

**CALIFORNIA COASTAL COMMISSION**

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



# Thu 8a

Filed: February 6, 2007  
49th Day: Waived  
Staff: Toni Ross-SD  
Staff Report: May 23, 2007  
Hearing Date: June 13-15, 2007

## STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Carlsbad

DECISION: Approved with Conditions

APPEAL NO.: A-6-CII-07-17

APPLICANT: Mickie and Hansi Riley

PROJECT DESCRIPTION: The construction of a two-story 5,619 sq. ft. single family residence with a basement on an undeveloped bluff-top lot protected by existing riprap revetment built in an unapproved location and configuration.

PROJECT LOCATION: 5011 Tierra Del Oro, Carlsbad (San Diego County).  
APN # 210-020-16.

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 approve the de novo permit application with several special conditions. The primary issues raised by the development relate to the appropriate western or stringline setback for the residence as well as the accessory structures (i.e. patio, staircase), geologic stability and protection of visual resources. The primary conditions include plan revisions for an increased stringline setback as well as provisions for all accessory structures being at grade and non-permanent to protect public views and coastal bluff stability. Further concerns were raised regarding the initial installation of a riprap revetment as a result of Commission action in 1993 (CDP #6-92-232). Geological surveys indicate that the existing riprap was not installed per Commission requirements. As currently configured, the revetment is located on top of a

dedicated public lateral access easement, thus causing impacts to public access. The applicant has modified the project description for the de novo review to request retention of the riprap in its current configuration. The Commission's staff coastal engineer has reviewed the applicant's request (and technical reports) for retention of the riprap as currently configured. Based on her review, staff is recommending the existing riprap be reconfigured in accordance to the alignment approved by CDP #6-92-232. Numerous conditions are suggested for the future maintenance of the revetment.

Other concerns include impacts to public views and public access. Conditions for these impacts include see-through gates within the side yard setbacks and maintenance of landscaping. A deed restriction is included to assure the conditions placed on the applicant will be upheld in perpetuity.

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**SUBSTANTIVE FILE DOCUMENTS:** Certified City of Carlsbad Mello II LCP, City of Carlsbad Staff Report and Resolution for CDP #06-05 dated January 17, 2007, California Coastal Commission file CDP #6-92-232, Geotechnical Report by Woodward-Clyde dated October 26, 1988, Geotechnical Investigation Report by Geotechnical Exploration, Inc. dated February 28, 2006, Addendum to the Geotechnical Investigation Report dated July 6, 2006 and a second Addendum to Geotechnical Investigation Report dated March 26, 2007, Letter from Leslie Ewing dated May 18<sup>th</sup> 2007, Appeal forms.

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**I. Appellants Contend That:** The appellants contend that the City's approval is inconsistent with Carlsbad LCP provisions pertaining to shoreline development, public access, coastal bluff protection, public view protection and ocean setback (stringline). Most prominent are concerns related to alteration of landforms, encroachment along the shoreline and encroachment of riprap onto dedicated public access. The appellants contend that the development as approved by the City allows the development to encroach further westward than the Commission's historic interpretation of the City's stringline provisions. The appellants further contend that there is an existing riprap revetment on the site and the City failed to address the revetment nor address or evaluate the proper siting of the home without the need for the riprap, inconsistent with the City's LCP provisions. Lastly the appellants contend that the project as approved is inconsistent with the LCP provisions that call for protection of public ocean views in that the side yard gating approved is not 75% transparent.

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**II. Local Government Action:** A coastal development permit was approved by the Planning Commission on January 17, 2007. The development was approved with conditions for dedication of 25' of lateral beach access and erosion control measures for grading.

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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 within mapped appealable areas. The grounds for 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 a de novo hearing on the merits of the project.

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. During the de novo portion of the hearing, 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 hearing, any person may testify.

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- IV. **MOTION:**      *I move that the Commission determine that Appeal No. A-6-CII-07-17 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

**STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:**

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 by a majority of the Commissioners present.

**RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:**

The Commission hereby finds that Appeal No. *A-6-CII-07-17* 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 construction of a 5,619 sq. ft. single-family residence to include a two-car garage and basement on a 12,517 sq. ft. vacant lot. The maximum height for the proposed residence is 30 ft. The City granted a variance from the front yard setback requirements (20 feet required, 0-foot setback approved). The variance allows more of the flat upper portion of the site to be used for building rather than the steeper sloping portions of the lot which minimizes grading and landform alteration consistent with coastal resource preservation. The prevailing pattern of development along Tierra Del Oro uses this approach and the City and Commission have approved it in many permit decisions. Also proposed is a patio and upper deck/terrace seaward of the home and a stairway that leads down the slope and beyond the identified edge of the bluff, terminating at the top of the riprap.

The project site is a coastal bluff-top lot located on the west side of Tierra Del Oro, just north of Cannon Road in the City of Carlsbad. The site slopes down from Tierra Del Oro, transitioning into a steep coastal bluff. The lower portion of the bluff face is currently covered with a large riprap revetment that extends up to approximately +18 Mean Sea Level (MSL) and seaward of the bluff toe onto the beach approximately 30 ft.

The proposed development is located in an already developed single-family residential neighborhood. Most of the oceanfront residences have decks, patios and other structures which extend seaward of the principal residential structure. Many of the residences have walkways which extend to the bluff edge. Some residences have platforms at the bluff edge and private beach access stairways which extend down the bluff face to the beach.

Residences on either side of the subject site have walkways that extend down the bluff face and lead to the beach.

The site is planned for residential development in the Mello II segment of the City's certified Land Use Plan (LUP). The site is located within and subject to the Coastal Resource Protection Overlay zone and the Coastal Shoreline Development Overlay Zone of the Carlsbad Municipal Code. The Land Use designation on the site is Residential Low-Medium Density (RLM) and Open Space (OS). The OS General Plan designation applies to the bluff portion of the site.

