



The Law Office of  
Julie M. Hamilton

April 13, 2020

Brian Will  
Chair, La Jolla Development Permit Review Committee  
Brianljcpa@gmail.com

**VIA EMAIL**

**RE: Site Development Permit, Coastal Development Permit, Project No. 639439, 5911 La Jolla Mesa Drive.**

Dear Mr. Will and Members of the Development Permit Review Committee:

I represent Brad Cless and Cari Connor in opposition to the proposed Site Development Permit and Coastal Development Permit on the property at 5911 La Jolla Mesa Drive. The applicant is proposing to add a 1,175 square foot master suite and 907 square foot cabana addition to an existing 4,135 square foot single family residence.

At this committee's third review of this project the committee requested drawings showing the fire buffer zones, additional information related to the Open Space Overlay Map provided by John Frangos and a photo demonstrating the visual impact of the project on the canyon. In considering this project, the committee needs to understand the reasoning behind the language in the La Jolla Community Plan and Local Coastal Program Land Use Plan.

The language related to hillsides was significantly revised during the Community Plan Update in 2003. In fact, the specific language applicable to this project was largely inserted into the plan by the Coastal Commission during review of the Local Coastal Program Amendment (LCPA) required to adopt the Community Plan. The staff report prepared for the LCPA demonstrates the intent of the Coastal Commission when it certified the LCPA. The Coastal Commission repeatedly relies on mapping provided on Map C-720 and clarifies that the scale of Figure 7 does not make it possible to confirm all areas of Map C-720 are included in Figure 7. The Coastal Commission and the City Council assumed the finite details of the mapping would be resolved as part of the necessary rezoning to the Open Space Residential Zone. This rezoning was anticipated to occur by 2008 but has not yet been done. Until that time, the City was to rely on Map C-720 to identify slopes that would be protected in the open space designation.<sup>1</sup> Tripp Bennett, Matt Peterson and Mike Pallamary testified at the City Council hearing where the modifications required by the Coastal Commission were approved – yet none have provided any information on Map C-720.

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<sup>1</sup> Coastal Commission Staff Report, San Diego Major Amendment No. 1-02(A), January 13, 2003, p. 35. <https://documents.coastal.ca.gov/reports/2003/2/WV14b-2-2003.pdf> ("CCC Staff Report").

It is clear from the findings adopted by the Coastal Commission that the protected hillsides were not limited to environmentally sensitive habitats, but also included scenic resources and geologic hazards. The Coastal Commission added specific language to assure protection of the hillsides and canyons for their park, recreation, scenic and open space values.<sup>2</sup> The specific modification adopted by the Coastal Commission is found below:

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 location of the public and private dedicated and designated open space and park areas ~~and easements~~ 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).<sup>3</sup>

The Coastal Commission also wrote and required the inclusion of Appendix L in the LCP:

- f. The City ~~should~~ 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 to 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 on those portions of the property designated as open space on Figure 7.<sup>4</sup>

The Coastal Commission's full intent in certifying the LCP with modifications is demonstrated in Appendix L of the Community Plan. The Coastal Commission drafted and required the inclusion of Appendix L in the LCP as a condition of certification. Appendix L allows encroachment in up to 25 percent of the premises if only a portion of the site contains open space designation. If more than 25 percent of the site is outside the open space designation, then no further encroachment is allowed.<sup>5</sup>

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<sup>2</sup> Coastal Commission Staff Report, p. 36.

<sup>3</sup> Community Plan, p. 30-31; Coastal Commission Staff Report, p. 7.

<sup>4</sup> Community Plan, p. 38; Coastal Commission Staff Report p. 8.

<sup>5</sup> Community Plan, p. 161; Coastal Commission Staff report, p. 20.

It is incumbent upon the applicant and the City to determine where the open space designation boundary lies, based on the underlying mapping. In this case the Coastal Commission was clear when it certified the LCPA, the City was to rely on Map C-720 to further refine the boundary of the open space designation. The Community Plan and the LCP do not allow the City to rely on environmentally sensitive lands definitions to determine the open space boundary. The open space protections are not limited to steep slopes and biological resources. It is clear from the documents relied upon in adopting the Community Plan and LCP that the Coastal Commission and City intended to protect the hillsides and canyons for their “park, recreation, scenic and open space values.”<sup>6</sup> The Coastal Commission further clarified the plan policies should emphasize the intent to restore disturbed slopes. Map C-720 included slopes that have been disturbed by adjacent development and invasive species. The Coastal Commission found such disturbance does not mean the hillsides are no longer considered natural landforms and are still capable of revegetation and restoration pursuant to the LUP. Again, Map C-720 is key to determining whether the disturbed slopes on the site should be restored.

When the Coastal Commission certified the Community Plan as the Land Use Plan for the LCP; the Commission staff emphasized brush management for fire protection is considered encroachment.<sup>7</sup> The applicant must provide a plan that shows where Map C-720 locates the open space boundary and the applicant’s brush management plan for fire protection.

The Coastal Commission intent when it certified the Community Plan as part of the LCP is important. It is instructional as to why the policies related to hillsides and natural resources are required to comply with the Coastal Act. It also provides background on why the language is included in the Community Plan and how it should be interpreted. The applicant is proposing a 2,082 square foot addition (master suite and cabana) to an existing 4,135 square foot single family residence. The best available information shows the entire addition is in the area designated as open space in the Land Use Plan. Under the Community Plan (the document you are vested with interpreting), this encroachment is not allowed.

Allowing the project to move forward with this encroachment sets a pattern other homes along this canyon may choose to follow. As the exhibit shows, few homes have encroached into the open space for anything other than what can be considered private park improvements. This home should be kept to the same standard.

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<sup>6</sup> Coastal Commission Staff Report, p. 36.

<sup>7</sup> Coastal Commission Staff Report, p. 34.



Thank you for considering my client's concerns. Please contact me if you have any questions or need additional information.

Regards,



Julie M. Hamilton  
Attorney for Brad Cless