

**CALIFORNIA COASTAL COMMISSION**

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**Th15.5a**

Filed: 6/17/2015  
 49th Day: 8/7/2015  
 Staff: R. Casswell-SD  
 Staff Report: 6/25/2015  
 Hearing Date: 7/9/2015

**STAFF REPORT AND RECOMMENDATION ON APPEAL  
 SUBSTANTIAL ISSUE DETERMINATION**

**Local Government:** City of Carlsbad

**Decision:** Approved with Conditions

**Appeal Number:** A-6-CII-15-0039

**Applicant:** Carson Nolan (Island Architects)

**Location:** 5039 Tierra Del Oro, Carlsbad, San Diego County (APN No. 210-020-08)

**Project Description:** Demolition of existing 3,056 square foot single-story single-family residence with basement, partial demolition of existing detached 528 square foot two-car garage with 432 square foot guest house; construction of a new two-story 8,845 square foot single-family residence with basement and new pool and deck.

**Appellants:** Commissioner Dayna Bochco, Commissioner Jana Zimmer

**Staff Recommendation:** Substantial Issue

**IMPORTANT HEARING PROCEDURE NOTE**

The Commission will not take testimony on this "substantial issue" recommendation unless at least three commissioners request it. The Commission may ask questions of the applicant, any aggrieved person, the Attorney General or the executive director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally and at the discretion of the Chair limited to 3 minutes total per side. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing.

If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony.

## **SUMMARY OF STAFF RECOMMENDATION**

Staff recommends that the Commission, after public hearing, determine that a substantial issue exists with respect to the grounds on which the appeal has been filed.

The proposed project involves demolition of an existing 3,056 square foot, one-story single-family residence with basement, along with partial demolition of an existing detached 528 square foot two-car garage, with attached 432 square foot guest house, and the construction of a new two-story 8,845 square foot single-family residence with basement and a new pool (with pool deck) on a 26,600 square foot blufftop property. The project site is a coastal blufftop lot located on the west side of Tierra Del Oro, just south of Cannon Road. The existing residence was built in 1959, with private stair access extending across the bluff face and to the beach, and a rip rap revetment along the rear property line established prior to the Coastal Act.

The neighborhood is planned for residential development within the Mello II Segment of the City's certified Land Use Plan (LUP), and the subject property has a land use designation of Residential Low-Medium Density/Open Space (RLM/OS). The OS designation applies to the bluff and beach portions of the property. The subject site is also located within, and subject to, the Coastal Resource Protection Overlay zone and the Coastal Shoreline Development Overlay Zone of the Carlsbad Municipal Code (i.e. the City's Implementation Plan, "IP").

The City found that the subject single-family residence is consistent with the public access, public recreation, blufftop, and shoreline development provisions of the certified Local Coastal Program (LCP). However, the development, as approved by the City, raises several LCP consistency issues with regard to stringline setbacks, geologic stability analysis, bluff edge determination, and previously unpermitted development.

The City's certified LCP prohibits new development from extending further seaward than a "stringline" drawn between adjacent developments. This stringline rule not only applies to habitable (enclosed) development, but also applies to decks or other appurtenances, which shall not be permitted further seaward than those allowed by a line drawn between those appurtenances on the adjacent structures to the north and south. Although the proposed single-family residence would comply with the enclosed (habitable) development stringline requirement; the City did not apply the deck/unenclosed accessory structure stringline to the proposed pool, deck and patio. This would result in the seaward encroachment of the aforementioned development by approximately 7 – 30 feet beyond the allowable stringline.

The certified Carlsbad Mello II LCP Segment contains policies that address when reliance on shoreline protective devices can be considered. These policies establish that shoreline armoring shall only be allowed to protect existing development, coastal-dependent uses, or public beaches in danger of erosion. The Geotechnical Report for the proposed project identified that, with an applied erosion rate over 75 years, the subject site could only accommodate the proposed new development with reliance upon the existing rip rap revetment fronting the subject site as a shoreline protection measure. The Geotechnical Report failed to evaluate whether or not the proposed new development

would be safe without reliance on shoreline armoring. This is especially relevant given the future potential for sea level rise, and provides for greater flexibility regarding adaptive measures that may be necessary related to future shoreline management strategies.

Bluff preservation policies within the City's LCP establish that no development shall be permitted on the face of any ocean bluff, with the exception of accessways to provide public beach access and for limited public recreation facilities. The Geotechnical Report conducted for the subject site delineated the bluff edge for the property at a lower elevation, and further seaward, than several other bluff edge determinations conducted for the previous redevelopment of properties located in close proximity to the subject site, and along the same coastal headland. The Geotechnical Report identified the bluff edge as following a line extending downslope along an existing concrete walkway and retaining wall that traverse the bluff. This identification resulted in a bluff edge determination descending to an elevation approximately 10 feet lower than previous bluff edge determinations conducted for similar properties located atop the same bluff. While the City did not directly rely on the bluff edge determination to identify appropriate setback and siting for the proposed development, the identified bluff edge could allow for future encroachment by other development along the bluff face that could be inconsistent with the certified LCP.

Because of the above-described inconsistencies with the LCP and the Coastal Act, staff recommends that the Commission determine that the project raises a substantial issue regarding conformance with the certified LCP and the Chapter 3 policies of the Coastal Act.

The standard of review is consistency with the certified City of Carlsbad Local Coastal Program, Mello II segment and, because the site is between the sea and the first public road, the public access and recreation policies of the Coastal Act.

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### APPENDICES

[Appendix A – Substantive File Documents](#)

### EXHIBITS

- Exhibit 1 – Location Map
- Exhibit 2 – Aerial Map
- Exhibit 3 – Site Plan
- Exhibit 4 – Cross-Sections
- Exhibit 5 – Stringline
- Exhibit 6 – Resolution
- Exhibit 7 – Appeal Forms

## **I. APPELLANTS CONTENTION**

The project as approved by the City does not conform to the City of Carlsbad’s certified Local Coastal Program (LCP), with regard to ocean setback (“stringline”), geologic analysis, delineation of coastal bluff edge, and unpermitted development. Most prominent are concerns related to shoreline development setback, bluff edge determination, and the reliance of new development on shoreline protective devices. An additional concern is the permit history for the stairway located within the riprap for private access to the ocean. The appellants contend that the development, as approved by the City, allows for encroachment of the proposed pool, pool deck, and terrace further westward than the Commission’s historic interpretation of the City’s stringline provisions. The appellants identify that the information contained within the Geotechnical Report does not include any analysis regarding the stability of the proposed residence without reliance on existing or future shoreline protection. The appellants also contend that the bluff edge was sited incorrectly in the Geotechnical Report; which could allow for future development on the face of the bluff, beyond that permissible by the City of Carlsbad’s LCP. Finally, the appellants also raise concerns that unpermitted development consisting of a private beach access stairway has not been addressed by the City in the review of the proposed project.

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## **II. LOCAL GOVERNMENT ACTION**

The project was approved with conditions by the City of Carlsbad Planning Commission on May 20, 2015. The conditions of approval found within the City’s approval resolution associated with the Coastal Development Permit (CDP) included: compliance with the City’s latest storm water regulations, the requirement to obtain a grading permit from the City, and the dedication of a lateral public access easement with a minimum of 25 feet of dry sandy beach at all times of the year to the California Coastal Commission or its designee.

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## **III. APPEAL PROCEDURES**

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits.

Section 30603(b)(1) of the Coastal Act states:

*The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.*

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

*With respect to appeals to the commission after certification of a local coastal program that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.*

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, those allowed to testify at the hearing 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 then, or at a later date, reviewing the project de novo in accordance with sections 13057-13096 of the Commission's regulations. If the Commission conducts the de novo portion of the hearing on the permit application, the applicable standard of review for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program (LCP).

In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Act requires that 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. In other words, in regard to public access and recreation questions, the Commission is required to consider not only the certified LCP, but also applicable Chapter 3 policies when reviewing a project on appeal.

