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APPROVED  
JUL 29 2008  
CALIFORNIA COASTAL COMMISSION

F10a

July 25, 2008

California Coastal Commission  
7575 Metropolitan Drive - Suite 103  
San Diego, CA 92108-4421

Att: Toni Ross, Coastal Program Analyst  
Ref: Commission Appeal No. A-6-CII-08-018  
CDP 07-16 , Byrne Stair Replacement  
5001 Tierra Del Oro, Carlsbad, CA

Dear Toni,

This letter is my response to you and the Coastal Commissioners regarding your staff report of May 23, 2008 for the above referenced project. There is the old saying that a picture is worth a thousand words. I have included 16 pictures to hopefully give you and the Commissioners a better feel for the area and hopefully an understanding of our proposal being consistent with the area.

From a historical standpoint, this house and the house immediately to the south were both built by Mr Campbell in 1978/1979. He obtained Building Permits for both houses. At the same time he built both sets of wooden stairs. He was not required to pull permits for the stairs. Mr Campbell would submit a certified affidavit to confirm the aforementioned.

The staff report indicates our application to be a development. It is not. No division of land or construction of habitable space is proposed. The application is to rebuild the wooden stairs with concrete stairs, rebuild an existing 3' wall on the uphill side where a small flat terrace exists, and to construct a new 3' wall to slightly enlarge and define the existing terrace previously mentioned. No grading for the stairs is proposed. As previously requested, I provided you with additional stair cross sections to show you that concrete would be used under the stairs to pick up any grade differentials. The only dirt that would be used would be about 7 cubic yards of fill behind the new wall.

The stairs proposed are replacement stairs and do not access the beach.

With regards to the photos my comments are as follows

Photos 1 and 2: This is a new house being built on Ocean Street near the Army Navy Academy. They are providing two access stairs to the beach.

Photo 3: This is a close up of one of the stairs for the above. As you can see they are taking the stairs directly into the beach sand.

Photo 4: This shows fairly recent concrete stairs that come down sea walls and connect to the sand that were constructed just south of the Army Navy Academy on Ocean Street.

Photo 5: This is a brand new project, again by the Academy, with concrete stairs to the beach.

Photo 6: Another project near the Academy which shows both concrete stairs and wood stairs. The wood stairs will be requiring replacement sometime in the future. The picture doesn't show the state of the stairs that well because I took it from a distance to show both stair conditions.

Photos 7 and 8: These are the existing slopes/"bluffs" directly to the north of the Byrne house, which you can see in Photo 8. This shows what happens when no non erosive set of stairs is provided. The "bluff" face has beaten paths all over it with erosion and destruction of vegetation occurring every day.

Photo 9: This is the Byrne residence taken from the beach. You can only see the upper portion of the stairs. The lower portion of the stairs that accesses the lower part of their lot "disappears" from view. No stair access to the beach exists nor has it been requested.

Photo 10: This is the house directly to the south of the Byrne residence. The previous house was totally removed and this the rebuild that you see. You can see the wood walls for their rear yard patios. It also looks like they may be getting ready to upgrade their stairs. They have "steps" in the large rip rap to take them to the beach.

Photo 11: This house is the second house south of the Byrnes. About 3 years ago I processed a Coastal Permit for this house that included an upper patio enlargement on the right hand side, a mid level patio on the left, and new concrete replacement stairs down the middle of the lot. This is almost identical to what the Byrnes are asking for. You can see the end result is just lovely with well protected slopes, stairs that should not have to be replaced again, and no signs of erosion whatsoever.

Photo 12: This is the next southerly set of concrete stairs which allows the owners to access the lower portion of their backyard.

Photo 13: The next southerly house in succession with wooden stairs directly to the beach. You can see these stairs will need replacement soon.

Photo's 14 and 15: These are of the house 4 lots down from the Byrnes. This house was permitted and completed about 2 years ago. They built a wall near the bottom of their lot, built a few stairs to the top of the rip rap, constructed a concrete bench behind the rip rap, then built concrete stairs and a railing down to the sand.

Photo 16: This as a photo of the stairs mentioned above, looking north, to exhibit their encroachment into the sand.

There are more photos that I took and a lot more that I could have taken. I felt the ones I enclosed give you a general feel for the area to the north and south.

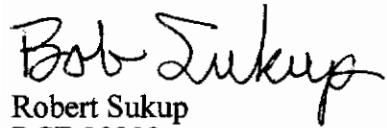
I believe the proposed stair repair in no way gives the feel of a private beach because they do not access the beach. Even if they did, I would still feel the same way. The repair of the stairs as proposed would create a situation where future repairs would be minimal verses would stairs which would require repairs sooner. No stair repair would leave a dirt path that would allow for erosion that benefits nobody.

I hope that you, as the Commissioners, can see the repairs as proposed , and as approved by the City, do not create any stability issues with the slope, will prevent erosion, and in no way impact the ability of the public to continue to use and enjoy the beach as they have for a long time.

I look forward to seeing you at the hearing to discuss this very important issue for my client.

Please call if you have any questions.

Sincerely,



Robert Sukup  
RCE 28302

byrnstc3  
encl.



PHOTO 1



PHOTO 2

100



PHOTO 3



PHOTO 4

101



PHOTO 5



PHOTO 6



PHOTO 7



PHOTO 8



PHOTO 9



PHOTO 10





PHOTO 11



PHOTO 12



← PHOTO 13

↘ PHOTO 14



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PHOTO 15



PHOTO 16

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4421  
(619) 767-2370



# F 10a

Filed: February 2, 2008  
49th Day: Waived  
Staff: Toni Ross-SD  
Staff Report: July 17, 2008  
Hearing Date: August 6-8, 2008

## STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Carlsbad

DECISION: Approval with Conditions

APPEAL NO.: A-6-CII-08-018

APPLICANT: Richard Byrne

PROJECT DESCRIPTION: The removal of an existing unpermitted private wooden beach access staircase and the construction of a new concrete staircase in its place, including a 130 sq. ft. patio and two retaining walls, all on the face of the coastal bluff fronting a site currently developed with a single family residence.

