February 3, 2020

Delivered via email

City of Del Mar
Attn: Matt Bator, Principal Planner
1050 Camino del Mar
Del Mar, CA 92014

RE: Marisol Specific Plan Initiative Draft Environmental Impact Report

Dear Mr. Bator,

The Surfrider Foundation is a non-profit, environmental organization dedicated to the protection and enjoyment of the world's oceans, waves and beaches for all people, through a powerful activist network. We are writing to provide comments on the Draft Environmental Impact Report (DEIR) that has been prepared for the proposed Marisol project in Del Mar. We have several several serious concerns about the proposed development and the accuracy of the DEIR, including:

I. Gross omissions occurred in the methodology used to estimate geologic erosion rates, resulting in **setback estimates for the proposed project that are far too optimistic** as they fail to utilize recent site specific and immediately-adjacent studies.
II. The public access trails seaward of the proposed buildings are seaward of the optimistic setbacks, and will consequently be the first part of the project that is lost to bluff retreat based on the recent site specific studies and due to accelerated erosion from Sea Level Rise (SLR).
III. Public access trails are not unique to this proposed development. There has been a misinformation campaign to paint the Marisol project as the only hope to gain public access along these bluffs. Both the Coastal Act and Del Mar Municipal Code would require similar public access. Accordingly, the City of Del Mar had previously approved a subdivision of this property into five lots for

single family homes. This project approval was conditioned on a public blufftop trail.[1]

IV. While Marisol claims there will be no seawall to protect the proposed development, they never explicitly state that they are taking a covenant or deed restriction to prohibit a future seawall. This is in contrast to the terms of the above-referenced previously approved subdivision project. The permits for this previous project were specifically conditioned to require a deed restriction on all proposed bluff top parcels, thus waiving all rights to future installation of shoreline protective devices. Similar restrictions should be placed on the proposed Marisol project.

V. The DEIR did not study the blufftop public access easement on the northern perimeter of the site as a "key view," despite the fact that the project would obstruct highly scenic views of the beach and Pacific Ocean from the existing trail.

VI. The DEIR's Flooding and stormwater estimates do not take into account increased storm intensity due to climate change.

Gross Omissions Occurred in Geologic Rates Estimates

The DEIR appropriately utilizes the Coastal Commission suggestion of a Factor of Safety (FOS) of 1.5 and 75 years of erosion with a projection for Sea Level Rise (SLR) to determine setbacks. As such, a Geotechnical Investigation was prepared by Geocon Inc in order to determine erosion rates.

> *"The purpose of the study was to investigate the soil and geologic conditions at the site, as well as evaluate geotechnical constraints, if any, that could impact the proposed project." (page 1)*

However, rather than using two recent site-specific studies to determine historical erosion rates:

> *"...[Geocon Inc] discounted the adjacent information and chose to perform an exclusive, site-specific study to evaluate blufftop recession on the Marisol property." (page 12)*

Geocon performed a site-specific bluff retreat study using photogrammetric techniques and geo-referencing of recent and historic aerial photographs. The photogrammetric technique relies on the calculation of erosion at various time periods from 1932 to 2019. However, the recession rates calculated for various periods

[1] Tentative Tract Map (TTM14-001), Coastal Development Permit (CDP14-019), Conditional Use Permit (CUP15-003)
https://www.delmar.ca.us/AgendaCenter/ViewFile/Agenda/_05042015-819 Item 11

(1932-2019, 1932-1953, and 1953-2019) produce very different historical erosion rates: **the fastest retreat rate within one of these ranges being over 5-fold larger than the slowest retreat rate**. This variance highlights what we already know about erosion in the area: Bluff retreat is episodic and varies significantly over time. It stands counter to reason that Geocon would settle on a historical erosion rate based on the average erosion rate of the ~90 year time period studied, rather than relying on the most conservative estimates for erosion in the area. The determination of an erosion rate of 0.17 feet per year is dangerously optimistic.

This optimistic historical bluff retreat rate is a major issue because it is then used to calculate the 75-year bluff retreat distance, per the Simple Equation. It is worth pointing out that we are comfortable with the use of the Simple Equation to calculate the bluff retreat rate. We also strongly agree that any setback calculations need to use the Coastal Commission setback recommendation of a 1.5 Factor of Safety (FOS) in addition to 75 years of erosion taking into account SLR. However, the 75-year retreat distance determined using the Simple Equation necessitates accurate historical retreat rates (R_1), which have not been accounted for through the photogrammetric methodology used.

$$R_2 = R_1 (S_2 / S_1)^{1/2}$$
(Simple Equation)

The Simple Equation is used to calculate the future rate of bluff retreat (R_2) where R_1 is historical bluff retreat rate, S_2 / S_1 is the ratio of future (anticipated) sea level rise rate to historical sea level rise rate. Table 6.3 (Page 15) of the Geotechnical Investigation includes different risk aversion scenarios and the calculated 75-year bluff retreat distance using the Simple Equation.