#### Site History.

There is limited buildable area on this parcel due to the configuration of the low bluff in this area (the parcel curves inland from adjoining lots), the existing street design (it curves into the subject property), and most importantly because much of it has eroded away from wave action over the years; riprap was not installed on this site until 1994. Many of the surrounding residences had rip rap armoring prior to the enactment of the Coastal Act. The lack of protection on this undeveloped lot intensified erosion rates there, as wave energy was deflected from adjacent revetments toward this unprotected section of coastal bluff.

CDP #6-92-232 was approved by the Commission in August 1993. The approved project included the construction of a two-story 3,664 sq. ft. single family residence and an engineered rock riprap revetment on a vacant lot. The Commission viewed the installation of the riprap as an infill project, thus permissible, as this lot was the last remaining both undeveloped and unarmored. The home approved by this permit was never constructed; however the slope was graded and the riprap revetment was installed in 1994. Grading of the slope resulted in the highest portion of the lot being reduced from 42' elevation to 36' elevation. Prior to the approval in 1993 the Commission required the applicant to provide an alternatives analysis to determine the most appropriate configuration for the riprap. The applicant provided an engineer's analysis of three feasible alternative designs for the slope restoration and riprap revetment. Alternative A aligned the revetment between the existing rock lateral with adjoining lots to be consistent with the "stringline" approach (ref. Exhibit #4). Alternative B resulted in less beach encroachment by the revetment than Alternative A, due to its concave configuration, and a steeper fill zone than Alternative A resulting in less rock being placed on the beach (ref. Exhibit #5). Alternative C eliminated the compacted fill slope and pulled the revetment back to abut the existing bluff (ref. Exhibit #6), however Alternative C was shown to be the least stable of the alternatives thus inconsistent with Coastal Act Policies. The Commission ultimately approved the riprap to be constructed in the concave Alternative B configuration. Apparently, due potentially to conditions in the field, although this is unclear, the riprap was installed in a different configuration from that of the approved Alternative B, in violation of the terms of permit #6-92-232. The actual construction of the revetment resulted in a configuration approximately four feet west of the approved location and directly on top of a portion of the dedicated public lateral beach access easement that resulted from this same Commission approval.

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.

2. Shoreline Development/Hazards. The appellants contend that the City's approval of the proposed new single-family residence on the subject site is inconsistent with the City's certified LCP as it pertains to shoreline development/hazards. In particular, as noted above, there is an existing riprap revetment located at the toe of the bluff fronting the subject site and the City, in its review, failed to address the revetment. Section 21.204.110 4b of the Coastal Shoreline Development Overlay zone states:

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.

The appellants contend the riprap was installed on the beach fronting the subject site without authorization of a coastal development permit. Since the appeal was filed, it was determined that riprap was permitted at the site pursuant to CDP #6-92-232. However, the riprap that was actually installed is inconsistent with the Commission's approval. The Commission found the revetment permissible, as was documented in the revised findings for CDP #6-92-232, only if it was constructed in a concave configuration:

...only as conditioned to implement Alternative B, can the commission find the proposed project consistent with Sections 30235 and 3025 of the Coastal Act and the hazard and public access policies of the Mello II LCP.

Thus, while the Commission permitted construction of riprap at this site, the riprap actually constructed is inconsistent with the previous Commission action, resulting in potential impacts to local sand supply, thus inconsistent with City provisions. The location of the revetment also has impacts to public access and will be further discussed in a subsequent section of this report. The City failed to address the revetment in its review. In addition, the City failed to address or evaluate the proper siting of the home without the need for the riprap. As such, the appellants' contention regarding the riprap and the appropriate siting of the home to assure geologic stability raises a substantial issue with regard to the City of Carlsbad's shoreline protection policies.

3. Stringline. The appellants contend that the project as approved by the City is also inconsistent with the City of Carlsbad's certified LCP regarding the interpretation of the western boundary of the home or the "stringline". The appellants contend that the stringline as interpreted by the City would set a new precedent for cumulative westward encroachment towards the bluff within the Tierra Del Oro neighborhood. 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 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 project as approved by the City interprets the stringline to be drawn from the furthest point of development to the direct north and south. The Commission has historically interpreted the stringline to be taken from the corner of development nearest to the proposed structure on either side (ref. CDP Nos. 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 allows the development to encroach further westward than if interpreted per Commission precedent (ref. Exhibit #7). This interpretation allows for a building footprint extending further west than that of the neighboring residences. Further, the approved stringline location results in new development being sited further seaward and nearer the ocean, causing increased potential adverse impacts to public views.

As noted, the City measured the stringline line from the furthest north portion, and not the nearest southern portion, of the adjacent structure to the north for both the building and the patio (ref. Exhibit #7). Consequently, as approved by the City, the proposed structure is sited between 0-8 feet further seaward than if measured from the closest corner of the building, and 0-6 feet further seaward than if measured from the closest corner of the patio, inconsistent with the LUP policy and shoreline ordinance cited above. Therefore, a substantial issue is raised with regards to the appellants’ contentions regarding stringline setback.

4. Development of the Bluff Face. The appellants contend that the project as approved by the City is inconsistent with the City of Carlsbad’s certified LCP regarding development on the bluff face. Specifically the appellants contend that the City has approved permanent structures on the bluff face, thus allowing for grading and development on the actual bluff face. Substantial grading and development on a coastal bluff face is not permitted by the City’s provisions. Section 21.204.050 of the Coastal Shoreline Development Overlay Zone and policies of the Mello II LCP state:

Mello II LUP Policy 4-1(d):

No development shall be permitted on sand or rock beach or in the face of any ocean bluff, with the exception of access ways to provide **public** (emphasis added) beach access and of limited public recreational facilities.