PROJECT LOCATION: 5001 Tierra Del Oro St. Carlsbad (San Diego County).  
APN # 210-020-23.

APPELLANTS: Commissioner Sara Wan, Commissioner Pat Kruer

STANDARD OF REVIEW: Certified City of Carlsbad Mello II Local Coastal Program  
and the public access policies of the Coastal Act.

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### SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that substantial issue exists with respect to the grounds on which the appeal has been filed. Staff also recommends that the Commission find, on the de novo review, that the proposed development is not consistent with the City of Carlsbad's LCP, and therefore deny the project approved by the City. The approved project includes the removal of existing wooden stairs, that to date, do not have any permit history. Therefore, the stairs are an existing unpermitted structure. Further, the development is located on the bluff face, a development expressly not permissible by the City's LCP. Further the project would include grading of the bluff face which would result in impacts to the bluff's integrity, and the construction of a more permanent structure which would result in prolonged impacts to public access. These impacts can be avoided by maintaining the area in a natural condition. Therefore, the project is not in conformance with the City of

Carlsbad's LCP or the applicable Chapter 3 policies of the Coastal Act and denial is recommended. Removal of the existing unpermitted stairs will be handled as a separate enforcement action.

Standard of Review: Certified City of Carlsbad Local Coastal Program and the public access and recreation policies of the Coastal Act.

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SUBSTANTIVE FILE DOCUMENTS: Certified City of Carlsbad Mello II LCP; City of Carlsbad Resolution for CDP #07-16 dated January 16, 2008; Coastal records Aerial photography courtesy of Kenneth and Gabrielle Adelman (<http://www.californiacoastline.org>), Image #'s 7240101, 7240102, 7954103, 6954104, 8702147, 8702146, 8920234, 8920233, 8920232, 9047, 9048, 9049, 9050, 200407472, 200407475, 200604188, 200604189 (in chorological order); Coastal Commission permits F6162/Gavin; 6-82-323/Roth; F1396/Barlow; F7385/ Clements; A-6-CII-07-017/Riley; City of Carlsbad appealable permits 6-CII-97-159/ Bagnall; 6-CII-98-001/Eaton; 6-CII-05-176/ Viola; 6-CII-05-287/ Sukup; Appeal Forms.

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I. Appellants Contend That: The appellants contend that the project as approved is inconsistent with policies protecting coastal bluffs included in the City of Carlsbad's certified Local Coastal Program and policies protecting the public's right to access the beach in both the City's LCP and the Coastal Act. The project includes the removal of an existing unpermitted wooden stairway used as private access to the beach down a coastal bluff, and the subsequent construction of concrete stairs, construction of retaining walls and construction of a 130 sq. ft. patio, all on the face of the coastal bluff. The project would require grading and the construction of permanent development on a natural coastal bluff; as such the development may result in impacts to the integrity of the coastal bluff. Permitting private accessways to the beach also results in impacts to public access, as the proliferation of private stairways leads to the perception by the public that those beaches are exclusive and/or private. The appellants contend that the development is inconsistent with the intent of the City's certified LCP for impacts to coastal bluff stability and protection of public access.

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II. Local Government Action: The City of Carlsbad approved the proposal on January 13, 2008. The Minor Coastal Development permit was approved with several "standard" special conditions. None of the approved special conditions were developed to address the previously mentioned impacts to coastal bluffs and public access.

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III. Appeal Procedures: After certification of a municipality's Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permit applications. One example is that the approval of projects within cities and counties may be appealed if the projects are

located between the first public road and the. The grounds for such an appeal are limited to the assertion that “development does not conform to the standards set forth in the certified local coastal program or the [Coastal Act] public access policies.” Cal. Pub. Res. Code § 30603(b)(1).

After the local government has taken final action on an appealable project, it must send a notice of that final action (NOFA) to the Commission. Cal. Pub. Res. Code § 30603(d); 14 C.C.R. § 13571. Upon proper receipt of a valid NOFA, the Commission establishes an appeal period, which runs for 10 working days. Cal. Pub. Res. Code § 30603(c); 14 C.C.R. § 13110 and 13111(b). If an appeal is filed during the appeal period, the Commission must “notify the local government and the applicant that the effective date of the local government action has been suspended,” 14 C.C.R. § 13572, and it must set the appeal for a hearing no later than 49 days after the date on which the appeal was filed. Cal. Pub. Res. Code § 30621(a).

Section 30625(b)(2) of the Coastal Act requires the Commission to hear an appeal of the sort involved here unless the Commission determines that no substantial issue is raised by the appeal. If the staff recommends “substantial issue” and no Commissioner objects, the Commission will proceed directly to the de novo portion of the hearing on the merits of the project then, or at a later date.

If the staff recommends “no substantial issue” or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project either immediately or at a subsequent meeting. If the Commission conducts the de novo portion of the hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Sec. 30604(c) of the Coastal Act requires that, for a permit to be granted, a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act.

The only persons qualified to testify before the Commission at the “substantial issue” stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo portion of the hearing, any person may testify.

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#### IV. Staff Recommendation on Substantial Issue.

The staff recommends the Commission adopt the following resolution:

**MOTION:**     *I move that the Commission determine that Appeal No. A-6-CII-08-018 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

#### **STAFF RECOMMENDATION:**

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

#### **RESOLUTION TO FIND SUBSTANTIAL ISSUE:**

The Commission hereby finds that Appeal No. *A-6-CII-08-018* presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

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#### V. Findings and Declarations.

**1. Project Description/Permit History.** The proposal includes the removal of an existing private wooden beach access staircase and the construction of a concrete staircase including a 130 sq. ft. patio to be constructed of concrete pavers and several retaining walls on the face of the coastal bluff fronting a blufftop lot currently developed with a single family residence. The project site is located on the west side of Tierra Del Oro, just north of Cannon Road in the City of Carlsbad. The subject site is the northernmost lot within the Tierra Del Oro development. The site slopes down from Tierra Del Oro, transitioning into a steep coastal bluff. The bottom of the bluff face is currently covered with a large riprap revetment that extends onto the beach.