TABLE 6.3
ESTIMATED BLUFF RETREAT AND SETBACK CONSIDERING SEA LEVEL RISE (75 YEARS) USING SIMPLE EQUATION

Scenario	Historical Sea Level Rise Rate (ft/yr) S_1	Historical Bluff Retreat Rate (ft/yr) R_1	Future Estimated Sea Level Rise Rate (ft/yr) S_2	Future Bluff Retreat Rate (ft./yr.) R_2	Mean annual bluff retreat rate, 2019-2100 (ft./yr.)	75-year bluff retreat (ft)
Low risk aversion-17 percent probability of exceedance (high emissions)	0.007	0.17	0.055	0.48	0.325	24
Medium-High risk aversion- 0.5 percent probability of exceedance (high emissions)	0.007	0.17	0.124	0.72	0.445	33
Extreme Risk Aversion – H++ Scenario (single scenario, no associated probability)	0.007	0.17	0.177	0.85	0.512	38

Setbacks and project planning in this DEIR were subsequently based around this very optimistic estimation that the bluff will retreat only 33 feet in 75 years. This is a serious deficiency for the DEIR. **Rather than discounting relevant information, the DEIR should utilize available site-adjacent data to determine historical bluff retreat rates and therefore arrive at a more conservative 75-year bluff retreat number.** This is the crux of the problem with gross omissions in this DEIR.

The first relevant study that should be included to calculate setbacks and bluff retreat is a 2009 erosion study for a permit to the Coastal Commission for a network of piers immediately adjacent to the subject site at the Del Mar Beach Club in Solana Beach. Erosion from the Marisol proposed site necessitated the need for these piers. Coastal Development Permit 6-00-009[2] at the Del Mar Beach Club stated the observed erosion rates were 0.8ft/year in 2001. This is almost five times faster than the historical rate Geocon used to calculate the 75-year bluff retreat value.

The Del Mar Beach Club in Solana Beach is adjacent to and immediately north of the Marisol site:

[2] https://documents.coastal.ca.gov/reports/2001/3/T12b-3-2001.pdf

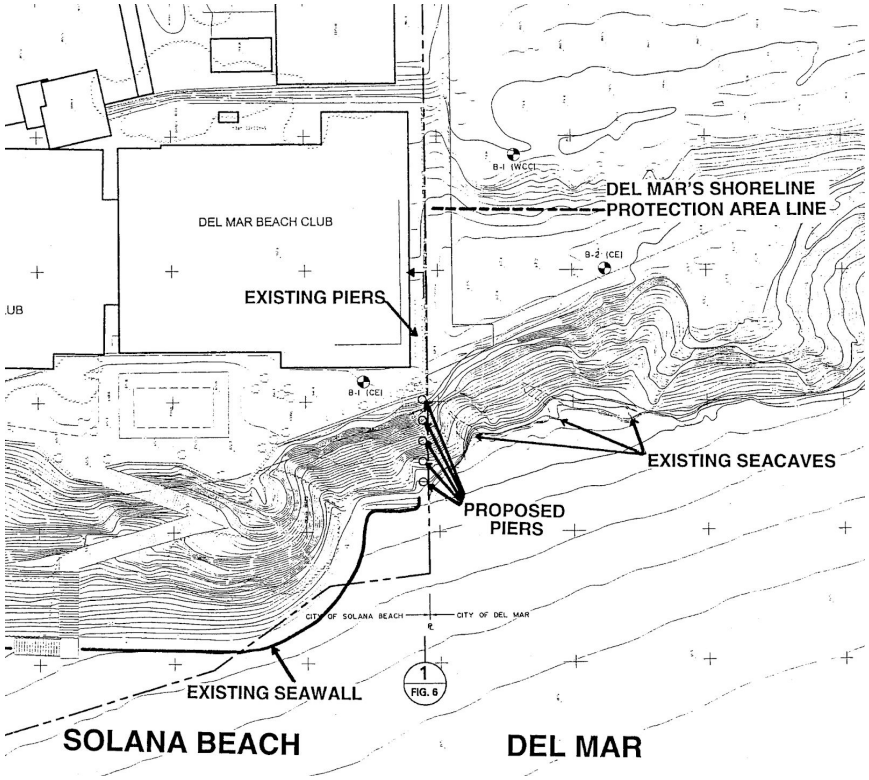


Exhibit 2, Page 29 of CDP 6-00-009

The Del Mar Beach Club CDP states:

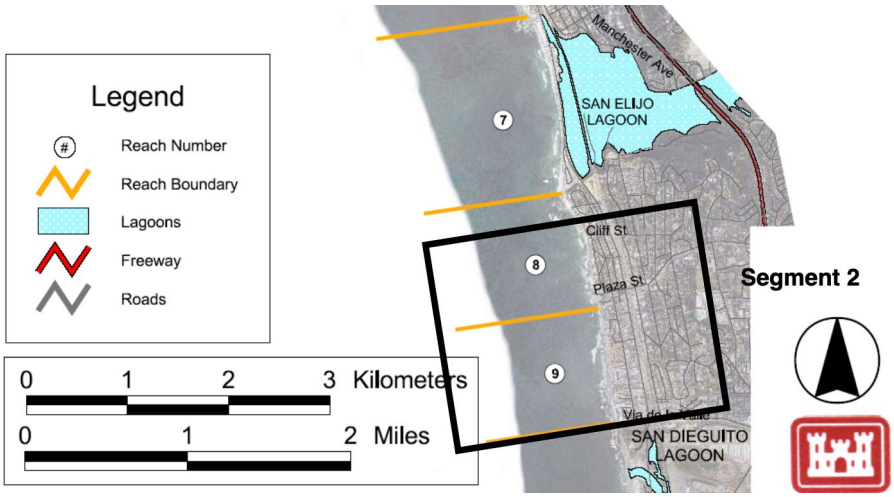
> *"The geotechnical report identifies the bluff immediately south of and adjacent to the proposed project is nearly vertical and extends approximately 70 feet in height. Its formation consists of an underlying layer of Torrey Sandstone and an upper layer of Marine Terrace Deposits.* ***The beach immediately south of the subject property is described as a cove with a bluff that is eroding at a faster rate than is typical for the Solana Beach shoreline****. The geotechnical report documents that this southern bluff retreated approximately 10 feet between 1977 and 1988, and since 1988, has retreated an additional 8 feet.* ***From this information the report concludes that the erosion rate is approximately 0.8 feet per year and twice as high as other areas along the Solana Beach shoreline****. The report attributes the accelerated erosion rate to the northeast trending faults that lie within the bluff at this location which have weakened the Torrey Sandstone and resulted in the formation of three seacaves. The geotechnical report identifies that the south end of the existing lower seawall and the mid-bluff retaining wall located on the south side of the property* ***are currently threatened due to the growth of a seacave that has formed (on the adjacent property to***

