical reports and shall not be graded further until a private grading permit is obtained. Private grading is a new process that involves grading plan review, grading permit issuance, and grading inspection by the Development Services Department (DSD).

To qualify for this new process, the proposed work cannot be within public property or public

easements, including the right of way. In addition, the proposed grading cannot impact public property or public improvements. Documents required for processing include a Drainage Study, Geotechnical Investigation Report, and Construction Cost Estimate. Inspections are required for all grading on private property and will be performed by DSD staff. Prior to any site disturbance activities, the contractor shall make arrangements for a Pre-Construction Meeting with DSD staff. Prior to final inspection, Permanent Best Management Practices must be addressed.

There are no natural canyons to apply the regulation. All natural canyons are located outside the property lines of the premises and all development will be maintained on the premise and will not extend into ESL.

#### Issue 5

*"The findings for the coastal development permit assume the project site does not include environmentally sensitive lands because the lands are not part of MSCP. However, the LCP places an emphasis on protection of steep slopes and native vegetation regardless of whether the land is part of MSCP. The LCP also emphasizes the protection of existing open space and canyon areas. The applicant has failed to perform any type of environmental assessment as required by the LCP and has not provided a plan of existing conditions showing the existing contours and vegetation. Without a delineation of the existing habitat, there is no evidence to support the Hearing Officer's findings that the project is consistent with the Open Space and Natural Resource policies of the LCP. Similarly, there is no evidence to support finding that the project is consistent with the grading policies of the PDO, which is part of the LCP. Finally, there is no evidence to support a finding grading for the project "will not result in soil erosion, silting of lower slopes, slide damage, flooding problems, or excessive cutting or scarring". All evidence is to the contrary, the project site already causes soil erosion and silting of the lower slopes, there are no plans to improve the sheet flow off the west side of the property yet the record shows there will be an increase in runoff from development of the project. The Hearing Officer cannot find the proposed residence will result in a minimum disturbance of the natural terrain. The project proposes to hang a pool over the existing steep slopes and includes a massive basement that cuts deeply into the existing slopes.*

*For the reasons stated above, the findings for approval of a coastal development permit and site development permit are not factually correct and are not supported by substantial evidence."*

#### Response to Issue 5

Issue 5 is a summary of the previously noted issues. All the issues have been addressed in the previous responses. All findings within the permit resolution approved by the Hearing Officer are supported by substantial evidence and are factually correct.

#### **Conclusion**

City staff has determined that the project is consistent with the LJCP and regulations of the Land Development Code, as described above. Staff has provided draft findings and conditions to support approval of the project (Attachments 3 and 4) and recommends that the Planning Commission deny the appeal and affirm the Hearing Officer's decision to approve Coastal Development Permit No. PMT-3242482 and Site Development Permit No. PMT-3242483.



**ALTERNATIVES**

1. Deny the appeal and affirm the Hearing Officer’s decision to approve Coastal Development Permit No. PMT-3242482 and Site Development Permit No. PMT-3242483, with modifications.
2. Grant the appeal and overturn the Hearing Officer decision to approve Coastal Development Permit No. PMT-3242482 and Site Development Permit No. PMT-3242483.

Respectfully submitted,



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Michael Prinz  
Interim Assistant Deputy Director  
Development Services Department



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Andrew Murillo  
Development Project Manager  
Development Services Department

Attachments:

1. Project Location Map
2. Community Plan Land Use Map
3. Aerial Photograph
4. Draft Permit Resolution with Findings
5. Draft Permit with Conditions
6. La Jolla Shores Planned District Advisory Board, minutes, 11/15/2023
7. La Jolla Community Planning Group Recommendation
8. Environmental Exemption
9. Ownership Disclosure
10. Project Plans
11. Neighborhood Survey
12. Appeal Application
13. Appeal Letter
14. Drainage Study
15. Biological Letter Report
16. Storm Water Requirements
17. Geotechnical Report