The single family residence located on the site was constructed in 1978 a Coastal Development Permit (CDP) was issued by the Commission for its construction (ref. CPD #F6162). However, the wooden staircase running down the coastal bluff was not constructed until many years later. It is unclear, based on aerial photography, what year the staircase was constructed, however it does not appear in photographs dated 1987 and does appear in photographs in 2002. The City of Carlsbad attained permit authority in 1996; therefore the permit for the construction of the staircase could have been issued by either the Coastal Commission or the City of Carlsbad; however no coastal development

permit was found issued by either the City of Carlsbad or the Coastal Commission. Therefore the existing stairs are considered unpermitted development.

Other homes located on the western side of Tierra Del Oro have private stairways or other improvements located on the bluff face. Again, in looking at available aerial photography, 5 of the 13 lots on the western side of this street had private accessways built prior to enactment of the Coastal Act. Beyond that, three Coastal Development Permits (CDPs) were issued by the Coastal Commission for various improvements on what is now considered the bluff face (ref. F1396, F7385, 6-82-323). Furthermore, the City of Carlsbad also issued four coastal development permits for development on what is now considered the coastal bluff face (ref. 6-CII-05-176, 6-CII-05-287, 6-CII-97-159, 6-CII-98-001) none of which were appealed by the Coastal Commission based on the information available at that time.

In 2007, the City of Carlsbad approved a CDP for the last vacant lot on Tierra Del Oro (ref. CDP A-6-CII-07-017/Riley) approximately 300 feet to the south of the subject site. Because of the conditions on this lot, the Commission's Technical Services staff reviewed in depth the geotechnical information submitted associated with this CDP. Previous to this review, the bluff edge was loosely defined at approximately the +20' Mean Sea Level (MSL) elevation. However, after more careful review of submitted geotechnical reports by the Commission's staff geologist for the above cited project in 2007, the bluff edge was more accurately defined and located at approximately the +36' (MSL) elevation. The Commission appealed the project (ref. A-6-CII-07-017/Riley) and required the project to be modified to remove all development located west of the 36' contour (i.e., remove all permanent improvements from the face of the coastal bluff). The subject development is the first CDP issued by the City since that determination. The Commission recognizes that development on the bluff face exists at several locations on Tierra Del Oro. However, most of these projects occurred before the Commission had a geologist on staff to advise it with respect to the location of the bluff edge; now that the bluff edge has been defined at approximately +36' (MSL) elevation and given the City's LCP provisions restricting development on the face of the bluff to only public accessways (private accessways are not permitted), these types of projects located beyond the established bluff edge (+36' MSL) can no longer be found consistent with the City of Carlsbad's certified LCP.

**2. Development on a Coastal Bluff.** The appellants contend that the project will result in impacts to the coastal bluff located on the western portion of the lot. The City approved project includes some grading and some placement of fill to facilitate the construction of concrete stairs, patio, retaining wall etc. Both the grading and associated construction would be considered development. Development on a coastal bluff is inconsistent with the City of Carlsbad's certified LCP. The certified Carlsbad Mello II LUP contains policies that address bluff preservation. Policy 4-1 provides:

(d) Undevelopable Shoreline Features



No development shall be permitted on any sand or rock beach or on the face of any ocean bluff, with the exception of accessways to provide public beach access and of limited public recreation facilities. [emphasis added]

In addition, Section 21.204.050 of the Coastal Shoreline Development Overlay Zone provides:

a. Grading and Excavation – Grading and excavation shall be the minimum necessary to complete the proposed development consistent with the provisions of this zone and the following requirements:

2) No excavation, grading or deposit of natural materials shall be permitted on the beach or the face of the bluff except to the extent necessary to accomplish construction pursuant to this section.

The Commission has interpreted the above stated City of Carlsbad LCP policies to mean that only at-grade structures are permitted on a bluff face, which do not require grading. The Commission has found that “the minimum necessary” for new development on the bluff face means at-grade and ephemeral structures that do not require excavation which results in more permanent developments. The project is proposing permanent structures (concrete stairs, patio, retaining wall) seaward of the residence on the bluff face which will require some excavation and/or fill and, as such, is inconsistent with the above provisions of the certified LCP. In addition, as noted above, only **public** access stairways are permitted on the face of the bluff, not private.

Development on coastal bluffs can result in impacts such as degradation and instability of the bluff. As stated above, the Commission previously reviewed the location of the edge of the coastal bluff edge in 2007 and determined that the bluff edge was located at approximately the +36' MSL elevation, as opposed to the previously accepted +20' MSL elevation. This modification results in the bluff edge being located much further inland on all western properties of Tierra Del Oro. Previously the accepted +20' MSL elevation allowed development along the entire natural sloping bluff to the top of the riprap revetment that exists on the beach fronting all blufftop lots on Tierra del Oro. The policies regulating development of coastal bluffs will now be additionally applied to the area located between the 20' and 36' contours for the Tierra Del Oro development. The applicant did not include a geotechnical report associated with this project. However, the Commission's staff geologist has reviewed photographs, topographic maps and visited the site and has determined that the edge of the bluff is around the +36' elevation (MSL). The Commission recognizes that development on the bluff was previously permitted by both the City of Carlsbad and the Coastal Commission (ref. Exhibit #5). However, when new technologies and/or information become available, the policies must be interpreted in light of this new information. As such, any development located seaward of the +36' MSL elevation is on the face of the coastal bluff and must comply with the above cited LCP policies pertaining to development on a coastal bluff.