the south) *along a northeast trending fault which extends onto the subject property." (*CDP 6-00-009 *page 9, emphasis added)*

This CDP directly contradicts the assumptions made by Geocon in the DEIR that the bluffs at the Marisol site are more stable than the adjacent properties in Del Mar. This further undermines their discarding of adjacent site studies for their site-specific analysis using photogrammetry. Additionally, accelerated erosion along faults and caves does not appear to have been accounted for in the erosion rates used in the Marisol DEIR.

An additional gross omission in the DEIR occured when Geocon ignored the Army Corps of Engineer (ACOE) Environmental Impact Statement (EIS) for the 50 year Encinitas Solana Beach Coastal Storm Damage Reduction Project.[3] This proposed project is immediately adjacent to the Marisol site. The "Solana-Encinitas Shoreline Study" is highly credible because it is site-specific and survived the California Environmental Quality Act (CEQA), National Environmental Policy Act (NEPA) and Coastal Commission review process as well as being the basis to justify a 50-year project as represented to Congress.

The ACOE EIS includes 'Reaches' 8 and 9, areas which were extensively analyzed to determine retreat rates.



Taken from Volume I: Main Integrated Feasibility Report and Final EIS/EIR: Figure ES-2 Segments 1 and 2, Solana-Encinitas Shoreline Study

Reach 9 in Solana Beach extends from Fletcher Cove to the southern city boundary. The ACOE EIS described this section of bluff as follows:

[3]https://www.spl.usace.army.mil/Missions/Civil-Works/Projects-Studies/Solana-Encinitas-Shoreline-Study/

> *"It is apparent that without corrective action, this reach will continue to have landslides and block failures. The beach provides almost no buffer between wave and tidal impacts and the base of the bluff, and as a result, the bluff face is subject to erosion during high tides and storm events. The bluff toe is exposed even during mid-tide levels. This ongoing exposure has resulted in the continued erosion of the bluff face and the associated recession of the upper bluff.* ***It is expected that without corrective action, upper bluff recession will most likely accelerate in this reach as the upper bluffs equilibrate with the ongoing erosion occurring at the base of the bluff****." (emphasis added, page 38, Main Integrated Feasibility Report and Final EIS/EIR, Solana-Encinitas Shoreline Study)*

With this understanding, the Army Corps of Engineers used a peer-reviewed and approved method to determine bluff retreat rates.

> *"The Monte Carlo Simulation technique combined with the Sunamura's short-term toe erosion model was, therefore, employed in this analysis to statistically quantify the bluff retreat scenarios for a 50-year project design life throughout the entire study area…the Corps of Engineers Committee on Tidal Hydraulics (CTH) reviewed a White Paper on "Coastal Bluff Erosion – Numerical Model using Monte Carlo Simulation Technique and Sunamura's Equation" at a meeting held in the South Pacific Division on 03 February 2004. Based on this review and the discussion of site specific data that would be used to calibrate the empirically based model, the Committee endorsed the documentation and model application in this feasibility study of shoreline erosion in Encinitas and Solana Beach." (Appendix B, Section 5.2.3: Monte Carlo Simulation for Bluff Failure, Solana-Encinitas Shoreline Study)*

Based on this approach, the ACOE estimated the retreat rate for reach 9 to be between 0.4 to 1.2 ft/year. Even at its most conservative retreat rate, 0.4 ft/year, this is still 3 times the retreat rate used in the Marisol DEIR to calculate blufftop setbacks.

Table 7.2-1 Summary of Sea Cliff and Bluff-Top Erosion

Reach	Sea Cliff (ft/yr)	Bluff-Top (ft/yr)
1	0.3	0.2
2	0.4 - 0.5	0.3 - 0.5
3	1.2	1.2
4	1.1	1.0
5	0.05 - 0.6	0.2 - 0.6
6	0.2 - 1.0	0.15 - 1.0
7	Beach, no cliff or bluff	---
8	0.4 - 1.2	0.4 - 1.2
9	0.4 - 1.2	0.4 - 1.2

Solana-Encinitas Shoreline Study Appendix C

There is no logical reason to support such a drastically reduced retreat rate in Del Mar as is proposed in the Marisol DEIR. Retreat rates are not consistent over time as bluff failures tend to be episodic rather than gradual, nor do they respect city boundaries. In fact, the 1,510 foot stretch of bluff top immediately south of Reach 9 was termed the Del Mar reach in the ACOE EIS. The ACOE project specifically cite the 'Del Mar Reach' immediately adjacent to Reach 9 in Solana Beach as particularly vulnerable to SLR.