Section 21.204.050 of the Coastal Shoreline Development Overlay Zone provides:

- a. Grading and Excavation - Grading and excavation **shall be the minimum necessary** (emphasis added) 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.

In its approval of the project, the City cited the project's conformance with the bluff-top development provisions of the Coastal Shoreline Development Overlay. The overlay is intended to provide land use regulations along the Carlsbad shoreline including beaches, bluffs and the land area immediately landward thereof. The purpose of the overlay zone is to ensure that the public's interest in maintaining the shoreline as a unique recreational and scenic resource is adequately protected. Additionally, the overlay ensures public safety and public access will be assured and promotes avoidance of the adverse geologic and economic effects of bluff erosion.

To preserve coastal bluffs, the Commission has typically interpreted the above sections to mean that "the minimum necessary" for new development on the bluff face means at-grade and ephemeral without requiring excavation which makes such improvements more "permanent" (ref. CDP Nos. 6-92-100/Fulton; 6-92-232/Weldon and 6-93-100/Gilstrap). It is unclear how much grading would be required or how permanent the accessory structures would be, as some of these accessory structures appear to be large and partially enclosed (ref. Exhibit #9). Further the slope of the bluff decreases in elevation by 6' across the proposed patio. An elevation change of that degree would require grading or terracing. No terracing has been proposed, thus grading/fill is presumed necessary and unpermittable. Based on the above, the Commission finds the proposed development raises a substantial issue with respect to conforming to the bluff preservation provisions of the certified LCP.

5. Public Access. The public access and recreation policies of the Coastal Act are applicable because the proposed development is located between the sea and the first public road. Section 30604(c) requires that a specific access finding be made. In addition, many policies of the Coastal Act address the provision, protection and enhancement of public access to and along the shoreline, in particular, Sections 30210, 30211 and 30212. These policies address maintaining the public's ability to reach and enjoy the water, preventing overcrowding by providing adequate recreational area, and protecting suitable upland recreational sites. The appellants contend that given possible prescriptive rights and the fact that this is the last undeveloped lot in the Tierra Del Oro community, vertical access may be required, but the City failed to address this issue.

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.....

Sections 30210, 30211 and 30212(a) 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(a):** Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects...

As stated above, this lot is the last remaining undeveloped lot in the Tierra Del Oro community. There is no vertical access within this community or the community to the south. Although currently gated off, aerial photographs of the subject site dating back to 1972 depict trails across the subject site to the beach. However, the Commission previously addressed this issue in its review of CDP #6-92-232. At that time, the Commission found that vertical public access was not necessary on the subject site as existing public vertical access exists a short distance to the north. However, the project does raise another issue with respect to public access.

As discussed above, the site includes a riprap revetment installed after issuance of CDP# 6-92-232, but in violation of the conditions in that permit. The riprap was installed approximately 4' west of the location approved by the Commission's action. A dedicated lateral access easement stretching from the western extent of the approved riprap design to 25' westward of this point was required by the Commission for the approval of CDP #6-92-232. The improperly installed riprap is located within this lateral access, thus impacting public access. During times of high tide and storm events, seawater reaches the riprap, thus public access is already limited. This additional 4' of beach may provide a place to which the public can retreat while waiting for a break from waves before continuing to walk further down the beach. However, as noted previously, the City failed to address the existing riprap. Thus, the Commission finds the proposed development raises a substantial issue with respect to conforming with the City of Carlsbad and Coastal Act policies pertaining to public access.

6. Public Views. The appellants contend that the City's approval of the proposed new single-family residence on the subject site is inconsistent with the City's certified LCP as it pertains to protection of visual resources. Specifically the appellants contend that the

approved block walls to be constructed within the side yard setback areas do not conform to provisions protecting public views.

LCP Section 21.204.100 (B & C) of the Coastal Shoreline Development Overlay Zone states:

- B. Appearance – Buildings and structures will be so located on the site as to create a generally attractive appearance and be agreeably related to surrounding development and the natural environment.
- C. Ocean Views – Buildings, structures, and landscaping will be so located as to preserve the degree feasible any ocean views as may be visible from the nearest public street.

Policy 8-1 of the City of Carlsbad's LCP states:

The Scenic Preservation Overlay Zone should be applied where necessary throughout the Carlsbad coastal zone to assure the maintenance of existing views and panoramas. Sites considered for development should undergo review to determine if the proposed development will obstruct views or otherwise damage the visual beauty of the area. The Planning Commission should enforce appropriate height limitations and see-through construction, as well as minimize alterations to topography.

Currently public views of the ocean are available across the subject site. While the City found that the project maintains 6-foot side yard setbacks, it did not assure their preservation as a view corridor. The site plan indicates 6-ft. high block walls will be installed in both the side yards such that public views from Tierra Del Oro to the ocean will be blocked. The City failed to address this issue, as no condition was imposed that required side yard fencing to be open or that side yards be maintained and open in the future. Thus, a substantial issue is raised with regards to the appellants' contentions regarding protection of public views.

In summary the appellants contend the project as approved by the City raises numerous issues with regard to conformance with the provisions of the City's Local Coastal Plan. The most pertinent of these issues are interpretation of the building and accessory structure "stringline" setback and proposed grading of the coastal bluff. Further concerns are raised regarding impacts to public access as well as protection of public views. For the reasons stated above, the Commission finds the City's approval is inconsistent with applicable provisions of the certified LCP as well as the public access provisions of the Coastal Act and thus a Substantial Issue exists with respect to the City's approval of the project.

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

The staff recommends the Commission adopt the following resolution:

**MOTION:** *I move that the Commission approve Coastal Development Permit No. A-6-CII-07-017 pursuant to the staff recommendation.*

## **STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

## **RESOLUTION TO APPROVE THE PERMIT:**

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the certified LCP and the public access policies of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

## **II. Standard Conditions.**

See attached page.