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.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question as to conformity with the certified local coastal program" or, if applicable, the public access and public recreation policies of Chapter 3 of the Coastal Act (Cal. Code Regs., tit. 14 section 13115(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP;
2. The extent and scope of the development as approved or denied by the local government;

3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to the Code of Civil Procedure, section 1094.5.

The City of Carlsbad has a certified Local Coastal Program (LCP), and the subject site is located in an area where the Commission retains appeal jurisdiction because it is located between the first public road and the sea. Therefore, before the Commission considers the appeal de novo, the appeal must establish that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603. In this case, for the reasons discussed further below, the Commission exercises its discretion to determine that the development approved by the City raises a substantial issue with regard to the appellant's contentions regarding coastal resources.

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#### **IV. SUBSTANTIAL ISSUE MOTION AND RESOLUTION**

The staff recommends the Commission adopt the following resolution:

**MOTION:**     *I move that the Commission determine that Appeal No. A-6-CII-15-0039 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:**     *The Commission hereby finds that Appeal No. A-6-CII-15-0039 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.*

## **V. SUBSTANTIAL ISSUE FINDINGS AND DECLARATION**

The Commission finds and declares as follows:

### **A. PROJECT DESCRIPTION**

The proposed project involves demolition of an existing 3,056 square foot, one-story single-family residence with basement, along with partial demolition of an existing detached 528 square foot two-car garage, with attached 432 square foot guest house, and the construction of a new two-story 8,845 square foot single-family residence with basement and a new pool (with pool deck) on a 26,600 square foot blufftop property. The project site is a coastal blufftop lot located on the west side of Tierra Del Oro, just south of Cannon Road. The existing residence was built in 1959, with private stair access extending across the bluff face and to the beach, and a rip rap revetment along the rear property line, also established prior to the Coastal Act.

The proposed development is located in an existing single-family residential neighborhood. Most of the oceanfront residences have decks, patios and other structures which extend seaward of the principal residential structure. A number of these residences also have walkways which extend up to the bluff edge. Additionally, several of these oceanfront residences have platforms at the bluff edge and private beach access stairways which extend down the bluff face to the beach.

The neighborhood is planned for residential development within the Mello II Segment of the City's certified Land Use Plan (LUP), and the subject property has a land use designation of Residential Low-Medium Density/Open Space (RLM/OS). The OS designation applies to the bluff and beach portions of the property. The subject site is also located within, and subject to, the Coastal Resource Protection Overlay zone and the Coastal Shoreline Development Overlay Zone of the Carlsbad Municipal Code (i.e. the City's Implementation Plan, "IP").

The City found that the subject single-family residence is consistent with the public access, public recreation, blufftop and shoreline development provisions of the certified Local Coastal Program (LCP).

### **B. OCEAN SETBACK ("STRINGLINE")**

The appellants contend that the project, as approved by the City, is inconsistent with the City of Carlsbad's certified LCP regarding the interpretation of the western boundary of the deck/other appurtenances "stringline". The appellants contend that the deck stringline (which includes the proposed pool, pool deck, and terrace) allows for seaward encroachment on the subject site. The certified LCP prohibits new development along the ocean from extending further seaward than a "stringline" drawn between adjacent developments. Specifically Section 21.204.050B of the Coastal Shoreline Development Overlay Zone states:



*New development fronting the ocean shall observe at a minimum, an ocean setback based on “stringline” method of measurement. No enclosed portions of a structure shall be permitted further seaward than allowed by a line drawn between the adjacent structure to the north and south, no decks or other appurtenances shall be permitted further seaward than those allowed by a line drawn between those on the adjacent structure to the north and south. A greater ocean setback may be required for geological reasons and if specified in the Local Coastal Program.*

The City made the finding that for the proposed swimming pool, deck and patio, no stringline opportunity exists to the south because there is not an existing, detached and permitted deck, or other appurtenance, seaward of the main residence on the lot south of the subject site, and that because the new pool, deck and patio are proposed to be located within an area of existing development (i.e. the existing concrete terrace and previous basement footprint), the stringline method does not apply to the subject proposal. However, the existing development is seaward of the required deck stringline between the northern and southern adjacent properties and, thus creates a visual impact (ref. Exhibit 5). Allowing new development in the same location would perpetuate this impact. The Commission has historically applied the City’s stringline provisions to any new development along the shoreline, which has resulted in previous appeals of CDPs within the City of Carlsbad, the most recent being the property located at 5015 Tierra Del Oro (CDP No. A-6-CII-08-028/Moss) among others (ref. CDP Nos. A-6-CII-07-17/Riley; A-6-CII-03-26/Kiko; 6-90-25/Kunkel; 6-90-299/Rowe; 6-92-107/Phillips; and 6-95-144/Bownes). In this particular case, the City’s interpretation would allow the development to encroach between 7-30 feet seaward of the deck stringline between the northern and southern adjacent properties, which is inconsistent with the Coastal Shoreline Development Overlay Zone.

Setbacks provide visual relief from the cluster of private development lining the shoreline of the Tierra Del Oro community, stepping back primary residences and accessory development in a measured, consistent manner while preserving open space and scenic vistas as viewed from the adjacent beach and public access points. Allowing the encroachment of development beyond the required stringline would create a precedent for shifting the pattern of development seaward along this stretch of coastline, and would represent a significant change in the community character and scenic quality of the area. Thus, the project raises a substantial issue regarding conformity with the LCP.

## **C. GEOLOGIC ANALYSIS**

The appellants contend that the project, as approved by the City, is inconsistent with the City of Carlsbad’s certified LCP regarding shoreline protective devices. The certified Carlsbad Mello II LCP Segment contains policies that address when reliance on shoreline protective devices can be considered. The City’s certified Mello II Land Use Plan (LUP) includes the following policies that address shoreline development and protection:

Policy 4-1, Subsection I. (Development Along Shoreline)

- a. *For all new development along the shoreline, including additions to existing development, a site-specific geologic investigation and analysis similar to that required by the Coastal Commission's Geologic Stability and Blufftop Guidelines shall be required; for permitted development, this report must demonstrate bluff stability for 75 years, or the expected lifetime of the structure, whichever is greater...*

Policy 4-1, Subsection III. (Shoreline Structures), which is echoed by Section 21.204.040.B. (Conditional Beach Uses) of the City's IP with the following language:

*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.*

These policies have been interpreted by the Commission in previous appeals (including A-6-CII-08-028/Moss and A-6-CII-03-26/Kiko) to mean that shoreline armoring shall only be allowed to protect existing development, coastal-dependent uses, or public beaches in danger of erosion. In establishing the development setbacks and their adequacy to protect development over the lifespan of the improvements, the Geotechnical Report identified that a 1.5 factor of safety delineation for the subject site, with an applied erosion rate over 75 years, could only accommodate the proposed development with reliance upon the existing rip rap revetment fronting the subject site as a shoreline protection measure. The Geotechnical Report failed to evaluate whether or not the proposed new development would be safe without reliance on shoreline armoring.

In this case, the proposed project includes demolition of the existing residence and the construction of an entirely new residence that, in accordance with the LCP, should be sited in a location that would not require stability afforded by either existing or future shoreline armoring, and should not assume the existing revetment will remain in perpetuity. This requirement is especially relevant given the future potential for sea level rise, and provides for greater flexibility regarding adaptive measures that may be necessary related to future shoreline management strategies. Thus, the project raises a substantial issue regarding conformity with the LCP.

#### **D. DELINEATION OF COASTAL BLUFF EDGE**

The appellants contend that the project, as approved by the City, is inconsistent with the City of Carlsbad's certified LCP in that the Geotechnical Report's delineation of the bluff edge determination could allow for future encroachment of development along the bluff face. 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.*

The Geotechnical Report conducted for the subject site delineated the bluff edge for the property at a lower elevation and further seaward than several other bluff edge determinations conducted for the previous redevelopment of properties located in close proximity to the subject site, and along the same coastal headland. The Geotechnical Report identified the bluff edge as following a line extending downslope along an existing concrete walkway and retaining wall that traverse the bluff. This identification resulted in a bluff edge determination at an elevation approximately 10 feet lower than previous bluff edge determinations conducted for similar properties located atop the same bluff. While the City did not directly rely on the bluff edge determination to identify appropriate setback and siting for the proposed development, the bluff edge identified within the Geotechnical Report could allow for future encroachment of development along the bluff face at a lower elevation compared to the surrounding properties, resulting in a seaward shift of development inconsistent with the existing pattern of development. Thus, the project raises a substantial issue regarding conformity with the LCP.