Lastly, as stated above, there is no permit history for the original development of a stairway on the face of the bluff, and as such, it is considered unpermitted. The City in its review failed to address whether the existing stairs had received the necessary permits and it has already been determined that the stairway was not constructed prior to implementation of the Coastal Act. Therefore, the proposal is treated as new development on the bluff face as opposed to maintenance or improvements to existing permitted development. The policies of the City of Carlsbad's certified LCP do not allow development on the bluff face or the proposed improvements (concrete vs. wooden) that would require grading on the bluff face. Furthermore, the project as approved by the City, replaces what is considered an at grade ephemeral stairway with a more permanent concrete stairway that will require some grading. As such, the impacts associated with the approved development are greater than that of a replacement wooden stairway. Therefore the project raises substantial issues both because it impacts the bluff as it is a more intensive and permanent structure than the existing stairway and because it consists of a private accessway, and public accessways are the only development allowed on the face of a coastal bluff. The project therefore, raises a substantial issue with respect to the grounds on which the appeal was filed.

**3. Public Access.** Because the development is located between the first coastal road and the sea any relevant public access policies of the Coastal Act are applicable, as well as the policies addressing public access within the City of Carlsbad's LCP. The appellants contend that the project will result in the perpetuation of private accessways to a public beach. Currently Tierra Del Oro does not have a single accessway for the public and as such, the private accessways to the beach often lead to the public perceiving the beach itself to be private as well. The certified Carlsbad Mello II LUP and Chapter 3 of the Coastal Act contain policies that address public access and state:

Coastal Act policies:

**Section 30210**

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

**Section 30211**

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

**Section 30212**

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

- (1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
- (2) Adequate access exists nearby, or, [...]

### **Section 30213**

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

The “Coastal Shoreline Development Overlay Zone”, an implementing measure of Carlsbad’s certified Mello II LCP Policy 7-3 states:

The city will cooperate with the state to ensure that lateral beach access is protected and enhanced to the maximum degree feasible, and will continue to formalize shoreline prescriptive rights.....

The Commission has historically discouraged the development of private access stairs from residential development to the beach, as it can deter public access. Development such as private access stairs and armoring creates a perception that the beach fronting these sites is also private, leading to a decrease in public access. While some homes on Tierra Del Oro have beach accessways on the bluff, these developments are either unpermitted or were permitted prior to establishing a thoroughly researched location of the bluff edge. Appeal A-6-CII-07-17/Riley was brought before the Commission in August 2007 and established the correct location for the bluff edge along this stretch of coast. As approved by the City, the proposed development includes the construction of a concrete stairway and accessory patio down the coastal bluff. The continued approval of development would therefore not only be inconsistent with the policies protecting development on a coastal bluff, but would also result in the perpetuation of development directly adjacent to a public beach, thus impacting public access. By prohibiting future development on the bluff face not only will the structural integrity of the bluff remain, but the perception by the public of an exclusive or private beach would be reduced. Further, there is currently no public access from anywhere on Tierra Del Oro Street. The need for creating public access has not been required due to the proximity of public access to the beaches in nearby locations. These nearby public accessways also provide beach access to homeowners on Tierra Del Oro St., thereby making private accessways unnecessary, especially given that private accessways are not protected or endorsed by the City's certified LCP. The proposed development is inconsistent with the applicable public access policies of the Coastal Act and the City of Carlsbad's LCP and therefore raises a substantial issue.

In conclusion, given the lack of permit history for the original development of the wooden stairway down the bluff; the prohibition in the LCP for private development on the bluff face, the replacement of a the wooden stairway with a more permanent concrete stairway, and the lack of endorsement for private accessways in both the City's LCP and the Coastal Act; the project raises multiple significant concerns. The City failed to address any of these above stated concerns in its review. The project as approved by the City therefore raises substantial issue.

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## **STAFF RECOMMENDATION ON THE COASTAL PERMIT**

### **I. PRELIMINARY STAFF RECOMMENDATION:**

**MOTION:**     *I move that the Commission approve Coastal Development Permit No. A-6-CII-06-18 for the development proposed by the applicant.*

### **STAFF RECOMMENDATION OF DENIAL:**

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

### **RESOLUTION TO DENY THE PERMIT:**

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform with the policies of certified local coastal program and the public access policies of Chapter 3 of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

### **II. Findings and Declarations.:**

#### **1. Project Description.**

The proposal includes the removal of an existing unpermitted wooden staircase and the construction of a concrete staircase including a 130 sq. ft. patio to be constructed by concrete pavers and retaining walls on the face of a coastal bluff seaward of an existing single family residence. The details of the project description are described above on pages 4 and 5 of this staff report and are hereby incorporated by reference.

## **2. Development on a Coastal Bluff.**

The certified Carlsbad Mello II LUP contains policies that address bluff preservation. Policy 4-1 provides:

### (d) Undevelopable Shoreline Features

No development shall be permitted on any sand or rock beach or on the face of any ocean bluff, with the exception of accessways to provide public beach access and of limited public recreation facilities. [emphasis added]

In addition, Section 21.204.050 of the Coastal Shoreline Development Overlay Zone provides:

a. Grading and Excavation – Grading and excavation shall be the minimum necessary to complete the proposed development consistent with the provisions of this zone and the following requirements:

2) No excavation, grading or deposit of natural materials shall be permitted on the beach or the face of the bluff except to the extent necessary to accomplish construction pursuant to this section.

The project as approved by the City of Carlsbad consists of the removal of an unpermitted wooden private accessway and the construction of a concrete stairway with retaining wall improvements and the addition of a 130 sq. ft. patio and several retaining walls on the face of a coastal bluff. The Commission has historically interpreted the above stated zoning ordinance provision to mean that any development beyond the edge of the bluff would have to be at-grade, ephemeral, and capable of being removed. Further, LUP policy 4.1 states that the only type of development permissible on the face of a bluff is *public* accessways. As such, the development raises concerns in that the development is not considered at grade, and it consists of the construction of a private accessway, both of which are prohibited by the City's certified LCP.