## **III. Special Conditions.**

The permit is subject to the following special conditions:

1. Revised Final Plans. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, final site, building, , grading foundation and elevation plans for the permitted development that have been approved by the City of Carlsbad. Said plans shall be in substantial conformance with the plans submitted by the applicant dated January 22, 2007 by Pekarek-Crandell Architecture, but shall be revised as follows:

- a. The western extent of both the proposed residence and accessory structures shall be revised such that neither the proposed residence nor the proposed accessory structures extend beyond the stringlines as depicted as “Interpreted Building Stringline and Interpreted Patio Stringline” on Exhibit #7 attached to this report.

- b. Any proposed accessory improvements (i.e., decks, patios, walls, etc.) located seaward of the residence on the bluff face of the site shall be detailed and drawn to scale on the final approved site plan. Such improvements shall be “at grade” and capable of being removed without significant landform alteration.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Assumption of Risk, Waiver of Liability and Indemnity. By acceptance of this permit, the applicant acknowledges and agrees; (i) that the site may be subject to hazards from wave runoff, erosion and flooding; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission’s approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

3. Other Special Conditions of the Carlsbad Regular Coastal Permit. Except as provided by this coastal development permit, this permit has no effect on conditions imposed by the City of Carlsbad pursuant to an authority other than the Coastal Act.

4. Deed Restriction. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

5. Future Development. This permit is only for the development described in coastal development permit No. A-6-CII-07-17. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources

Code Section 30610(a) shall not apply. Accordingly, any future improvements to the proposed single family residence, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code section 30610(d) and Title 14 California Code of Regulations section 13252(a)-(b), shall require an amendment to permit No. A-6-CII-07-17 from the California Coastal Commission or shall require an additional coastal development permit from the applicable certified local government.

6. Construction Schedule/Staging Areas/Access Corridors. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, detailed plans identifying the location of access corridors to the construction sites and staging areas, and a final construction schedule. Access shall only be via the identified access corridors. Said plans shall include the following criteria specified via written notes on the plan:

- a. Use of sandy beach and public parking areas outside the actual construction site, including on-street parking, for the interim storage of materials and equipment is prohibited.
- b. No work shall occur on the beach during the summer peak months (start of Memorial Day weekend through Labor day) of any year.
- c. Equipment used on the beach shall be removed from the beach at the end of each workday.

The permittee shall undertake development in accordance with the plans and construction schedule. Any proposed changes to the approved plans or construction schedule shall be reported to the Executive Director. No changes to the plans or schedule shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

7. Drainage Plan. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and written approval of the Executive Director, a final drainage and runoff control plan, with supporting calculations, that has been approved by the City of Carlsbad. This plan shall include the following requirements:

- (a) Drainage from all roofs, parking areas, driveways, and other impervious surfaces on the building pad shall be directed toward the street to the maximum extent possible and through vegetative or other media filter devices effective at removing and/or mitigating contaminants such as petroleum hydrocarbons, heavy metals, and other particulates.

The permittee shall undertake development in accordance with the drainage plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to

this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. Revised Landscaping Plan. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and written approval of the Executive Director, a revised final landscape plan approved by the City of Carlsbad. Said landscape plans shall be in substantial conformance with the plans submitted with this application by Urbitech Platform dated March 2, 2007, except they shall be revised as follows:

- a. The landscape palette shall emphasize the use of drought-tolerant native species, but use of drought-tolerant, non-invasive ornamental species and lawn area, is allowed as a small component. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized.
- b. A view corridor a minimum of 6 ft. wide shall be preserved in the north and south yard areas. All proposed landscaping in these yard areas shall be maintained at a height of three feet or lower (including raised planters) to preserve views from the street towards the ocean. All landscape materials within the identified view corridors shall be species with a growth potential not expected to exceed three feet at maturity.
- c. A planting schedule that indicates that the planting plan shall be implemented within 60 days of completion residential construction.
- d. A written commitment by the applicant that all required plantings shall be maintained in good growing condition, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape screening requirements.
- e. Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.
- f. Five years from the date of issuance of the coastal development permit, the applicant shall submit for review and written approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping

plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and written approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

g. Any gates or fencing across the side yard setback areas shall be at least 75% see through/open.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

9. Protection of Accessory Improvements. In the event that erosion or bluff failure threatens the accessory improvements (i.e., decks, retaining walls, patios, etc.), they shall be removed. The decks, retaining walls and patios are authorized to remain in place only until they are threatened by erosion or bluff failure. The approval of this permit shall not be construed as creating a right to shoreline protection under the City's LCP. Prior to removal of any threatened accessory improvements, the permittee shall obtain a coastal development permit for such removal unless the Executive Director determines that no permit is required.

10. Disposal of Export Material/Construction Debris. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall identify the location for the disposal of export material and construction debris. If the site is located within the coastal zone, a separate coastal development permit or permit amendment shall first be obtained from the California Coastal Commission or its successors in interest.

11. As-Built Plans. Within 60 days following completion of the project, the permittee shall submit for review and written approval of the Executive Director, as-built plans for the residence and accessory improvements permitted herein. Said as built plans shall first be approved by the City of Carlsbad and document that the home and accessory improvements have been constructed consistent with the Executive Director approved construction plans required pursuant to Special Condition #1 of CDP A-6-CII-07-17.