**E. SUBSTANTIAL ISSUE FACTORS**

As discussed above, the factors that the Commission often considers when evaluating whether a local government's action raise a substantial issue also support a finding of substantial issue. First, there is inadequate factual and legal support for the City's determination that the proposed development is consistent with the certified LCP. In this case, the development, as approved by the City, raises several LCP consistency issues with regard to stringline setbacks, geologic stability analysis, bluff edge determination, and previously unpermitted development. While the extent and scope of development is for a single family residence, the coastal resources affected are significant; in particular, the bluff face and geological stability in the area. The local government's approval sets poor precedent for future interpretations of its LCP because it avoided using the string line to evaluate setback, it miscalculated the bluff edge, and it ignored a potential violation caused by the unpermitted construction of the new staircase. The objections to the project raised by the appellants identify substantial issues of regional or statewide significance, due to the intensely debated issues of geological stability and sea level rise impacts and how they affect development on bluffs up and down the California coast.

Furthermore, the decision fails to adequately address the reliance of new development on existing shoreline protective devices and is inconsistent with recent Commission guidance on this issue, especially as it relates to analysis necessary in the face of anticipated future sea level rise.

## **F. NOTE ON UNPERMITTED DEVELOPMENT**

There is existing unpermitted development within the footprint of the existing rip rap revetment along the subject property's rear property line consisting of a private stairway access to the beach. The certified Carlsbad Mello II LUP contains policies that address bluff preservation, including Policy 4-1, which 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 [emphasis added] beach access and of limited public recreation facilities.*

The existing residence was built in 1959, with private stair access to the beach and a rip rap revetment along the rear property line established prior to the Coastal Act. In 1978 (under permit #F7529) seven properties along Tierra Del Oro (including the subject site), received Coastal Commission approval to repair and upgrade the existing revetment, due to erosional impacts at the time. When the revetment was repaired, the portion of the pre-coastal stairway on the property that was located within the footprint of the revetment was removed. However, at some point between 1989 and 2002 (based on imagery provided by the California Coastal Records Project), a new private stairway was constructed through the revetment on the subject property to access the beach, without any local or Commission approval. San Diego District staff has an existing violation case on the subject property regarding construction of the stairway. Resolution of such violations are typically addressed at the time of redevelopment, as was the case with the A-6-CII-08-028 (Moss) and A-6-CII-03-26 (Kiko) appeals.

However, the City's review of the subject proposal did not address the potential violation of the revetment stairway which accesses the beach, and instead remained silent on the existence of the unpermitted stairway within the revetment.

**APPENDIX A**

**SUBSTANTIVE FILE DOCUMENTS:** Appeal by Commissioner Dayna Bochco dated June 16, 2015; Appeal by Commissioner Jana Zimmer dated June 17, 2015; Certified City of Carlsbad Local Coastal Program.



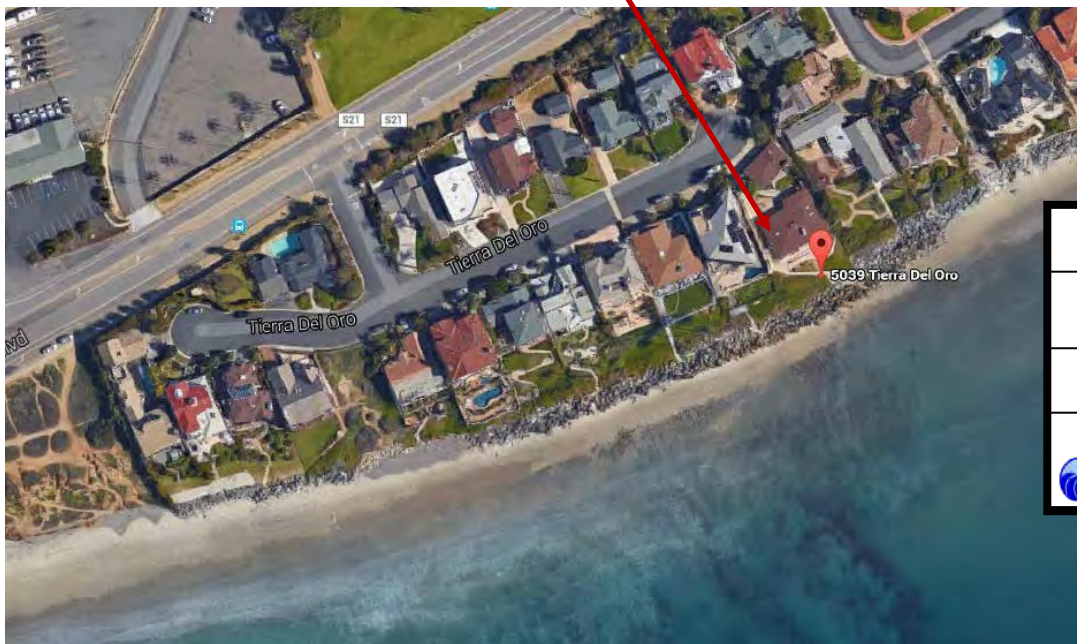



EXHIBIT NO. 1
APPLICATION NO. <b>A-6-CII-15-0039</b>
Nolan
Location Map
 California Coastal Commission





**5039 Tierra Del Oro**

**EXHIBIT NO. 2**

APPLICATION NO.