The proposed project includes the removal of an existing wooden stairway utilized for private access to the beach. The existing stairs were not constructed prior to the Coastal Act, nor is there any permit history for the development of the stairs. As such, the existing development is considered unpermitted development. The Commission has historically allowed "in-kind" replacement of previously permitted private stairways or stairways that were constructed prior to the Coastal Act. In this particular case, because the stairs were not previously permitted nor constructed prior to the Coastal Act, the replacement of "in-kind" stairs is not necessary. As such, the existing stairway not only cannot be replaced by more permanent concrete stairs, but it cannot be replaced by more ephemeral wooden stairs either. Thus, the project cannot be found consistent with the City of Carlsbad's LCP and the project shall be denied as submitted.

As stated previously, recent review of the coastal bluff edge in this location (Tierra Del Oro St.) by the Commission's staff geologist has resulted in a bluff edge located more inland than previously accepted (+36' vs. +20' elevation (MSL) contour). Development that at one time was thought to be consistent with applicable policies of Carlsbad's certified LCP is therefore no longer consistent.

The current existing pattern of development includes a private accessway down the face of the bluff, at all but two of the blufftop lots, allowing individual residents to gain access to the low lying beaches. As previously explained, these stairways/improvements have either no permit history (thus unpermitted), were constructed prior to enactment of the Coastal Act or were issued a CDP by the City that was not appealed by the Coastal Commission (ref. Exhibit #5) based upon the information available at that time. However, it is important to note that prior to the review of the Riley property in 2007, the accepted location of the bluff edge was at approximately +20' MSL (the top of the riprap) and not +36' MSL elevation. It should be noted that most of the CDP approvals by the City and/or the Commission for these structures occurred prior to the Commission having its own staff geologist to provide technical expertise on the location of the bluff. Prior to that, the Commission had to just accept the applicant's consultants bluff edge determination.

Many of the developed lots on this street that have private accessways that are constructed even further seaward than the +20' MSL elevation (within the revetment and/or onto the sandy beach) are considered violations and are being reviewed by Coastal enforcement staff. It was never the intention of these past actions to allow development down the face of the bluff, but rather development *to* the established bluff edge. It is the hope of the Commission that over time as residents propose upgrades or replacements on the upland sites that the City reestablish the bluff edge at its most accurate and updated location resulting in a decrease in potential or permissible bluff face development proposals thus maintaining only the currently permitted development and allowing for the protection of the coastal bluff in its most natural and current state. As such, approval of this project represents a development that the Commission has determined to be inconsistent with the certified policies of the City's LCP. The project, therefore, shall be denied as submitted.

**3. Public Access.** Because the development is located between the first coastal road and the sea any relevant public access policies of the Coastal Act are applicable, as well as the policies addressing public access within the City of Carlsbad's LCP. The project will result in the perpetuation of private accessways to a public beach on the face of a coastal bluff. The certified Carlsbad Mello II LUP and Chapter 3 of the Coastal Act contain policies that address public access and state:

Sections 30210, 30211, 30212 and 30213 of the Coastal Act state:

**Section 30210**

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

### **Section 30211**

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

### **Section 30212**

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

- (1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
- (2) Adequate access exists nearby, or, [...]

### **Section 30213**

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

The “Coastal Shoreline Development Overlay Zone”, an implementing measure of Carlsbad’s certified Mello II LCP Policy 7-3 states:

The city will cooperate with the state to ensure that lateral beach access is protected and enhanced to the maximum degree feasible, and will continue to formalize shoreline prescriptive rights.....

The Commission has historically been unsupportive of the development of private accessways to the beaches of California. The proliferation of private accessways in a single location results in the appearance of an exclusive or private beach. The project is located between the first coastal road and the sea, and as such, Coastal Act policies pertaining to public access are also applicable. One of the key provisions of the Coastal Act is to protect, maintain, and enhance *public* access to coastal areas and beaches. The development of private accessways gives members of the public the impression that the residents in these areas somehow maintain an exclusive right to access these beaches, thereby decreasing the general public's access to the area.

The Commission has allowed the replacement of "in-kind" private accessways previously permitted or constructed prior to the Coastal Act. These developments can be considered "grandfathered in" and as such are allotted a certain amount of protection. However, in this case, the stairs were not constructed prior to the Coastal Act and therefore are not given the latitude for "in-kind" replacement. Further, the proposed project is of greater intensity and the scale of the development (wooden to concrete) results in a more permanent structure, thereby exacerbating the impacts to public access. As such, the replacement of the existing stairway by any sort of means would not be consistent with the above stated policies and therefore shall be denied as submitted.

In conclusion, the project is inconsistent with the applicable policies of the Coastal Act and the City's certified LCP in three different respects. First, the development is not permissible in that the location of the development is down the face of a coastal bluff. The only development permissible by the City's LCP in this location is public accessways. Second, the project will result in grading and fill on a coastal bluff, also inconsistent with the LCP. Third, the project will result in impacts to public access, in that the development will result in a more permanent private accessway, known to deter members of the public from the associated beaches. Denying the project will result in benefits to both the coastal bluffs and public access. The project is therefore inconsistent with multiple policies contained in both the City of Carlsbad's certified LCP and the Coastal Act and should therefore be denied as submitted.

**4. Unpermitted Development.** Although development in the form of the construction of a private accessway has been completed without the benefit of a coastal development permit, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of the permit does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit. Removal of the unpermitted development will be addressed through a separate enforcement action.