12. Condition Compliance. **WITHIN SIXTY (60) DAYS OF COMMISSION ACTION ON THIS COASTAL DEVELOPMENT PERMIT APPLICATION**, or within such additional time as the Executive Director may grant for good cause, the applicants shall satisfy all requirements specified in the conditions hereto that the applicants are required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

13. Revised Revetment Plan. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for review and written approval of the Executive Director, a revised revetment plan approved by the City of Carlsbad. The plans shall be revised as follows:

a. The revetment shall be revised consistent with the revetment design as depicted in Exhibit #5 attached to this report and originally described as Alternative B in the "Evaluation of Additional Alternatives for Shoreline Protection Tierra Del Oro Property Carlsbad, California", dated 4/27/93 approved by CDP #6-92-232, and shall include the following:

a. The toe of the revetment shall be excavated to +5 ft. MSL.

b. The top of the revetment shall not exceed elevation +18' MSL at any point.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

14. Long-Term Revetment Monitoring Program. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for review and written approval of the Executive Director, a long-term monitoring plan for the existing shoreline protection. The purpose of the plan is to monitor and identify damage or changes to the revetment such that repair and maintenance is completed in a timely manner to avoid further encroachment of the revetment on the beach. The monitoring plan shall incorporate, but not be limited to the following:

a. An evaluation of the current condition and performance of the revetment, addressing any migration or movement of rock which may have occurred on the site and any significant weathering or damage to the revetment that may adversely impact its future performance.

b. Measurements taken from the benchmarks established in the survey as required in Special Condition #16 of CDP #A-6-CII-07-17 to determine settling or seaward movement of the revetment. Changes in the beach profile fronting the site shall be noted and the potential impact of these changes on the effectiveness of the revetment evaluated.

c. Recommendations on any necessary maintenance needs, changes or modifications to the revetment to assure its continued function and to assure no encroachment beyond the permitted toe.

d. An agreement that the permittee shall apply for a coastal development permit within 90 days of submission of the report required in subsection c. above for



any necessary maintenance, repair, changes or modifications to the project recommended by the report that require a coastal development permit and implement the repairs, changes, etc. approved in any such permit.

The above-cited monitoring information shall be summarized in a report prepared by a licensed engineer familiar with shoreline processes and submitted to the Executive Director for review and written approval. The report shall be submitted to the Executive Director and the City of Carlsbad Engineering Department after each winter storm season but prior to May 1st of each year starting with May 1, 2008. Monitoring shall continue throughout the life of the revetment or until the revetment is removed or replaced under a separate coastal development permit.

The permittee shall undertake development in accordance with the approved monitoring program. Any proposed changes to the approved program shall be reported to the Executive Director. No changes to the program shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

15. No Future Seaward Extension of Shoreline Protective Devices. By acceptance of this Permit, the applicant agrees, on behalf of himself and all successors and assigns, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the existing shoreline protective device, as shown on Exhibit #5, shall be undertaken if such activity extends the footprint seaward of the subject shoreline protective device as specified in Special Condition #16 of CDP #A-6-CII-07-17. By acceptance of this Permit, the applicant waives, on behalf of itself (or himself or herself, as applicable) and all successors and assigns, any rights to such activity that may exist under Public Resources Code Section 30235.

16. Revetment As-Built Plans. Within 60 days following completion of the revetment reconfiguration, the permittee shall submit revetment as-built plans approved by the City of Carlsbad to be reviewed and approved in writing by the Executive Director documenting that the revised revetment is in substantial conformance with the revetment plans approved pursuant to Special Condition #13 of this permit.

In addition, within 60 days following completion of the revetment reconfiguration, the permittee shall submit a geological survey of the existing revetment, prepared by a licensed geologist, or civil or geotechnical engineer for the review and written approval of the Executive Director. The survey shall identify permanent benchmarks from the property line or another fixed reference point from which the elevation and seaward limit of the revetment can be referenced for measurements in the future.

17. Implementation of Removal and Reconfiguration of Existing Riprap. **WITHIN 90 DAYS OF ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-6-CII-07-17**, or within such additional time as the Executive Director may grant for good cause, the applicant shall remove the existing riprap located on the beach at the toe of the bluff and replace it consistent with the plans approved pursuant to Special Condition #13 of

this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

#### **IV. Findings and Declarations.**

The Commission finds and declares as follows:

**1. Detailed Project Description.** The proposal includes the construction of a 5,619 sq. ft. two-story single-family residence to include a subterranean two-car garage and basement on a 12,517 sq. ft. vacant lot. The maximum height for the proposed residence is 30 ft. The City granted a variance from the front yard setback requirements (20 feet required, 0-foot setback approved). The variance allows more of the flat upper portion of the site to be used for building rather than the steeper sloping portions of the lot, therefore minimizing grading and landform alteration consistent with coastal resource preservation. The prevailing pattern of development along Tierra Del Oro uses this approach and the City and Commission have approved it in many permit decisions. Also proposed is a patio and upper deck/terrace seaward of the home and a stairway that leads down the slope and beyond the identified edge of bluff, terminating at the top of the riprap.

The project site is a coastal bluff-top lot located on the west side of Tierra Del Oro, just north of Cannon Road in the City of Carlsbad. The basement level is not visible from the street but is exposed on the west side of the structure, with access to an at-grade deck. The site slopes down from Tierra Del Oro, transitioning into a steep coastal bluff. The lower portion of the bluff face is currently covered with a large riprap revetment that extends up to approximately +18 Mean Sea Level (MSL) and seaward of the bluff toe onto the beach approximately 30 ft. The applicant has revised the project for purposes of the Commission's de novo review to include retention of the existing riprap in its current configuration.

The proposed development is located in an already developed single family residential neighborhood. Most of the oceanfront residences have decks, patios and other structures which extend seaward of the principal residential structure. Many of the residences have walkways which extend to the bluff edge. Some residences have platforms at the bluff edge and private beach access stairways which extend down the bluff face to the beach. Residences on either side of the subject site have walkways that extend down the bluff face and lead to the beach.