**A-6-CII-15-0039**

Nolan

**Aerial Map**



California Coastal Commission

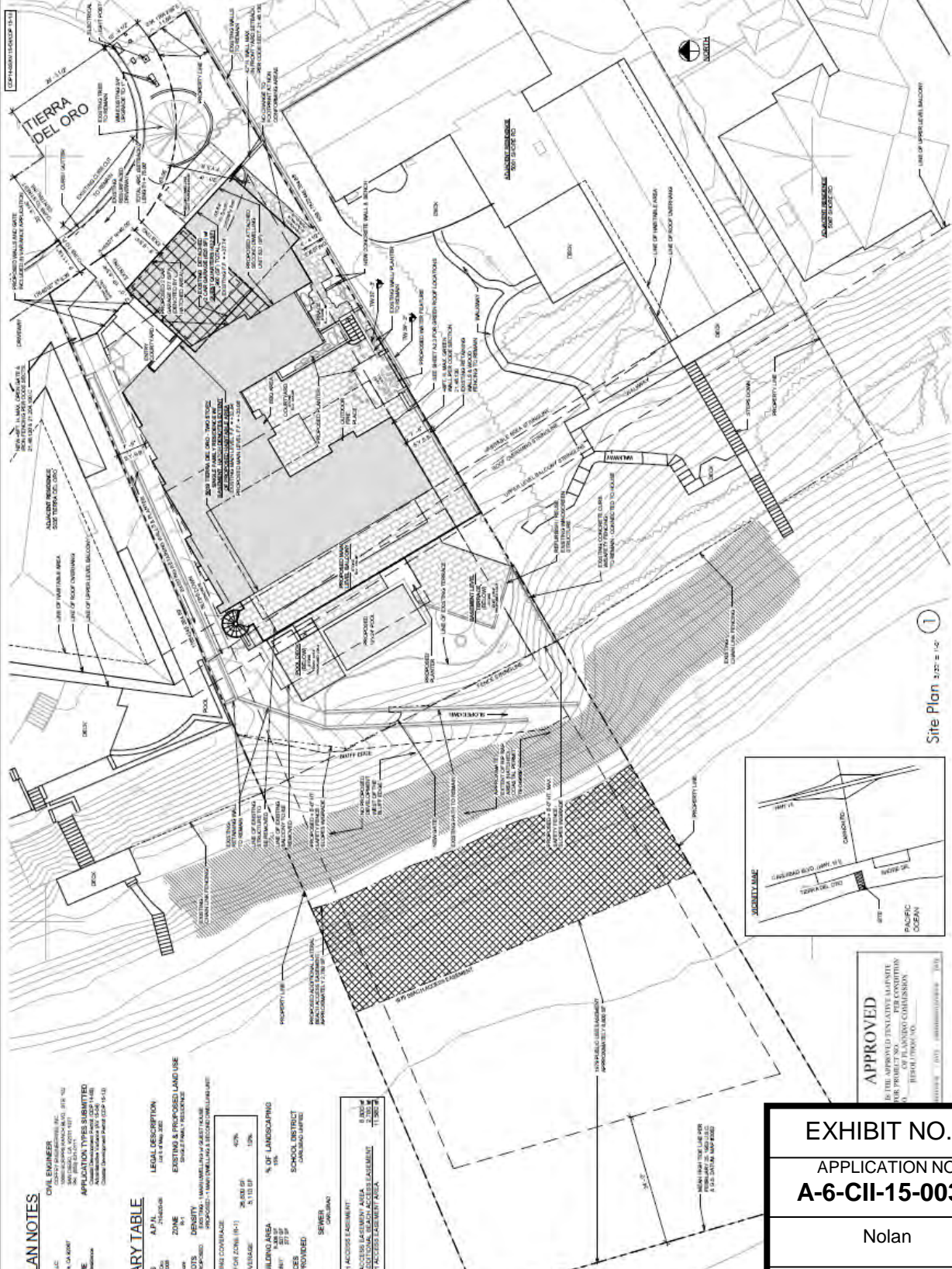




5039 Tierra Del Oro

Unpermitted Stairway





**SITE PLAN NOTES**  
 OWNER: [Name]  
 CIVIL ENGINEER: [Name]  
 APPLICATION TYPES SUBMITTED: [List]  
 PROJECT NAME: [Name]

**SUMMARY TABLE**  
 LEGAL DESCRIPTION: [Text]  
 SITE ADDRESS: [Text]  
 ZONE: [Text]  
 EXISTING & PROPOSED LAND USE: [Text]

TOTAL BUILDING COVERAGE: [Text]  
 ALLOWABLE FLOOR ZONE (R-1): [Text]  
 SILLING COVERAGE: [Text]

TOTAL BEACH ACCESS EASEMENT: [Text]  
 BEACH ACCESS EASEMENT AREA: [Text]  
 PROPOSED ADDITIONAL BEACH ACCESS EASEMENT: [Text]



APPROVED  
 CALIFORNIA COASTAL COMMISSION  
 APPLICATION NO. A-6-CII-15-0039

EXHIBIT NO. 3  
 APPLICATION NO. A-6-CII-15-0039  
 Nolan  
 Site Plan















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3 **PLANNING COMMISSION RESOLUTION NO. 7101**

4 A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF  
5 CARLSBAD, CALIFORNIA, APPROVING A COASTAL DEVELOPMENT  
6 PERMIT AND MINOR VARIANCE TO 1) ALLOW FOR THE DEMOLITION OF  
7 AN EXISTING 3,056 SQUARE FOOT ONE-STORY SINGLE-FAMILY  
8 RESIDENCE WITH BASEMENT AND A PARTIAL DEMOLITION OF AN  
9 EXISTING DETACHED 528 SQUARE FOOT TWO-CAR GARAGE WITH A 432  
10 SQUARE FOOT GUEST HOUSE; 2) ALLOW FOR THE REMODEL,  
11 EXPANSION, AND ATTACHMENT OF THE EXISTING TWO-CAR GARAGE  
12 AND GUEST HOUSE TO A NEW TWO-STORY SINGLE-FAMILY RESIDENCE  
13 WITH BASEMENT TOTALING 8,845 SQUARE FEET OF LIVING AREA  
14 ALONG WITH CONSTRUCTION OF RELATED SITE IMPROVEMENTS,  
15 INCLUDING A NEW SWIMMING POOL; AND 3) ALLOW FOR A REDUCED  
16 FRONT YARD SETBACK FROM 20'-0" TO 8'-9¾" AND A REDUCED SIDE  
17 YARD SETBACK FROM 7'-6" TO 4'-4½" TO PRESERVE THE ESTABLISHED  
18 DEVELOPMENT FOOTPRINT OF THE EXISTING GARAGE/GUEST HOUSE;  
19 AND A REDUCED FRONT YARD SETBACK FROM 20'-0" TO 12'-6¾" FOR  
20 THE REPLACEMENT OF A NEWLY DESIGNED FRONT ENTRY COURTYARD  
21 WALL WITH DECORATIVE WOOD GATE AND IRON VIEW FENCE  
22 GREATER THAN FORTY-TWO INCHES IN HEIGHT ON PROPERTY LOCATED  
23 AT 5039 TIERRA DEL ORO WITHIN THE MELLO II SEGMENT OF THE  
24 CITY'S COASTAL ZONE AND LOCAL FACILITIES MANAGEMENT ZONE 3.

CASE NAME: TIERRA DEL ORO RESIDENCE

CASE NO.: CDP 14-05/AV 15-04

15 WHEREAS, the Tierra Del Oro, LLC, "Owner/Developer" has filed a verified application  
16 with the City of Carlsbad regarding properties described as:

17 Lot 8 of Tierra Del Oro, in the City of Carlsbad, County of San Diego,  
18 State of California, according to Map thereof No. 3052, filed in the  
19 Office of the County Recorder of San Diego County, February 4, 1954

20 ("the Property"); and

21 WHEREAS, said verified application constitutes a request for a Coastal Development  
22 Permit and Minor Variance as shown on Exhibits "A" – "II" dated May 20, 2015, on file in the Planning  
23 Division, TIERRA DEL ORO RESIDENCE – CDP 14-05/AV 15-04, as provided by Chapters 21.50 and  
24 21.201 of the Carlsbad Municipal Code; and

25 WHEREAS, the Planning Commission did, on May 20, 2015,  
26 hearing as prescribed by law to consider said request; and

27 **EXHIBIT NO. 6**

28 APPLICATION NO.  
**A-6-CII-15-0039**

Nolan

Resolution



California Coastal Commission

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WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, said Commission considered all factors relating to the Coastal Development Permit and Minor Variance.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Planning Commission of the City of Carlsbad as follows:

- A) That the foregoing recitations are true and correct.
- B) That based on the evidence presented at the public hearing, the Planning Commission **APPROVES TIERRA DEL ORO RESIDENCE – CDP 14-05/AV 15-04** based on the following findings and subject to the following conditions:

**Findings:**

**Coastal Development, CDP 14-05**

1. That the proposed development is in conformance with the Certified Local Coastal Program and all applicable policies in that **the project site is designated for single-family residential development and the development consists of demolition, partial remodel and expansion of an existing single-family residence with an accessory garage/guest house on a 0.61 acre property; the development is consistent with the Mello II land use designation of RLM/OS; no development is proposed within the Open Space (OS) designated portions of the site reserved for the coastal bluff and the beach area below; the proposed residence, which includes a decorative iron type view fencing perpendicular to the north property line with ≥50% open type design, does not obstruct views of the coastline as seen from public lands or public rights-of-way or otherwise damage the visual beauty of the coastal zone; no agricultural activities, geological instability or coastal access opportunities exist on the previously graded and developed site; and no sensitive biological resources exist on site as discussed in the project staff report.**
2. The proposal is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act in that **while the property is located adjacent to the shore, the project will not interfere with the public’s right to physical access as there are existing vertical shoreline public access points in close proximity of the project site located to the north along Carlsbad Boulevard across from the Encina Power Plant, and to the south along Carlsbad Boulevard near Cerezo Drive; and the proposal will not deny the public access to the beach in that the project is conditioned to dedicate a lateral public access easement with a minimum width of 25 feet of dry sandy beach at all times of the year to the California Coastal Commission or their designee as agreed to with the California Coastal Commission.**
3. The project is consistent with the provisions of the Coastal Resource Protection Overlay Zone (Chapter 21.203 of the Zoning Ordinance) in that **the project will adhere to the City’s Master Drainage Plan, Grading Ordinance, Storm Water Ordinance, Standard Urban Storm Water Mitigation Plan (SUSMP) and Jurisdictional Urban Runoff Management Program (JURMP) to avoid increased urban run-off, pollutants and soil erosion. No development occurs within areas of natural steep slopes (≥25%); no native vegetation is located on the subject property;**

1 and no development occurs within the 100 year flood plain. A geotechnical analysis prepared  
2 for the project indicates that the site is not located in an area prone to landslides or slope  
3 instability; and seismic hazards, such as risk of liquefaction, tsunami and seiche, is considered  
low.