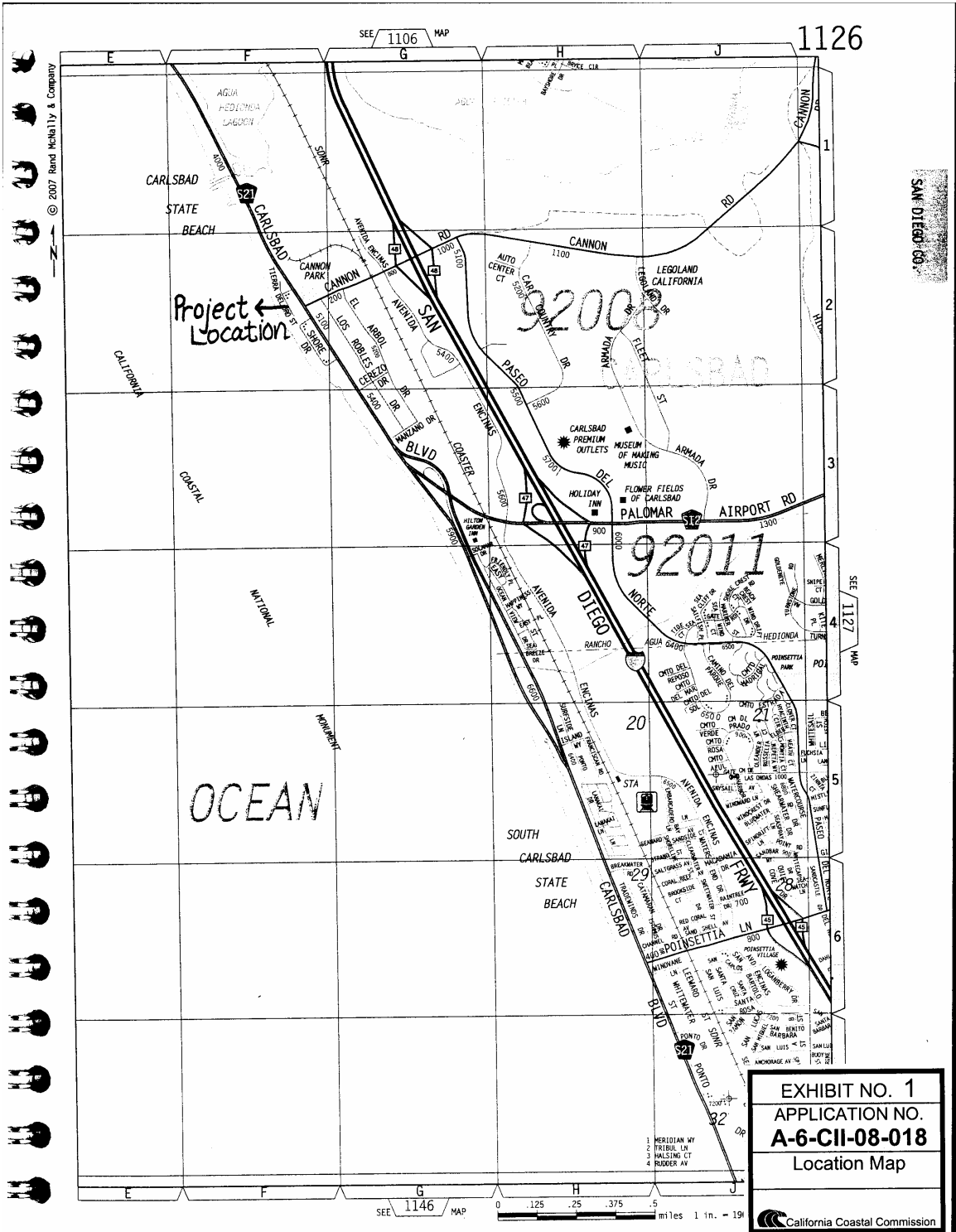
**5. Local Coastal Planning.** The certified Carlsbad LCP Mello II segment contains in its Zoning Plan, Coastal Development Regulations that include a Coastal Resource Protection Overlay Zone and the Coastal Shoreline Development Overlay Zone, which have been cited in this report. The purpose of these overlays, among other purposes, is to provide regulations for development and land uses along the coastline in order to maintain the shoreline as a unique recreational and scenic resource, affording public safety and access, and to avoid the adverse geologic and economic effects of bluff erosion.

The proposed project includes the construction of a concrete stairway and associated improvements on a coastal bluff, inconsistent with the above cited provisions of the LCP. Denial will result in protection of coastal bluffs and public access and recreational opportunities. Therefore, the Commission finds that denial of the proposed development will not prejudice the ability of the City to continue implementation of its certified LCP.