The site is planned for residential development in the Mello II segment of the City's certified Land Use Plan (LUP). The site is located within and subject to the Coastal Resource Protection Overlay zone and the Coastal Shoreline Development Overlay Zone of the Carlsbad Municipal Code. The Land Use designation on the site is Residential Low-Medium Density (RLM) and Open Space (OS). The OS General Plan designation applies to the bluff portion of the site. The proposed residence meets all height and density requirements of the certified LCP and architecturally is in conformance with the development and design standards of the surrounding community.

### **Site History**

There is limited buildable area on this parcel due to the configuration of the low bluff in this area (the parcel curves inland from adjoining lots), the existing street design (it curves into the subject property), and most importantly because much of it has eroded away from wave action over the years; riprap was not installed on this site until 1994. Many of the surrounding residences had rip rap armoring prior to the enactment of the Coastal Act. The lack of protection on this undeveloped lot intensified erosion rates there, as wave energy was deflected from adjacent revetments toward this unprotected section of coastal bluff.

CDP #6-92-232 was approved by the Commission in August 1993. The approved project included the construction of a two-story 3,664 sq. ft. single family residence and an engineered rock riprap revetment on a vacant lot. The Commission viewed the installation of the riprap as an infill project, thus permissible, as this lot was the last remaining lot both undeveloped and unarmored. The home approved by this permit was never constructed; however the slope was graded and the riprap revetment was installed in 1994. Grading of the slope resulted in the highest portion of the lot being reduced from 42' elevation to 36' elevation. Prior to the approval in 1993, the Commission required the applicant to provide an alternatives analysis to determine the most appropriate configuration for the riprap. The applicant provided an engineer's analysis of three feasible alternative designs for the slope restoration and riprap revetment. Alternative A aligned the revetment between the existing rock lateral with adjoining lots to be consistent with the "stringline" approach (ref. Exhibit #4). Alternative B resulted in less beach encroachment for the revetment than alternative A, due to it's concave configuration, and a steeper fill zone than Alternative A resulting in less rock being placed on the beach (ref. Exhibit #5). Alternative C eliminated the compacted fill slope and pulled the revetment back to abut the existing bluff, however Alternative C was shown to be the least stable of the alternatives thus inconsistent with Coastal Act Policies (ref. Exhibit #6). The Commission ultimately approved the riprap to be constructed in the concave Alternative B configuration. Apparently, due potentially to conditions in the field, although this is not clear, the riprap was installed in a different configuration from that of the approved Alternative B, in violation of the terms of permit #6-92-232. The actual construction of the revetment resulted in a configuration approximately four feet west of the approved location and directly on top of a portion of the dedicated public lateral beach access easement that resulted from this same Commission approval. Again, as a component of this project, the applicant is proposing to maintain the improperly constructed riprap in its current location.

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.

**2. Shoreline Development/Hazards.** Policy 21.204.04- b of the Coastal Shoreline Development Overlay provides, in part:

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.....Provisions for the maintenance of any permitted seawall shall be included as a condition of project approval.....Seawalls shall be constructed essentially parallel to the base of the bluff and shall not obstruct or interfere with the passage of people along the beach at any time.

The vacant lot is currently protected by a riprap revetment constructed after issuance CDP #6-92-232. At the time, the riprap was viewed as an infill project that increased the protection of the existing residences to the north and south and was thus permissible under the City of Carlsbad policies. However, the City of Carlsbad's LCP was not yet certified, therefore, conformance with Chapter 3 provisions of the Coastal Act was also required. The Commission required the applicant to develop alternatives to the original proposed configuration for the riprap revetment. The applicant submitted a report that discussed three different alternatives. Alternative B maintained slope stability, protected the proposed home and allowed for maximization of public access, by configuring the revetment in a concave shape matching the shape of the coastal bluff. This was the alternative ultimately permitted by the Commission.

As noted above, the Commission previously approved construction of a home and a revetment on the subject site in 1993. The only development that was completed pursuant to that permit was grading of the site and installation of riprap. Upon review of the current project for construction of a new home on the site, it became apparent that the riprap that was installed is inconsistent with the plans approved by the Commission pursuant to CDP #6-92-232. Further, the Second Addendum to the Geotechnical Report submitted by Geotechnical Exploration Inc., confirmed that the revetment, due to unknown circumstances was, in fact, installed in a more linear manner, resulting in the revetment toe extending an estimated 4' westward of the configuration approved by the Commission in 1993. The submitted addendum states:

Apparently due to the opinions stated in the Woodward-Clyde report, combined with field conditions that we could not verify nor research further, field construction of the revetment toe varies from that of the Alternative B plan. In addition, the toe construction differs from the City of Carlsbad As-built plans that were signed at the completion of the revetment prior to bond release. We could not find any evidence of Coastal Monitoring of this project since 1994 nor any explanation for the discrepancy

To address this issue, the applicant has revised the project and is now proposing to retain the revetment in its current location and configuration and has submitted the Second Addendum to the Geotechnical Report to justify the request. The Addendum indicates that the current configuration provides the best public safety scenario. However, the Commission's staff coastal engineer has reviewed the project and submitted technical

reports and disagrees with their findings. A detailed comment by Commission's staff Coastal Engineer states (ref. Exhibit #11):

.....This alignment is feasible (Alignment B), it could have been constructed and it would have less beach encroachment than the alignment that was constructed.

Reconstruction of the revetment in the approved alignment (Alignment B) **is possible** (emphasis added). Since the slope between the revetment and the bluff face is compacted fill, it should be possible to remove the revetment and fill slope and reconstruct both as approved in 1993 by the Commission without disturbance to the natural bluff face....