- 4 4. The project is consistent with the provisions of the Coastal Shoreline Development Overlay  
5 Zone (Chapter 21.204 of the Zoning Ordinance) in that a) the project does not interfere with  
6 the public's right to physical access as there are existing vertical shoreline public access points  
7 in close proximity to the north and south of the project site as discussed in the project staff  
8 report; b) the proposal does not deny the public access to the beach in that the project has  
9 been conditioned to dedicate a lateral public access easement with a minimum width of 25  
10 feet of dry sandy beach at all times of the year to the California Coastal Commission or their  
11 designee as agreed to with the California Coastal Commission; c) a geotechnical analysis and  
12 subsequent updates for the project concluded that the proposed development, including the  
13 addition of a new swimming pool, will have no adverse effect on the stability of the coastal  
14 bluff and that the site is suitable for the proposed development; d) all enclosed portions of  
15 the proposed structures, including decks and other appurtenances, adhere to the coastal  
16 "stringline" setback requirements; and for the proposed swimming pool, where no  
17 "stringline" opportunity exists to the south, is proposed at or below existing grade, does not  
18 encroach into or penetrate the coastal bluff, and is proposed within an area of existing  
19 improvements (i.e., existing concrete patio and existing basement footprint); e) the project  
20 proposes an attractive architectural design that is well articulated and consistent with other  
21 adjacent homes within the neighborhood; and with exception to the southwest corner of the  
22 existing garage/guest house structure, which is proposed to remain and the subject of a minor  
23 variance, all new additions comply with the applicable side yard setback requirements, and to  
24 the extent feasible along the north elevation, will continue to preserve existing ocean views  
25 from the public street. Decorative iron type view fencing with a  $\geq 50\%$  open design replaces  
26 an existing iron view fence with wide iron slats and a solid stone wall, thus increasing ocean  
27 views from the public street; f) the proposed single-family home, to the extent feasible,  
28 retains the natural features and topography of the site, and all new habitable living area is  
stepping further back from the ocean in comparison to the existing residential footprint (i.e.,  
the proposed basement footprint moves eastward approximately 21 feet while the main level  
moves eastward approximately 12 feet); g) the improved site has been previously graded to  
accommodate the existing single-family residence, basement and detached accessory  
garage/guest house, and only minor grading for the basement and swimming pool  
improvements are proposed; and h) the proposed landscape has been designed to use an  
efficient irrigation system and eliminate dry weather flow.

22 **Minor Variance, AV 15-04**

- 23 5. That because of special circumstances applicable to the subject property, including size, shape,  
24 topography, location or surroundings, the strict application of the zoning ordinance deprives  
25 such property of privileges enjoyed by other property in the vicinity and under identical zoning  
26 classification, in that the subject site is constrained between the street right-of-way and  
27 coastal bluff, and application of both the "stringline" setback requirements for structures and  
28 rear yard amenities combined with a required 20-foot front yard setback, the buildable area  
of the site is significantly reduced and an average of less than 18% of the site is considered  
developable. Therefore, setbacks applicable to the subject lot results in a significantly smaller  
buildable area than that of comparable sized lots. Additionally, other residences within the  
immediate neighborhood and along other coastal bluff areas of the city have been developed

1 with 10-foot or less front yard setbacks and/or 5-foot or less side yard setbacks, or have  
2 received approval of variances for 10-foot or less front yard setbacks and/or 5-foot or less  
3 side yard setbacks. The requested 12'-6 $\frac{3}{4}$ " reduced front yard setback for the replacement of  
4 a newly designed front entry courtyard wall with decorative wood gate and iron view fence  
5 greater than forty-two inches in height; and also the 8'-9 $\frac{3}{4}$ " front yard setback and 4'-4 $\frac{1}{2}$ " side  
6 yard setback for a limited portion of the existing garage/guest house is consistent with that  
7 which was legally constructed in 1959; does not exceed 75% (i.e., 15'-0") of the required front  
8 yard; does not exceed 75% (i.e., 5'- $\frac{5}{8}$ ") of the required side yard; does not exceed other front  
9 and side yard setback variance requests granted in the same zone and general vicinity, and  
10 would not constitute a special privilege that is not enjoyed by other properties in the general  
11 vicinity and under identical zoning classifications.

12 6. That the minor variance shall not constitute a grant of special privileges inconsistent with the  
13 limitations upon other properties in the vicinity and zone in which the subject property is  
14 located and is subject to any conditions necessary to assure compliance with this finding, in that  
15 other residences within the immediate neighborhood and along other coastal bluff areas of  
16 the city that have 10-foot or less front yard setbacks and 5-foot or less side yard setbacks, so  
17 the proposed setback reductions will be consistent with the setbacks allowed for other  
18 properties in the same general vicinity and zone; and therefore, would not constitute a special  
19 privilege that is not enjoyed by other properties in the same general vicinity and under the  
20 identical zoning classification.

21 7. That the minor variance does not authorize a use or activity which is not otherwise expressly  
22 authorized by the zone regulation governing the subject property, in that the proposed design  
23 will result in the remodel of an existing legally constructed garage/guest house and the  
24 replacement of an existing courtyard wall and iron view fence greater than forty-two inches in  
25 height with a newly designed courtyard wall with decorative wood gate and iron view fence  
26 greater than forty-two inches in height, maintaining the current use of the property as a one-  
27 family dwelling while updating the appearance and functionality. The granting of the minor  
28 variance does not authorize a use or activity which is not otherwise expressly authorized by  
the zone regulations governing the property.

8. That the minor variance is consistent with the general purpose and intent of the general plan  
and any applicable specific or master plans, in that the proposed use will remain as a one-  
family dwelling, consistent with the Residential Low-Medium (RLM) Density designation; the  
proposed project does not change the use or density of the property as discussed above; no  
development is proposed within the Open Space (OS) designated portions of the site reserved  
for coastal bluff and beach area below; and the granting of this variance would not be  
materially detrimental to the public welfare or injurious to the property or improvements in  
the vicinity and zone in which the property is located in that other residences within the  
immediate neighborhood and along other coastal bluff areas of the city have been developed  
with reduced setbacks.

9. That the minor variance is consistent with and implements the requirements of the certified  
local coastal program and that the variance does not reduce or in any manner adversely affect  
the protection of coastal resources as specified in the zones included in this title, and that the  
variance implements the purposes of zones adopted to implement the local coastal program  
land use plan, in that the granting of a minor variance is consistent with and implements the  
requirements of the Local Coastal Program, and will not have an adverse effect on coastal  
resources as discussed in the project staff report. Furthermore, the project will maintain



1 coastal "stringline" limits, building height and lot coverage requirements; will not impact  
2 steep slopes; will continue to preserve ocean views as seen from the public street along the  
3 north property line; and will have no impact on sensitive environmental resources.