> *"Results under the high sea-level rise scenario show a similar pattern—damages are concentrated in reaches 3-5 and 8-9 and the Del Mar Reach" Appendix E, Section 4.4.6 - Economics, Solana-Encinitas Shoreline Study*

As we noted above, a gross omission occured when the DEIR ignored two site-specific studies, CDP-00-0-09 and the ACOE EIS, which described retreat rates of 0.8 ft/year and 0.4-1.2 ft/year respectively. Table 4.5-1 of the Marisol DEIR calculated the estimated bluff retreat and setback considering SLR over the next 75 years.

> *"Bluff retreat was analyzed based on three scenarios: (1) the low risk aversion scenario with a 17 percent probability of exceedance; (2) the medium-high risk aversion scenario with a 0.5 percent probability of exceedance for projected sea level rise per the Ocean Protection Council (OPC) 2018 under a high emission scenario; and (3) the extreme risk aversion H++ scenario." (Marisol DEIR, page 4.5.6)*

We have performed the retreat calculation using the Simple Equation to demonstrate how badly the Marisol DEIR underestimates the 75 year bluff retreat and therefore the setbacks for the proposed development. Our table compares the

three bluff retreat rate values the Marisol DEIR calculated in Table 4.5-1 (using the Simple Equation) for the three risk-based scenarios with 75-year bluff retreat distances calculated using the adjacent site-specific studies that were omitted in the DEIR.

Scenario	Historical SLR (ft/yr) S_1	Historical Bluff Retreat Rate (ft/yr) R_1	Future Estimated SLR Rate (ft/yr) S_2	Future Bluff Retreat Rate (ft/yr) R_2	Mean annual bluff retreat rate 2019-2100 (ft/yr)	75 year bluff retreat (ft)
Low risk aversion (Marisol DEIR)	0.007	0.17	0.055	0.48	0.325	24
Low risk (CDP-00-009)	0.007	0.8	0.055	2.24	1.52	114
Low risk (ACOE EIS - low end)	0.007	0.4	0.055	1.12	0.76	57
Low risk (ACOE EIS- high end)	0.007	1.2	0.055	3.36	2.28	171
Medium-High risk aversion (Marisol DEIR)	0.007	0.17	0.124	0.72	0.445	**33**
Medium-High risk (CDP-00-009)	0.007	0.8	0.124	3.37	2.09	**157**
Medium-High (ACOE EIS - low end)	0.007	0.4	0.124	1.68	1.04	**78**
Medium-High (ACOE EIS - high end)	0.007	1.2	0.124	5.05	3.13	**235**
Extreme risk aversion (Marisol DEIR)	0.007	0.17	0.177	0.85	0.512	38
Extreme risk (CDP-00-009)	0.007	0.8	0.177	4.022	2.41	181
Extreme (ACOE EIS - low end)	0.0007	0.4	0.177	2.01	1.21	76

Extreme (ACOE EIS - high end)	0.0007	1.2	0.177	6.03	3.62	272

75 year bluff retreat distances calculated using the Simple Equation. Comparison between Marisol DEIR historical retreat rates and relevant site specific historical retreat rates.

As the above table demonstrates, in the Medium-High risk aversion scenario, the Marisol DEIR estimates a 75-year bluff retreat of 33 ft. By our calculation using the adjacent site-specific historical retreat rates, the **75-year bluff retreat distances range from 78 to 235 feet**. The retreat distance could range from 2 to almost 7 times the distance that the Marisol DEIR then proceeds to use to determine setbacks and where to safely site development. Clearly the setbacks have been seriously underestimated.

Access trails are not guaranteed over lifetime of the structure

The Marisol DEIR attempts to sell the proposed development as providing a unique benefit to the public via public access along the blufftop. We take issue with this for two reasons:

1. The public access trail is located seaward of the flawed and optimistic setback calculation. It will be the first part of the property lost to the receding bluff.
2. The city previously approved a subdivision of this property to five private single family homes. This approval was conditioned on the creation of a blufftop public access trail. A public trail is not unique to the Marisol development proposal - any development on this site would be required to provide public access over its lifetime.

There has been a misinformation campaign to paint the Marisol project as the only hope to gain public access along these bluffs. The City of Del Mar had previously approved a subdivision of this property in 2015 to five lots for single family homes. This project approval was conditioned on a public blufftop trail.[4]

In addition to blufftop access not being unique to the proposed Marisol project, public access will be the first thing lost when the bluff erodes. Figure 3-1 from Marisol DEIR delineates the property and proposed 40 foot setback in its Land Use Plan.

[4] Tentative Tract Map (TTM14-001), Coastal Development Permit (CDP14-019), Conditional Use Permit (CUP15-003)
https://www.delmar.ca.us/AgendaCenter/ViewFile/Agenda/_05042015-819 Item 11