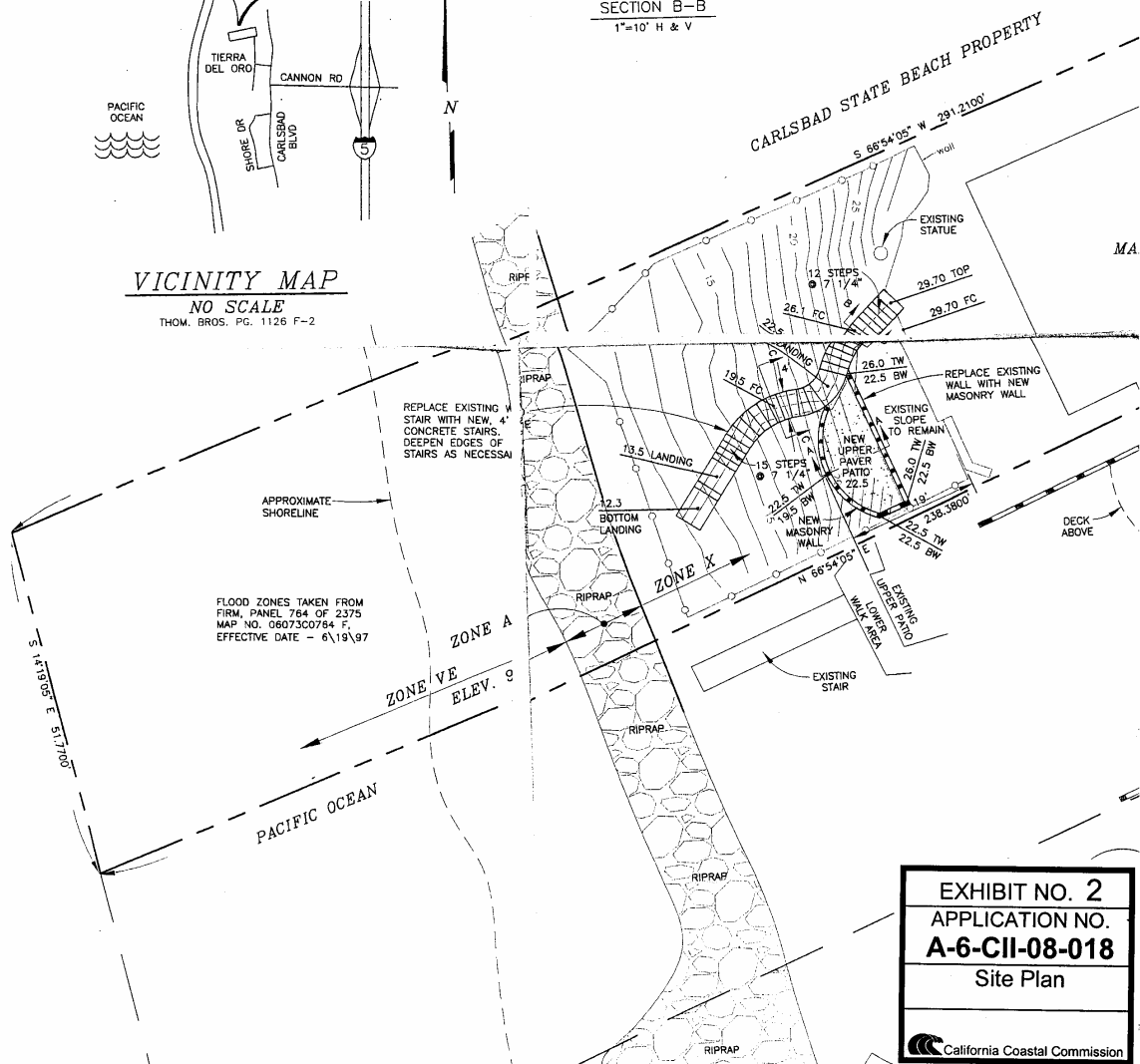
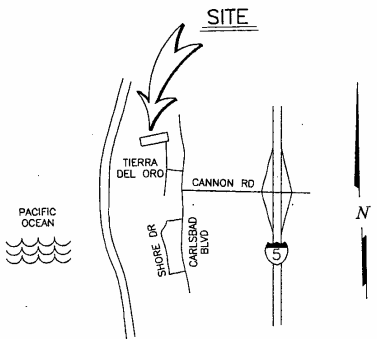
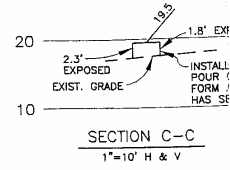
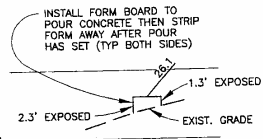
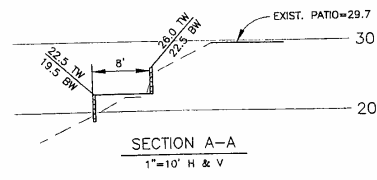


**6. California Environmental Quality Act (CEQA).** Section 13096 of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit to be supported by a finding showing the permit is consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The project as proposed will result in unmitigatable impacts to both coastal bluffs and public access. Any modifications to the project, including allowing the development of an at grade stairway capable of being removed would still result in impacts to coastal bluffs and public access and recreational opportunities. The “No Project” alternative (or denial) is the only feasible alternative that would substantially lessen any significant adverse impacts the development would have on the environment. Therefore, the Commission finds that the proposed project is not the least environmentally damaging feasible alternative and is not consistent with the requirements of the Coastal Act to conform to CEQA.



PROPERTY OWNER INFORMATION	
NAME:	RICHARD & LORINE BYRNE
ADDRESS:	5001 TIERRA DEL ORO CARLSBAD, CA 92008
TELEPHONE NUMBER:	(760) 749-1539
24 HOUR CONTACT NUMBER:	
SITE A.P.N. NUMBER:	210-020-23
SITE ADDRESS:	5001 TIERRA DEL ORO CARLSBAD, CA 92008



**EXHIBIT NO. 2**  
**APPLICATION NO.**  
**A-6-CII-08-018**  
 Site Plan



# City of Carlsbad

**Planning Department**

## MINOR COASTAL DEVELOPMENT PERMIT NOTICE OF DECISION

January 13, 2005

Herbert & Lorine Byrne  
5001 Tierra Del Oro Street  
Carlsbad, CA 92008

**SUBJECT: CDP 04-55 – BYRNE RESIDENCE ALTERATION**

The City has completed a review of the application for a Minor Coastal Development Permit for the conversion of an existing 275 square foot bedroom and hall to an indoor/outdoor lanai space and the construction of a 187 square foot balcony above the conversion area.

It is the Planning Director's determination that the project **CDP 04-55 – BYRNE RESIDENCE ALTERATION**, is consistent with the applicable City's Coastal Development Regulations (Chapters 21.201 - 21.205) and with all other applicable City ordinances and policies. The Planning Director, therefore, **APPROVES** this request based upon the following:

**Findings:**

1. That the total cost of the proposed development is less than \$60,000.
2. That the proposed development requires no discretionary approvals other than a Minor Coastal Development Permit.
3. That the development has no adverse effect individually or cumulatively on coastal resources or public access to the shoreline or the coast, in that no coastal resources or opportunities for coastal access are available from the subject site.
4. That the proposed development is in conformance with the Certified Local Coastal Program and all applicable policies in that the site is designated for residential uses.
5. That the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act, in that no opportunities for coastal access are available from the subject site, nor are public recreation areas required.