4 **California Environmental Quality Act (CEQA):**

5 10. The City Planner has determined that the project belongs to a class of projects that the State  
6 Secretary for Resources has found do not have a significant impact on the environment, and it is  
7 therefore categorically exempt from the requirement for preparation of environmental  
8 documents pursuant to Sections 15301(l), 15303(a), and 15305(a) of the State CEQA  
9 Guidelines. More specifically, CEQA Section 15301(l) – Existing Structures, is a Class 1  
10 exemption that includes demolition and removal of small structures, such as but not limited  
11 to, one single-family residence. Consistent with this section, the project includes the  
12 demolition of one (1) existing single-family residence in preparation for the construction of a  
13 new single-family home along with the remodel of an existing accessory structure consisting  
14 of a two-car garage and guest house. CEQA Section 15303(a) – New Construction or  
15 Conversion of Small Structures, is a Class 3 exemption that includes the construction of one  
16 single-family residence or second dwelling unit in a residential zone. Consistent with the  
17 section, the project is proposing to construct a new single-family residence in place of an  
18 existing single-family residence, which is located on a residentially zoned property (i.e., R-1  
19 Zone). CEQA Section 15305(a) – Minor Alterations in Land Use Limitations, is a Class 5  
20 exemption consisting of minor alterations in land use limitations in areas with an average  
21 slope of less than 20%, which do not result in any changes in land use density, including but  
22 not limited to, minor lot line adjustments, side yard, and setback variances not resulting in  
23 the creation of any new parcels. Consistent with this section, the project is proposing a  
24 setback variance (i.e., 8'-9½" reduced front yard and a 4'-4½" reduced side yard along the  
25 south side of an existing detached garage/guest house, and a 12'-6¾" reduced front yard  
26 setback for the replacement of a newly designed front entry courtyard wall with decorative  
27 wood gate and iron view fence that is greater than forty-two inches in height) in an area of  
28 the parcel with an average slope of less than 20% and of which does not result in any changes  
in land use density. In making this determination, the City Planner has found that the  
exceptions listed in Section 15300.2 of the State CEQA Guidelines do not apply to this project.

19 **General**

20 11. The project is consistent with the City-Wide Facilities and Improvements Plan, the Local  
21 Facilities Management Plan for Zone 3 and all City public policies and ordinances. The project  
22 includes elements or has been conditioned to construct or provide funding to ensure that all  
23 facilities and improvements regarding: sewer collection and treatment; water; drainage;  
24 circulation; fire; schools; parks and other recreational facilities; libraries; government  
25 administrative facilities; and open space, related to the project will be installed to serve new  
26 development prior to or concurrent with need. Specifically,  
27  
28 a. The project has been conditioned to provide proof from the **Carlsbad Unified School District**  
that the project has satisfied its obligation for school facilities.  
b. The Public Facility fee is required to be paid by Council Policy No. 17 and will be collected  
prior to the issuance of building permit.

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c. The Local Facilities Management fee for Zone 3 is required by Carlsbad Municipal Code Section 21.90.050 and will be collected prior to issuance of building permit.

12. That the project is consistent with the City's Landscape Manual and Water Efficient Landscape Ordinance (Carlsbad Municipal Code Chapter 18.50).

13. The Planning Commission has reviewed each of the exactions imposed on the Developer contained in this resolution, and hereby finds, in this case, that the exactions are imposed to mitigate impacts caused by or reasonably related to the project, and the extent and the degree of the exaction is in rough proportionality to the impact caused by the project.

**Conditions:**

Note: Unless otherwise specified herein, all conditions shall be satisfied prior to the **approval of the demolition permit, grading permit or building permit whichever occurs first.**

1. If any of the following conditions fail to occur, or if they are, by their terms, to be implemented and maintained over time, if any of such conditions fail to be so implemented and maintained according to their terms, the City shall have the right to revoke or modify all approvals herein granted; deny or further condition issuance of all future building permits; deny, revoke, or further condition all certificates of occupancy issued under the authority of approvals herein granted; record a notice of violation on the property title; institute and prosecute litigation to compel their compliance with said conditions or seek damages for their violation. No vested rights are gained by Developer or a successor in interest by the City's approval of this **Coastal Development Permit and Minor Variance.**

2. Staff is authorized and directed to make, or require the Developer to make, all corrections and modifications to the **Coastal Development Permit and Minor Variance** documents, as necessary to make them internally consistent and in conformity with the final action on the project. Development shall occur substantially as shown on the approved Exhibits. Any proposed development, different from this approval, shall require an amendment to this approval.

3. Developer shall comply with all applicable provisions of federal, state, and local laws and regulations in effect at the time of building permit issuance.

4. 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.

5. 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 **Coastal Development Permit and Minor Variance** (b) City's approval or issuance of any permit or action, whether discretionary or nondiscretionary, in connection with the use contemplated herein, and (c) Developer/Operator's installation and operation of the facility permitted hereby, including

1 without limitation, any and all liabilities arising from the emission by the facility of  
2 electromagnetic fields or other energy waves or emissions. This obligation survives until all  
3 legal proceedings have been concluded and continues even if the City's approval is not  
4 validated.

5 6. Developer shall submit to the **Planning Division** a reproducible 24" x 36" mylar copy of the **Site**  
6 **Plan** reflecting the conditions approved by the final decision-making body.

7 7. Prior to the issuance of a building permit, the Developer shall provide proof to the Building  
8 Division from the **Carlsbad Unified** School District that this project has satisfied its obligation to  
9 provide school facilities.

10 8. This project shall comply with all conditions and mitigation measures which are required as part  
11 of the **Zone 3 Local Facilities Management Plan** and any amendments made to that Plan prior to  
12 the issuance of building permits.

13 9. This approval shall become null and void if building permits are not issued for this project within  
14 24 months from the date of project approval.

15 10. Developer shall submit to the City a Notice of Restriction executed by the owner of the real  
16 property to be developed. Said notice is to be filed in the office of the County Recorder, subject  
17 to the satisfaction of the City Planner, notifying all interested parties and successors in interest  
18 that the City of Carlsbad has issued a **Coastal Development Permit and Minor Variance** by  
19 Resolution No. 7101 on the property. Said Notice of Restriction shall note the property  
20 description, location of the file containing complete project details and all conditions of  
21 approval as well as any conditions or restrictions specified for inclusion in the Notice of  
22 Restriction. The City Planner has the authority to execute and record an amendment to the  
23 notice which modifies or terminates said notice upon a showing of good cause by the Developer  
24 or successor in interest.

25 11. Building permits will not be issued for this project unless the local agency providing water and  
26 sewer services to the project provides written certification to the City that adequate water  
27 service and sewer facilities, respectively, are available to the project at the time of the  
28 application for the building permit, and that water and sewer capacity and facilities will  
continue to be available until the time of occupancy.

12 12. Developer shall pay the citywide Public Facilities Fee imposed by City Council Policy #17, the  
13 License Tax on new construction imposed by Carlsbad Municipal Code Section 5.09.030, and  
14 CFD #1 special tax (if applicable), subject to any credits authorized by Carlsbad Municipal Code  
15 Section 5.09.040. Developer shall also pay any applicable Local Facilities Management Plan fee  
16 for **Zone 3**, pursuant to Chapter 21.90. All such taxes/fees shall be paid at issuance of building  
17 permit. If the taxes/fees are not paid, this approval will not be consistent with the General Plan  
18 and shall become void.

19 13. Developer shall submit and obtain City Planner approval of a Final Landscape and Irrigation Plan  
20 showing conformance with the approved Preliminary Landscape Plan and the City's Landscape  
21 Manual. Developer shall construct and install all landscaping as shown on the approved Final  
22 Plans, and maintain all landscaping in a healthy and thriving condition, free from weeds, trash,  
23 and debris.