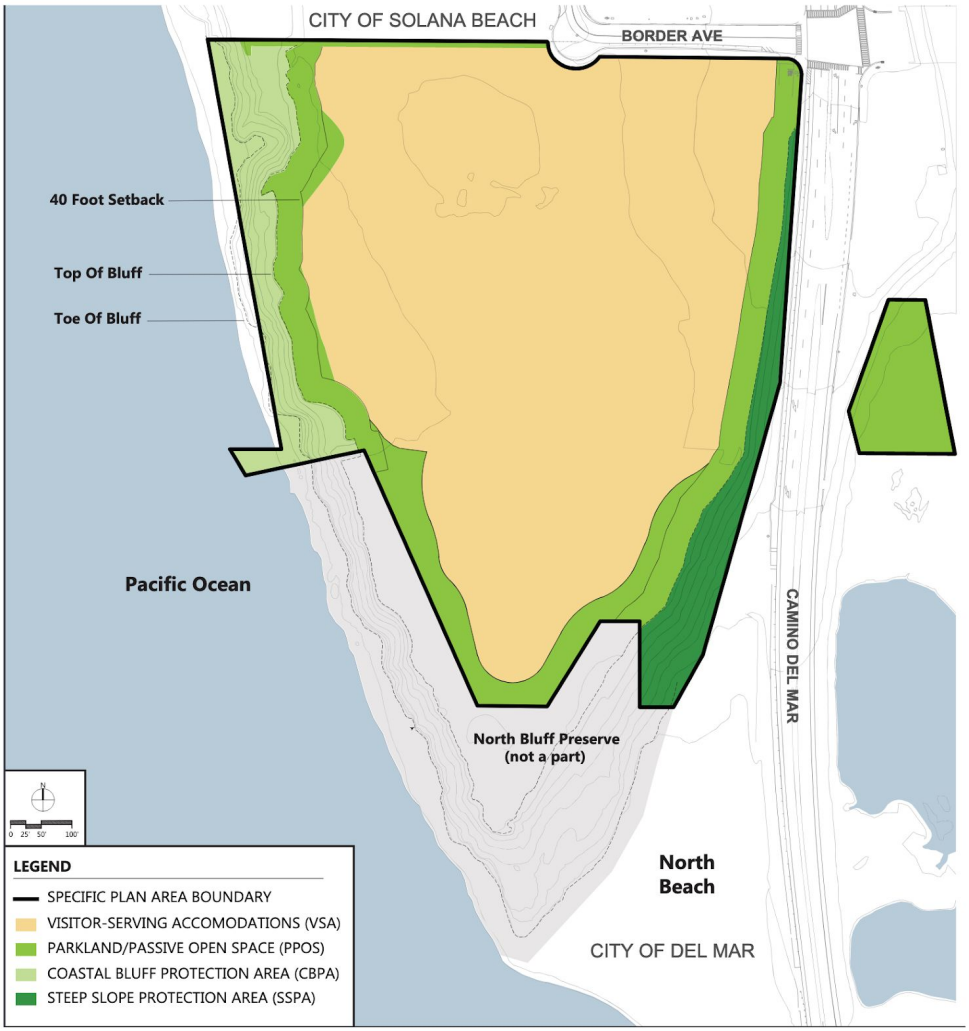


Figure 3-1, Marisol DEIR Land Use Plan

The subsequent Figure 3-2, Conceptual Site Plan shows how the blufftop public access is seaward of the 40 ft setback (Additionally, there is an error in this figure that also should be addressed. The 40 ft setback should indicate the inner, landward edge of the medium green color. This figure currently indicates that the setback and top of bluff are the same line).