EXHIBIT NO. 3
APPLICATION NO.
<b>A-6-CII-08-018</b>
Administrative Permit
California Coastal Commission

CDP 04-55 – BYRNE RESIDENCE ALTERATION  
January 14, 2005  
Page 3

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4. The Developer shall comply with all applicable provisions of federal, state, and local laws and regulations in effect at the time of building permit issuance.
5. If any condition for construction of any public improvements or facilities, or the payment of any fees in-lieu thereof, imposed by this approval or imposed by law on this Project are challenged, this approval shall be suspended as provided in Government Code Section 66020. If any such condition is determined to be invalid this approval shall be invalid unless the City Council determines that the project without the condition complies with all requirements of law.
6. The Developer/Operator shall and does hereby agree to indemnify, protect, defend and hold harmless the City of Carlsbad, its Council members, officers, employees, agents, and representatives, from and against any and all liabilities, losses, damages, demands, claims and costs, including court costs and attorney's fees incurred by the City arising, directly or indirectly, from (a) City's approval and issuance of this **Minor Coastal Development Permit**, (b) City's approval or issuance of any permit or action, whether discretionary or non-discretionary, in connection with the use contemplated herein, and (c) Developer/Operator's installation and operation of the facility permitted hereby, including without limitation, any and all liabilities arising from the emission by the facility of electromagnetic fields or other energy waves or emissions.
7. This approval shall become null and void if building permits are not issued for this project within 24 months from the date of project approval.
8. Developer shall pay the citywide Public Facilities Fee imposed by City Council Policy #17, the License Tax on new construction imposed by Carlsbad Municipal Code Section 5.09.030, and CFD #1 special tax (if applicable), subject to any credits authorized by Carlsbad Municipal Code Section 5.09.040. Developer shall also pay any applicable Local Facilities Management Plan fee for Zone 1, pursuant to Chapter 21.90. All such taxes/fees shall be paid at issuance of building permit. If the taxes/fees are not paid, this approval will not be consistent with the General Plan and shall become void.
9. Approval is granted for **CDP 04-55** as shown on Exhibits **A-C**, dated **January 13, 2005**, on file in the Planning Department and incorporated herein by reference. Development shall occur substantially as shown unless otherwise noted in these conditions.
10. Prior to the issuance of the **building permit**, Developer shall submit to the City a Notice of Restriction to be filed in the office of the County Recorder, subject to the satisfaction of the Planning Director, notifying all interested parties and successors in interest that the City of Carlsbad has issued a **Minor Coastal Development Permit** on the property. Said Notice of Restriction shall note the property description, location of the file containing complete project details and all conditions of approval as well as any conditions or restrictions specified for inclusion in the Notice of Restriction. The Planning Director has the authority to execute and record an amendment to the notice which modifies or terminates said notice upon a showing of good cause by the Developer or successor in interest.



April 8, 2008

California Coastal Commission  
 7575 Metropolitan Drive - Suite 103  
 San Diego, CA 92108-4421

Att: Toni Ross, Coastal Program Analyst  
 Ref: Commission Appeal No. A-6-CII-08-018  
 CDP 07-16 , Byrne Stair Replacement  
 5001 Tierra Del Oro, Carlsbad, CA

RECEIVED

APR 10 2008

CALIFORNIA  
 COASTAL COMMISSION  
 SAN DIEGO COAST DISTRICT

Dear Toni,

The above referenced project was approved by the City of Carlsbad but subsequently appealed by the Coastal Commission. Since our meeting with you and Lee we have spent a lot of time in researching the history of the lot. Our findings are as follows:

1. The house on this lot and the lot directly to the south were built at the same time in 1978.
2. The permits that were obtained from the City of Carlsbad were for the house construction only. There was no requirement at that time to pull a permit for the stairs. It was something that you just built.
3. The owner, Dick Byrne, believes he has the contact person that has a picture that shows the stairs existed around 1979.

Comments:

1. Even if Dick is successful in finding the photo, the stairs were built after the Coastal Commission came into existence.
2. No permit was pulled for the stairs but none was necessary from the City of Carlsbad at that time. I doubt there was any discussion about needing a Coastal Permit for the stairs.
3. A Coastal Permit was issued about 2.5 years ago for a similar set of replacement concrete stairs 2 lots south of the Byrne property.
4. The proposed concrete stairs will not require grading. To try and do minor fills to accommodate grade differentials would require a lot of work and greater disturbance to the existing slope.
5. Stair construction is proposed to be done by forming each side and pumping concrete in between the forms. This creates the least amount of disturbance to the slopes.
6. The stairs do not provide access to the beach. They are proposed to follow the identical path of the existing stairs, so the Byrnes can get to the lower part of their lot, as they have been doing for the last 12 years.
7. Concrete stairs have a much higher life expectancy than wood stairs and would hopefully never have to be redone.
8. New wood stairs would require replacement in the future and thus create another path to the slope area. Concrete stairs would most likely negate any future work.
9. To simply remove the deteriorating stairs would leave a dirt path to the lower part of the lot which would leave a highly erodible condition which nobody prefers or wants.

Engineering Management General Contracting Development

4322 Sea Bright Place Carlsbad, CA 92008 Telephone/FAX 760-720-0000

EXHIBIT NO. 4
APPLICATION NO.
<b>A-6-CII-08-018</b>
Letter from Agent
California Coastal Commission

Conclusion:

The Byrnes have been utilizing the existing stairs for the last 12 years since they have owned the house. It appears the stairs may have existed for 29 years. Their proposed stair repair requires no grading and would create a very long term fix. The stairs adhere to the existing established string line. Many neighbors to the south are able to utilize their stairs, and we are hoping the Commission can see fit to allow the existing approval to remain, so the Byrnes can repair their stairs and continue to use them as they have for the last 12 years.

Please call if you have any questions.

Sincerely,



Robert Sukup  
RCE 28302

byrncstc


**RECEIVED**

APR 10 2008

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

CITY PERMITS ISSUED: **YELLOW DOTTED LINE**  
CCC PERMITS ISSUED: **RED DOTTED LINE**  
POTENTIAL VIOLATIONS: **GREEN ARROWS**  
UNKNOWN: **NO INDICATOR**  
PRE-COASTAL: **BLUE ARROW**



EXHIBIT NO. 5
APPLICATION NO.
<b>A-6-CII-08-018</b>
Aerial Map of Tierra Del Oro
 California Coastal Commission