As cited above, the Carlsbad LCP requires that when shoreline protection is permitted, it should be installed parallel with the bluff. In this particular case, based on review of the submitted technical reports, the bluff face at the subject site is concave and curves in. However, the installed riprap is linear to the shoreline and does not follow parallel to the concave bluff face, inconsistent with the LCP provisions. Because reconstruction of the revetment is possible and because the current location of the revetment is not in conformance with what was originally permitted by the Commission and what has been interpreted as permissible by the Coastal Development policies of the City of Carlsbad (essentially parallel), the Commission is requiring the applicant to redesign the existing revetment to decrease its foot print on the beach and resulting impacts to shoreline sand supply and public access. Special Condition #13 requires that the applicant submit revised revetment plans that indicate the revetment alignment is consistent with the previous Commission action. Special Condition #16 requires the applicant to submit as-built plans indicating that the revised revetment is in substantial conformance with the approved plans and requires that the applicant have the modified riprap surveyed to confirm the riprap is designed in substantial conformance with the as-built plans. Special Condition #4 requires the applicant to record a deed restriction indicating all Special Conditions placed on this site.

The City of Carlsbad's LCP requires that provisions for maintenance of any seawalls shall be included as a condition of project approval. As such, Special Condition #14 requires the applicant to submit a detailed monitoring program for the revetment and to survey the revetment annually and to submit the survey to both the City of Carlsbad and the Executive Director. Special Condition #14 also includes provisions to address maintenance of the revetment should any maintenance activities be recommended.

In summary, the revetment is currently inconsistent with the City of Carlsbad's policies for shoreline protection. As conditioned by Special Condition #13, the revetment will be reconfigured to be parallel to the existing bluff in an alignment historically approved by the Commission and consistent with the City's LCP policies. Further, Special Conditions #14, 15 and 16 will require the applicant to maintain the revetment in the appropriate configuration for the life of the development. Therefore, as conditioned, the proposed development is in conformance with the City of Carlsbad's regulations for Shoreline Development.

**3. Public Access.** The public access and recreation policies of the Coastal Act are applicable because the proposed development is located between the sea and the first public road. Section 30604(c) requires that a specific access finding be made. In addition, many policies of the Coastal Act address the provision, protection and enhancement of public access to and along the shoreline, in particular, Sections 30210, 30211 and 30212. These policies address maintaining the public's ability to reach and enjoy the water, preventing overcrowding by providing adequate recreational area, and protecting suitable upland recreational sites. Therefore, this development will be reviewed for consistency with both the public access policies of the Coastal Act and the City of Carlsbad's LCP. The project, as proposed, would consist of development on a currently vacant bluff-top lot and preserving an existing riprap revetment in its current location. Both the development and the riprap have potential impacts to public access. The following public access policies are applicable and state in part:

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.....

Sections 30210, 30211 and 30212(a) 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(a):** Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects...

The site is the last undeveloped site in the Tierra Del Oro neighborhood. The Tierra Del Oro neighborhood is an inlet coastal street that runs parallel with the ocean, and has one entrance and street parking that is open to the public. Currently there is no vertical access along Tierra Del Oro. The proposed site has been gated off to the public in recent times, but based on aerial photographs of the site dating back to 1972, there is evidence of historic use by the public to access the beach across the subject site. However, the need for vertical access was addressed by the Commission in its review of CDP #6-92-232 which states:

No vertical public access to the shore presently exists along Tierra Del Oro or in the adjacent residential area to the south along Shore Drive. Public access does exist about 100 yards further to the north at Carlsbad State Beach across from Encina Power Plant and approximately 1/3 mile to the south where a section of Carlsbad State Beach also exists. This access allows the public to gain access to the beach below the subject site. The commission finds that with access available nearby to the north and south that imposition of a vertical access requirement is not warranted for this project.

The Commission finds that the same is true today, in that public access to the shoreline is currently available a short distance north of the subject site. Therefore, the need to require public vertical access on the subject site is not necessary. In addition, in its previous action, the Commission required that a 25 ft. lateral public access easement on the beach seaward of the revetment be recorded as partial mitigation for installation of the riprap revetment on the beach. This access easement was subsequently recorded.

However, as previously discussed, the site has a riprap revetment installed by CDP# 6-92-232. The riprap was installed approximately 4' seaward of the location approved by the Commission's action. Thus, the riprap is currently located within this lateral access easement. As noted in the previous section, because the riprap was installed inconsistent with the Commission's previous action, the applicant has modified the project and is now requesting to maintain the riprap in its current configuration. To address this issue, the applicant submitted a geotechnical report that concluded that the riprap, as currently installed, would provide the best public safety scenario. However, based on review of the technical reports by the Commission's staff coastal engineer, no new information has been submitted that would support a finding that the riprap, as originally approved, will not provide adequate protection for the subject site. During times of high tide and storm events, seawater reaches the riprap, thus public access is already limited. With the estimated additional 4 ft. of encroachment on the beach and into the existing lateral access easement, lateral access along the shoreline in this location will be adversely impacted.

The revetment in its current configuration is not in conformance with public access policies of the City of Carlsbad's LCP or the Coastal Act. As such, Special Conditions #13, 14 and 16 require the applicant to reconfigure and maintain the revetment to conform to the design approved by the Commission's action in 1993 thereby protecting the existing dedicated lateral public access. Special Condition #15 requires that the applicant agree to restrict any maintenance, enhancement, or re-enhancement to the existing revetment if such modifications result in a seaward encroachment of the revetment. The special conditions discussed above will protect the existing public access along the site, and as conditioned, the development can therefore be found in conformance with the above stated public access policies.

**4. Stringline.** The proposed development is located in a region that utilizes stringline policies to regulate the seaward extent of development. The City of Carlsbad has specific policies regarding stringline setback. The goal of limiting new development from

extending beyond the stringline is to restrict encroachment onto the shoreline and to preserve public views along the shoreline. Specifically Section 21.204.050B of the Coastal Shoreline Development 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.