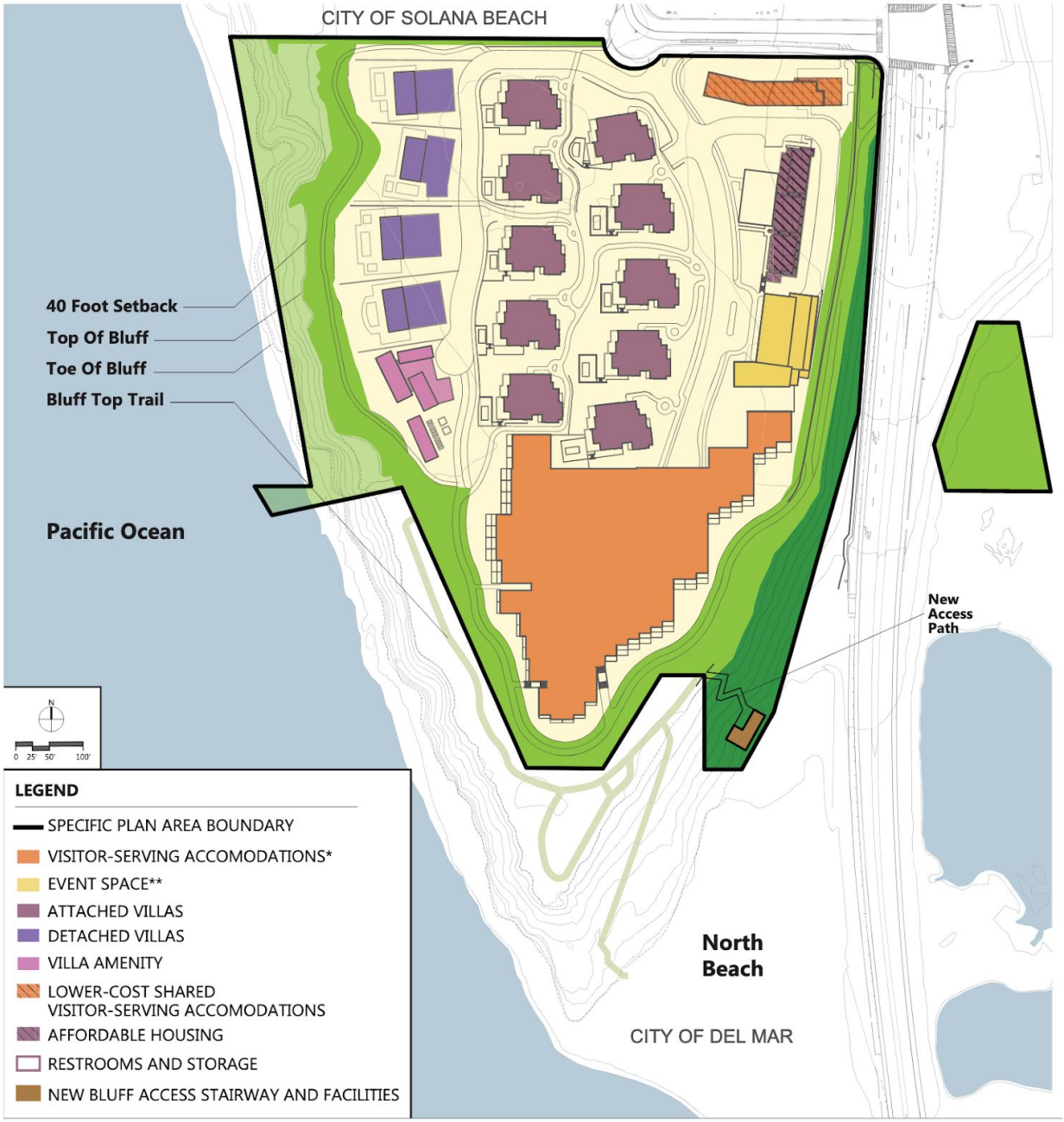


Figure 3-2, Marisol DEIR Conceptual Plan

The proposed public trail is clearly within the area of the property that may soon be lost to blufftop erosion. The Marisol DEIR acknowledges the likelihood of this scenario by stating that the trails should be built using lightweight materials that can be easily removed when the trail is no longer safe.

> *"All new trails, fences, windscreens, and benches shall be set back a minimum of 10 feet from the top edge of a coastal bluff. All such improvements, when providing less than the identified coastal bluff-top setback of an FOS 1.5 plus 33 feet, shall be constructed above-grade using lightweight materials and without the use of grading and/or continuous foundation components. Development plans for such improvements, as well as improvements located outside and adjacent to the coastal bluff top setback, shall demonstrate Adaptive Design strategies to allow and ensure future relocation of the public amenities to the east over time, as needed due to erosion and bluff failure. Said Adaptive Design strategies shall be subject to review and approval of the Del Mar City Council during the required discretionary design review of such development." 4.5.5 Mitigation Measures, MM GEO-1: Bluff Erosion*

Public access to a blufftop trail must be guaranteed over the life of the structure to be consistent with both Del Mar Municipal Code 30.61.070 and Section 30212 of the Coastal Act. The setback should be adequate and access always available and never subject to future permits. Access should be permitted at the outset by ensuring proper setbacks accounting for sea level rise and not placing access within the areas prone to erosion. This is especially true in light of our findings that the 75 year bluff retreat distance more realistically ranges from 78 to 235 feet.

Adaptation of the trail is further discussed in the impact analysis section:

> *"The paved public amenity trail would be accessible to the public, provide passive recreation opportunities, and allow pedestrians to circumnavigate the Specific Plan Area. The Specific Plan addresses hazard control policies of the LUP by implementing setbacks and a coastal bluff minimum buffer of 40 feet (or a setback in accordance with the factor of safety as recommended by geotechnical engineers) and incorporates adaptive design to ensure no future loss of coastal public access or recreation amenities. For example, the plans for trails and pathways demonstrate adaptive design as required by proximity to the coastal bluff by including adequate space to be moved back if necessary so that no public access would be lost due to sea level rise or bluff retreat in the future." 4.8.4 Impact Analysis, Marisol DEIR page 4.8.15*

This seems an empty promise as private villas and villa amenities are immediately landward of the public access. In the event that the trail did need to be moved back to maintain public access, does that mean that the villas behind it would also be moved back and/or removed to make room for the public trail? The Coastal Act Section 30212 explicitly guarantees public access for all new development.

30212. (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects..."

Likewise, the Del Mar Municipal Code also requires public access. This would be true of any development on this property, as it was of the subdivision approved by the city in May 2015. The 2015 staff report for this approved subdivision made that clear:

> *"...staff is recommending that findings can be made to approve the CDP application subject to conditions that would require:*
>
> *1) a "lateral" public access easement along the top of the coastal bluff at the western extent of proposed Lots 1-3;*
> *2) a "vertical" access easement running generally in an east-west alignment from the edge of the City right-of-way at the first coastal roadway (Camino del Mar), connecting to the lateral coastal bluff top access noted in #1 above; and*
> *3) a lateral public access easement over the sandy beach area located at the base of the coastal bluff.*
>
> *The recommendation for the lateral bluff top access easement is based on the fact that public access is provided to the north (Border/Sierra Avenue public overlook) and to the south North Bluff Preserve) and the provision of the public access easement would contribute to the future linkage of those existing access points to the north and south. The provision of the "vertical" access would ensure access to the required lateral access." May 4, 2015 Del Mar Staff Report, Item 11, page 4*

This condition is further supported by Del Mar Municipal Code section 30.61.030, Provision of Public Access Required:

A. *Unless otherwise specified herein, an application for a Coastal Development Permit in the areas identified below shall be subject to the dedication of a public access easement(s) in the manner and form prescribed in this Chapter:*
   1. *New development on any parcel or location identified in the City of Del Mar Local Coastal Program Land Use Plan as containing an historically used or suitable informal public access pathway.*
   2. *New development on any site where there is substantial evidence of a public right of access to the sea or public tidelands which has been acquired through use or by legislative authorization.*
   3. ***New development on any site where a trail, bluff top access, or other recreational access is necessary to mitigate the impact of the development on existing public access opportunities.***

4. ***New development in locations where it has been determined that a trail access is required to link recreational areas to each other or to the sea.***