- 1 14. The first submittal of Final Landscape and Irrigation Plans shall be pursuant to the landscape  
2 plan check process on file in the Planning Division and accompanied by the project's building,  
3 improvement, and grading plans.
- 4 15. Approval is granted for CDP 14-05 and AV 15-04 as shown on Exhibits "A" – "II", dated May 20,  
5 2015, on file in the Planning Division and incorporated herein by reference. Development shall  
6 occur substantially as shown unless otherwise noted in these conditions.
- 7 16. Prior to the issuance of a building permit, the owner shall comply with the Coastal Shoreline  
8 Development Overlay Zone (Chapter 21.204 of the Zoning Ordinance), and dedicate a lateral  
9 public access easement with a minimum width of twenty-five feet of dry sandy beach at all  
10 times of the year to the California Coastal Commission or their designee as agreed to with the  
11 California Coastal Commission.
- 12 17. The proposed bar area located within the basement level of the proposed single-family home  
13 shall comply with all zoning standards governing "wet bars" as defined in Section 21.04.378.1  
14 of the Carlsbad Municipal Code.

15 **Engineering:**

16 **General**

- 17 18. Prior to hauling dirt or construction materials to or from any proposed construction site within  
18 this project, developer shall apply for and obtain approval from, the city engineer for the  
19 proposed haul route.
- 20 19. Developer shall install sight distance corridors at all driveways in accordance with City  
21 Engineering Standards. The property owner shall maintain this condition.

22 **Fees/Agreements**

- 23 20. Developer shall cause property owner to execute and submit to the city engineer for  
24 recordation, the city's standard form Geologic Failure Hold Harmless Agreement.
- 25 21. Developer shall cause property owner to execute and submit to the city engineer for  
26 recordation the city's standard form Drainage Hold Harmless Agreement.
- 27 22. Prior to approval of any grading or building permits for this project, developer shall cause owner  
28 to give written consent to the city engineer for the annexation of the area shown within the  
boundaries of the site plan into the existing City of Carlsbad Street Lighting and Landscaping  
District No. 1 and/or to the formation or annexation into an additional Street Lighting and  
Landscaping District. Said written consent shall be on a form provided by the city engineer.

**Grading**

23. Based upon a review of the proposed grading and the grading quantities shown on the site plan,  
a grading permit for this project is required. Developer shall prepare and submit plans and  
technical studies/reports for city engineer review, post security and pay all applicable grading  
plan review and permit fees per the city's latest fee schedule.

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24. Developer acknowledges that, pursuant to Order No. R9-2013-0001 issued by the California Regional Water Quality Control Board, new storm water requirements become effective near the end of 2015, could affect the design of this project. Prior to construction, Developer shall demonstrate compliance with latest storm water requirements to the satisfaction of the city engineer.
  25. Developer shall comply with the city's Stormwater Regulations, latest version, and shall implement best management practices at all times. Best management practices include but are not limited to pollution control practices or devices, erosion control to prevent silt runoff during construction, general housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices or devices to prevent or reduce the discharge of pollutants to stormwater, receiving water or stormwater conveyance system to the maximum extent practicable. Developer shall notify prospective owners and tenants of the above requirements.
  26. Developer shall complete and submit to the city engineer a Project Threat Assessment Form (PTAF) pursuant to City Engineering Standards. Concurrent with the PTAF, developer shall also submit the appropriate Tier level Storm Water Compliance form and appropriate Tier level Storm Water Pollution Prevention Plan (SWPPP) as determined by the completed PTAF all to the satisfaction of the city engineer. Developer shall pay all applicable SWPPP plan review and inspection fees per the city's latest fee schedule.
  27. Developer is responsible to ensure that all final design plans (grading plans, landscape plans, building plans, etc.) incorporate all source control, site design and Low Impact Design (LID) facilities.
  28. Developer shall incorporate measures with this project to comply with Standard Stormwater Requirements per the city's Standard Urban Stormwater Management Plan (SUSMP). These measures include, but are not limited to reducing the use of new impervious surfaces (e.g.: paving) and designing drainage from impervious surfaces to discharge over pervious areas (e.g.: turf, landscape areas) all to the satisfaction of the city engineer.

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**Utilities**

29. Developer shall meet with the fire marshal to determine if fire protection measures (fire flows, fire hydrant locations, building sprinklers) are required to serve the project. Fire hydrants, if proposed, shall be considered public improvements and shall be served by public water mains to the satisfaction of the district engineer.
30. Prior to issuance of building permits, developer shall pay all fees, deposits, and charges for connection to public facilities.

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**Code Reminders:**

The project is subject to all applicable provisions of local ordinances, including but not limited to the following:

31. Prior to the issuance of a building permit, Developer shall pay the Local Facilities Management fee for Zone 3 as required by Carlsbad Municipal Code Section 21.90.050.

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- 32. Developer shall pay a landscape plan check and inspection fee as required by Section 20.08.050 of the Carlsbad Municipal Code.
- 33. Developer shall pay planned local area drainage fees in accordance with Section 15.08.020 of the City of Carlsbad Municipal Code to the satisfaction of the city engineer.
- 34. Approval of this request shall not excuse compliance with all applicable sections of the Zoning Ordinance and all other applicable City ordinances in effect at time of building permit issuance, except as otherwise specifically provided herein.
- 35. Premise identification (addresses) shall be provided consistent with Carlsbad Municipal Code Section 18.04.320.

**NOTICE TO APPLICANT**

An appeal of this decision to the City Council must be filed with the City Clerk at 1200 Carlsbad Village Drive, Carlsbad, California, 92008, within ten (10) calendar days of the date of the Planning Commission's decision. Pursuant to Carlsbad Municipal Code Chapter 21.54, section 21.54.150, the appeal must be in writing and state the reason(s) for the appeal. The City Council must make a determination on the appeal prior to any judicial review.

**NOTICE**

Please take **NOTICE** that approval of your project includes the "imposition" of fees, dedications, reservations, or other exactions hereafter collectively referred to for convenience as "fees/exactions."

You have 90 days from date of final approval to protest imposition of these fees/exactions. If you protest them, you must follow the protest procedure set forth in Government Code Section 66020(a), and file the protest and any other required information with the City Manager for processing in accordance with Carlsbad Municipal Code Section 3.32.030. Failure to timely follow that procedure will bar any subsequent legal action to attack, review, set aside, void, or annul their imposition.

You are hereby **FURTHER NOTIFIED** that your right to protest the specified fees/exactions **DOES NOT APPLY** to water and sewer connection fees and capacity charges, nor planning, zoning, grading, or other similar application processing or service fees in connection with this project; **NOR DOES IT APPLY** to any fees/exactions of which you have previously been given a **NOTICE** similar to this, or as to which the statute of limitations has previously otherwise expired.

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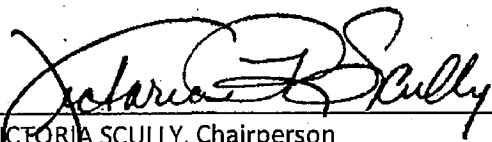
PASSED, APPROVED, AND ADOPTED at a regular meeting of the Planning Commission of the City of Carlsbad, California, held on **May 20, 2015**, by the following vote, to wit:

AYES: Chairperson Scully, Commissioners Anderson, Black, L'Heureux, Montgomery and Segall

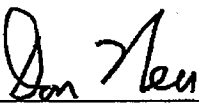
NOES:

ABSENT: Commissioner Siekmann

ABSTAIN:

  
\_\_\_\_\_  
VICTORIA SCULLY, Chairperson  
CARLSBAD PLANNING COMMISSION

ATTEST:

  
\_\_\_\_\_  
DON NEU  
City Planner

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4402  
(619) 767-2370



APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Dayna Bochco  
Mailing Address: 45 Fremont Street  
Suite 2000  
San Francisco, CA 94105  
Phone Number: (415) 904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Carlsbad
2. Brief description of development being appealed: Demolition of existing 3,056 square foot, one-story single-family residence with basement, along with the partial demolition of an existing detached 528 square foot two-car garage with attached 432 square foot guest house, and the construction of a new two-story 8,845 square foot single-family residence with basement and a new pool (with pool deck) on a 26,600 square foot blufftop lot.
3. Development's location (street address, assessor's parcel no., cross street, etc.):  
The property is located at the southern terminus of Tierra Del Oro, at 5039 Tierra Del Oro (APN: 210-020-08) within the Mello II LCP Segment.
4. Description of decision being appealed:
  - a. Approval; no special conditions:
  - b. Approval with special conditions:
  - c. Denial:
  - d. Other:  \_\_\_\_\_