The requirement of a permanent public access trail that would not be sacrificed to eroding bluffs in order to protect landward private development is further supported by Del Mar Municipal Code section 30.61.070, Coastal Bluff Top Access:

A. *Minimum requirements. Where required pursuant to the provisions of this Chapter, the alignment of a coastal bluff top public access easement and the improvements required therein shall be designed to ensure that the access way, once implemented, will provide the public with the permanent right of public access to and/or along the coastal bluff top. (emphasis added)*

A Deed Restriction or Similar Waiver Should Prohibit Any Future Armoring at this Location

While Marisol claims there is no seawall in the specific plan, they never explicitly state that they are taking a covenant or deed restriction to prohibit a future sea wall. Given their optimistic estimation of 75 year bluff retreat rates, it seems highly likely that the project will be threatened in far less than 75 years from now. Section 30235 of the Coastal Act makes it clear that new development cannot rely on bluff stabilization or other hard structures:

> *Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.*

A similar provision forbidding protective devices for new development is also outlined Section 30253 of the Coastal Act:

> *New development shall: (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard. (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs*

While there is no seawall in the specific plan there is no prohibition on a future sea wall. The DEIR is specific that there are no seawalls allowed in the Coastal Bluff Protection Area (CBPA):

> *"Additionally, no shoreline protection devices are permitted in the CBPA. No shoreline protection devices are proposed for the Specific Plan." (Page 4.8.15, Marisol DEIR)*

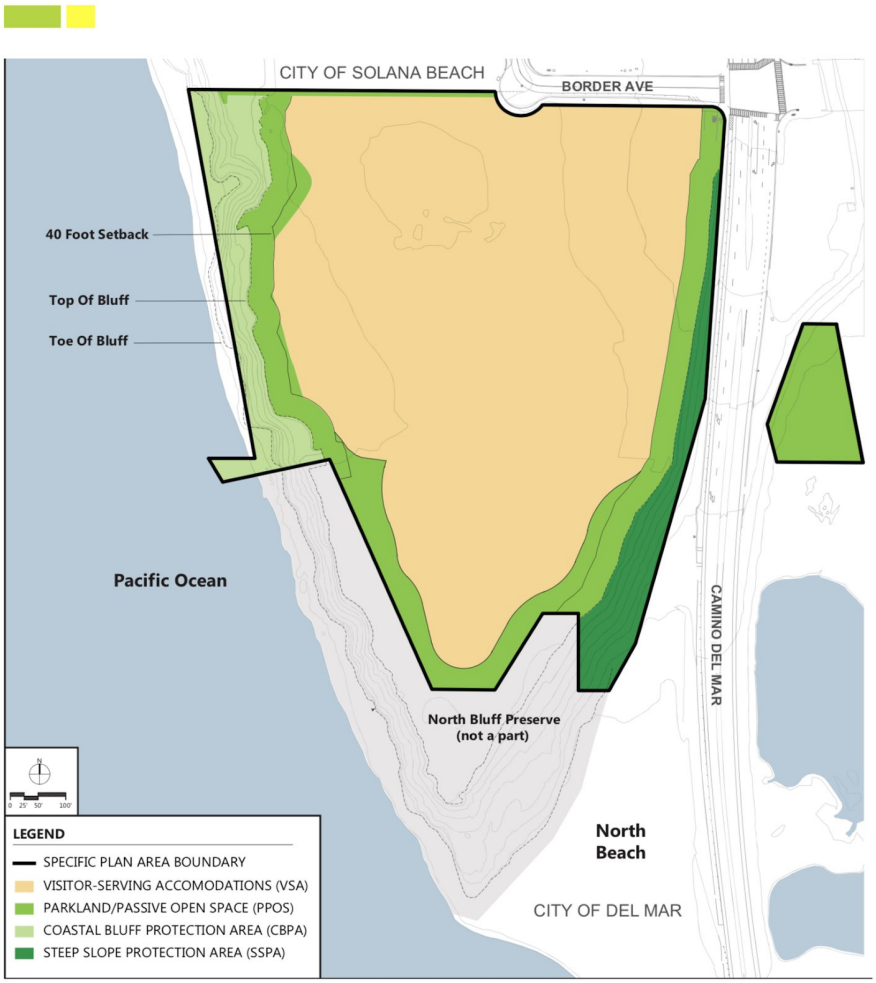


Figure 3-1, Land Use, CPBA in light green

However, once the bluff has eroded landward past the demarcation of the CPBA, Del Mar Municipal Code allows for seawalls behind the Shoreline Protective Area Line. Essentially, the DEIR states that it will not allow shoreline protective devices until the bluffs have eroded beyond the CPBA. Once the CPBA has been sacrificed to SLR and the private portions of the development are threatened, shoreline protective devices could be potentially allowed. This is a reasonable fear, as Del Mar

is currently attempting to amend its LCP to change the definition of existing development to any legal, permitted development. We have opposed this proposed amendment, and previously argued that existing development should always be defined per the original intent of the Coastal Act and the Commission's Sea Level Rise Policy Guidance document. The Commission interprets the term "existing structures" in Section 30235 of the Coastal Act as structures that were in existence on January 1, 1977—the effective date of the Coastal Act. This potential zoning loophole should be closed by conditioning the project to waive any future right to shoreline armoring.

Stated differently, the Specific Plan or DEIR claim there will be no seawalls because the setbacks according to the geotechnical report are adequate. What happens if setbacks are not adequate consistent with what happened at many developments along the same bluff in Solana Beach? The DEIR and Specific Plan nowhere explicitly say they will never build a seawall if the geotechnical estimation is wrong. This is further acknowledged by the fact there is no potential impact listed in the DEIR detailing mitigation measures if the private portions of the development are subject to future bluff collapse. Table ES-1, Project Environmental Impacts and Mitigation Measures discusses adaptive management of the public bluff-top trails, but neglects to mention any Mitigation Measure for private villas or similar structures located just landward of the public trail. Because of the optimistic erosion rates used to determine setbacks there is currently no provision to prevent the developers from requesting a seawall when the first Villa is threatened.

There is also historical precedent in Del Mar that proposed development on this site should be conditioned with a waiver for any future shoreline development as well. The approved subdivision in 2015 had the following special condition:

> *Special Condition-7 [Bluff and Shoreline Protective Devices] Prior to the recordation of the Final Map, a deed restriction shall be placed on all proposed bluff top parcels waiving all rights to future installation of shoreline protective devices."*

Del Mar has required permit waivers at this location in the past. Equivalent waivers should be codified for any other development, including the Marisol project, on this site.

In summary, The DEIR clearly acknowledges that a seawall on the site would not currently be permitted, per the Coastal Act and Del Mar Municipal code. However, the landward advancement of the sea may create a loophole where seawalls are technically permitted in an area that is currently unintended to allow new shoreline armoring. The City of Del Mar has acknowledged in countless planning efforts that

shoreline armoring has a negative impact on the coast and public beach, and it is very clearly not the intention of these zoning codes to allow increased opportunities for armoring in the future. Because of the potential for a loophole to exist in the future however, a deed restriction or covenant prohibiting seawalls should be required.

Scenic Views from an Existing Public Easement will be Obstructed

Currently, a public access easement exists adjacent to the northern perimeter of the site. The trail extends from Border Avenue to the coastal facing edge of the North Bluff and provides highly scenic views of the Pacific Ocean and beaches in Del Mar.

Views from the public trail were not considered as a “key view” as part of this EIR, which is an error of the report. It is also highly likely that most of the coastal views from the public trail would be completely obstructed by the proposed project.

Views from public access trail across Marisol property

Del Mar Municipal Code section 30.52.080, Bluff, Slope and Canyon Overlay Zone (BSC-OZ) currently restricts the obstruction of scenic views:

> *C. No primary scenic views or scenic views from public streets, roads or pedestrian trails shall be obstructed, unless the Design Review Board finds that there is no feasible alternative siting which eliminates or significantly reduces the obstruction, and that the bulk and scale of the proposed structure have been minimized to the greatest extent feasible commensurate with preserving the physical characteristics of the site.*

Likewise the Coastal Act Section 30251 states:

> *The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance**. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas**, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

The Marisol initiative proposes to eliminate the Beach Slope and Canyon Overlay Zone, within the boundaries of the Specific Plan, that requires preservation of scenic views, thus there will be a significant loss of public views and an unmitigated impact. We disagree with removing the project from the view requirements of the BSC-OZ Regardless, absent, the BSC-OZ, the project is still required to consider the impacts under the Coastal Act.

Flooding and Stormwater Components Do Not Take Into Account Increased Storm Intensity due to Climate Change

The DEIR cites the City of Del Mar's Coastal Hazards, Vulnerability, and Risk Assessment in noting that the region will experience "increased frequency and intensity of storms" in the future (DEIR, 4.7-2). Additionally, the DEIR acknowledges that the proposed development project would greatly increase the amount of impervious surface on the property and therefore increase stormwater runoff. Together, these two circumstances highlight the need for robust stormwater management; especially considering that any failure to manage stormwater would result in contamination of the San Dieguito Lagoon, designated a Water Quality Sensitive Area and Marine Protected Area; or a coastal stretch of the Pacific Ocean frequented by surfers and swimmers.

However, the DEIR fails to account for the increasing intensity of storms in its estimates of rainfall projections, noting:

> *"Under current conditions at the project site, the 100-year rainfall event would be expected to result in 2.3 inches of rain over a six-hour period and up to 4.0 inches over a 24-hour period." (DEIR, 4.7-2)*

The DEIR's corresponding drainage plan should be clarified to address peak flow attenuation based on future, 100-year rainfall projections:

> *"Drainage improvements associated with future development within the project site would be required to be implemented to address 100-year peak flow attenuation, based on future rainfall projections." (DEIR, 4.7-15)*

Stormwater management at the project site should account for increased intensity of storms in the future and discuss how proposed Best Management Practices (BMPs) will meet water quality goals and objectives. The project should also discuss how it will meet the goals of the Trash Amendments to the Regional Municipal Separate Stormwater System (MS4) permits currently being implemented in San Diego County. This is especially important given the fact that the property will be responsible for any westward flowing runoff discharged directly into the Pacific Ocean, as well as for privately maintained additions to local stormwater infrastructure.

Summary

In our comments we have outlined gross omissions in the DEIR that result in a deficient analysis of the 75-year bluff retreat distance. This will result in the proposed blufftop public access trail being sacrificed in order to protect private development. This is inconsistent with Del Mar Municipal Code as well as the Coastal Act. The developers also neglect to put their money where their mouth is by not taking a covenant or deed restriction to prohibit a future seawall when the development is threatened. Through their proposed rezoning, they have opened a loophole where future armoring could plausibly be allowed. Additionally, severe view impacts from an adjacent public access easement are not acknowledged or studied in the DEIR. Lastly, the DEIR's flooding and stormwater estimates are deficient as they do not take into account increased storm intensity due to climate change.

Sincerely,

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