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-CII-15-0039  
DATE FILED: 6/17/2015  
DISTRICT: San Diego

**RECEIVED**

JUN 16 2015

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

EXHIBIT NO. 7

APPLICATION NO.  
**A-6-CII-15-0039**

Nolan

Appeal Forms



California Coastal Commission



5. Decision being appealed was made by (check one):

a.  Planning Director/Zoning  
Administrator

c.  Planning Commission

b.  City Council/Board of  
Supervisors

d.  Other

Date of local government's decision: May 20, 2015

Local government's file number (if any): CDP 14-05

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

Name and mailing address of permit applicant:

Carson Nolan  
Island Architects  
7626 Herschel Avenue  
La Jolla, CA 92037

Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

\_\_\_\_\_

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT  
Page 3

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

SEE ATTACHMENT A

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: *A. Bochner*  
Appellant or Agent

Dated: 6/14/15

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

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JUN 16 2015

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Attachment A

6/17/2015

The proposed project involves demolition of an existing 3,056 square foot, one-story single-family residence with basement, along with the partial demolition of an existing detached 528 square foot two-car garage with attached 432 square foot guest house, and the construction of a new two-story 8,845 square foot single-family residence with basement and a new pool (with pool deck) on a 26,600 square foot blufftop property. The project site is a coastal blufftop lot located on the west side of Tierra Del Oro, just south of Cannon Road. The existing residence was built in 1959, with private stair access extending across the bluff face and to the beach, and a rip rap revetment along the rear property line established prior to the Coastal Act.

The City found that the subject single family residence is consistent with the blufftop and shoreline development provisions of the certified Local Coastal Program (LCP). However, the development as approved by the City raises several LCP consistency issues with regard to stringline setbacks, geologic stability analysis, bluff edge determination, and previously unpermitted development.

Ocean Setback ("Stringline")

The City's certified LCP prohibits new development from extending further seaward than a "stringline" drawn between adjacent developments. Specifically, Section 21.204.050.B. of the Coastal Shoreline Development Overlay Zone (part of the City's Implementation Plan, "IP") states:

New development fronting the ocean shall observe at a minimum, an ocean setback based on a "stringline" method of measurement. No enclosed portions of a structure shall be permitted further seaward than those allowed by a line drawn between the adjacent structure to the north and south; no decks or other appurtenances shall be permitted further seaward than those allowed by a line drawn between those on the adjacent structures to the north and south. A greater ocean setback may be required for geologic reasons and if specified in the local coastal program.

The new single-family residence would be rebuilt 12 feet inland of the existing building footprint, at the main level, and by 21 feet at the basement level. This proposed change to relocate the main residence landward of the existing building footprint complies with the enclosed (habitable) development stringline requirement. The City, however, did not apply a stringline for decks/unenclosed accessory structures.

The City found that the project is consistent with the stringline provisions of the LCP; however, while the stringline for habitable structures was applied correctly and resulted in the new residence being sited further landward, the stringline for decks/unenclosed accessory structures was not applied to the approved plans. This would result in the encroachment of new development approximately 1 – 10' seaward beyond the allowable stringline and result in the existing terrace, pool, pool deck, and other accessory developments extending seaward beyond similar existing accessory structures on adjacent properties to the north and south of the subject site.

### Geologic Analysis

The certified Carlsbad Mello II LCP Segment contains policies that address when reliance on shoreline protective devices can be considered. The City's certified Mello II Land Use Plan (LUP) includes Policy 4-1, Subsection III (Shoreline Structures), which is echoed by Section 21.204.040.B. (Conditional Beach Uses) of the City's IP, and both identify that shoreline armoring shall only be allowed to protect existing development, coastal-dependent uses, or public beaches in danger of erosion.

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.

In establishing the development setbacks and their adequacy to protect development over the lifespan of the improvements, the Geologic Report identified that a 1.5 factor of safety delineation for the subject site, with an applied erosion rate over 75 years, could only accommodate the proposed development with reliance upon the existing rip rap revetment fronting the subject site as a shoreline protection measure. The Geologic Report failed to evaluate whether or not the proposed new development would be safe without reliance on shoreline armoring. In this case the proposed project includes demolition of the existing structure and the construction of a new structure that should be sited in a location that would not require stability afforded by either existing or future shoreline armoring. This requirement is especially relevant given the future potential for sea level rise, and provides for greater flexibility regarding adaptive measures that may be necessary related to future shoreline management strategies.

### Delineation of Coastal Bluff Edge

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.

The Geologic Report conducted for the subject site delineated the bluff edge for the property at a lower elevation and further seaward than several other bluff edge determinations conducted for the previous redevelopment of properties located in close proximity to the subject site, and along the same coastal headland. The Geologic Report identified the bluff edge as following a line extending downslope along an existing concrete walkway and retaining wall that traverse the bluff. This identification resulted in a bluff edge determination at an elevation approximately 10 feet lower than previous bluff edge determinations conducted for similar properties located atop the same bluff. While the City did not directly rely on the bluff edge determination to identify appropriate setback and siting for the proposed development, the bluff edge identified within the Geologic Report could allow for

future encroachment along the bluff face that could be inconsistent with the certified LCP if allowed to be recognized at this lower elevation.

Unpermitted Development

The existing residence was built in 1959, with private stair access to the beach and a rip rap revetment along the rear property line established prior to the Coastal Act. In 1978 (under permit #F7529) seven properties along Tierra Del Oro (including the subject property), received Coastal Commission approval to repair and upgrade the existing revetment, due to erosional impacts at the time. When the revetment was repaired, the portion of the pre-coastal stairway on the property that was located within the footprint of the revetment was removed. However, several years later, a new private stairway was constructed through the revetment on the subject property to access the beach, without any local or Commission approval. The City's recent review of the subject site did not address the potential violation of the revetment stairway which accesses the beach, and instead remained silent on the existence of the unpermitted stairway within the revetment. Any redevelopment should address unpermitted development existing on the subject site in order to bring those items into conformance with the certified LCP.

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4402  
(619) 767-2370



APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Jana Zimmer  
Mailing Address: 45 Fremont Street  
Suite 2000  
San Francisco, CA 94105  
Phone Number: (415) 904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Carlsbad
2. Brief description of development being appealed: Demolition of existing 3,056 square foot, one-story single-family residence with basement, along with the partial demolition of an existing detached 528 square foot two-car garage with attached 432 square foot guest house, and the construction of a new two-story 8,845 square foot single-family residence with basement and a new pool (with pool deck) on a 26,600 square foot blufftop lot.
3. Development's location (street address, assessor's parcel no., cross street, etc.):  
The property is located at the southern terminus of Tierra Del Oro, at 5039 Tierra Del Oro (APN: 210-020-08) within the Mello II LCP Segment.
4. Description of decision being appealed:
  - a. Approval; no special conditions:
  - b. Approval with special conditions:
  - c. Denial:
  - d. Other:  \_\_\_\_\_

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-CII-15-0039

DATE FILED: 6/17/2015

DISTRICT: San Diego

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JUN 17 2015

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

5. Decision being appealed was made by (check one):

- a.  Planning Director/Zoning Administrator                      c.  Planning Commission
- b.  City Council/Board of Supervisors                              d.  Other

Date of local government's decision: May 20, 2015

Local government's file number (if any): CDP 14-05

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

Name and mailing address of permit applicant:

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Ref: 5039 Tierra Del Oro Carlsbad

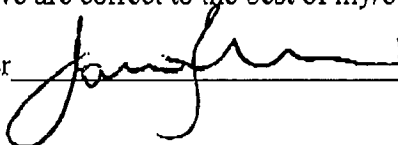
See Attached

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Signed: Commissioner Jana Zimmer  
Appellant or Agent



Dated: June 17, 2015

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

**RECEIVED**

JUN 17 2015

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT



Attachment A

6/17/2015

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