As noted above, the provision of a stringline setback for shorefront development addresses the appropriate line of development based on its relation to existing structures on either side. However, a greater setback may be required to assure the new development is sited such that it will be safe based on geotechnical and other reasons. This will be discussed in the next section of the report.

The proposed development includes a two-story home with subterranean garage and accessory structures such as patios and a stairway to the beach. The lot is currently undeveloped but the lots immediately to the north and south are developed. The project as approved by the City interprets the stringline to be taken from the furthest point of development of the residences to the direct north and south. Staff has historically interpreted the stringline to be taken from the corner of development **nearest** to the proposed structure (ref. CDP Nos. A-6-CII-03-26/Kiko; 6-90-25/Kunkel; 6-90-299/Rowe; 6-92-107/Phillips and 6-95-144/Bownes). The project’s interpretation of the stringline allows the development and its accessory structures to encroach further westward than that if it were interpreted pursuant to past Commission precedent. This interpretation allows for a building footprint to extend further seaward than that of the neighboring residences. If the development were constructed as proposed, it could set a precedent that the neighboring homes could try to use should they choose to redevelop their homes. Further, the method of interpreting the stringline used by the applicant would set a second precedent allowing all future development to justify their stringline by interpreting the provision in the same manner. The results of this would lead to possible incremental encroachment westward for any future development. The approved stringline location results in new development being sited nearer to the ocean, causing increased potential adverse impacts to public views.

The City measured the stringline from the furthest north portion, and not the nearest southern portion, of the adjacent structure to the north for both the building and the patio (ref. Exhibit #7). Consequently, as approved by the City, the proposed structure is sited up to 8 feet further seaward than if measured from the closest corner of the building, and up to 6 feet further seaward than if measured from the closest corner of the patio, thus inconsistent with the LUP policy and shoreline ordinance as interpreted by the Commission along the Carlsbad shoreline.



Special Condition #1 therefore requires the applicant to submit revised final plans modifying the project such that the proposed home and accessory improvements are sited behind the stringline, as measured from the nearest corner of the adjacent structures to the north and south. Special Condition #11 requires the applicant to submit as-built plans within 60 days of completion of the project that document the development was constructed per plans approved by Special Condition #1. Because further development on the site could result in impacts on coastal resources, even some development that may otherwise be exempt, Special Condition #5 requires the applicant to submit an application/amendment for any improvements or modifications to the residence in the future to the Commission and/or the City of Carlsbad. These conditions will protect the goals of the stringline provision for the current development as well as any future development and only as conditioned can this development be found consistent with the policies for the use of stringline provisions.

In summary, the project, as proposed, has been sited further seaward for both building and accessory structures than allowed in the City of Carlsbad's LCP. However, as conditioned by Special Condition #1, the development will be constructed in a manner consistent with the Commission's historical interpretation pertaining to stringline policies of the City of Carlsbad's LCP, and is thus consistent with said policies.

**5. Grading of a Coastal Bluff/Siting New Development.** The proposed development is located on a vacant bluff-top lot. Substantial grading and development on a coastal bluff face is not supportable by the City's LCP provisions. Section 21.204.050 of the Coastal Shoreline Development Overlay Zone and policies of the Mello II LCP state:

Mello II LUP Policy 4-1(d):

No development shall be permitted on sand or rock beach or in the face of any ocean bluff, with the exception of access ways to provide **public** (emphasis added) beach access and of limited public recreational facilities

Section 21.204.050 of the Coastal Shoreline Development Overlay Zone provides:

- b. Grading and Excavation - Grading and excavation **shall be the minimum necessary** (emphasis added) to complete the proposed development consistent with the provisions of this zone and the following requirements:
  - 3) 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.

To preserve coastal bluffs, the Commission has typically interpreted the above sections of the LCP to mean that "the minimum necessary" for new development on the bluff face means at-grade and ephemeral without requiring excavation which makes such

improvements more “permanent” (ref. CDP Nos. 6-92-100/Fulton; 6-92-232/Weldon and 6-93-100/Gilstrap).

In its approval of the project, the City cited the project’s conformance with the bluff-top development provisions of the Coastal Shoreline Development Overlay. The overlay is intended to provide land use regulations along the Carlsbad shoreline including beaches, bluffs and the land area immediately landward thereof. The purpose of the overlay zone is to ensure that the public’s interest in maintaining the shoreline as a unique recreational and scenic resource is adequately protected. Additionally, the overlay ensures public safety and public access will be assured and promotes avoidance of the adverse geologic and economic effects of bluff erosion.

A geotechnical report was submitted by the applicant for the proposed development. The report documents that the home, as proposed, will be safe for its estimated life. According to the Commission’s staff geologist, based on the submitted slope stability analysis completed for the project, as proposed, the home will achieve greater than a 1.5 factor of safety. Thus, the home in its proposed location will be safe from a geotechnical standpoint. However, based on the above LCP provisions, the Commission must also find that the development does not extend beyond the bluff edge onto the face of the bluff.

The geotechnical report submitted by the applicant sited the bluff edge somewhere between the 10’ and 20’ elevation (MSL). The Commission’s staff geologist has reviewed the report however, and determined that the elevation of the coastal bluff is actually at the 36’ elevation (MSL) contour shown on the grading plans by Partners Planning and Engineering submitted on April 18, 2007 (ref. Exhibit #8); resulting in the patio and all accessory structures being sited on the bluff-face. The proposed home remains just inland of this contour and is therefore at the absolute edge of the coastal bluff, including the subterranean parking structure and basement. It is unclear, however, if the grading associated with the basement and subterranean garage will have any affect on slope stability or result in grading of the bluff face. The proposed development also includes a back patio and a stairway down the coastal bluff, to accommodate private beach access. It is unclear how much grading would be required or how permanent the accessory structures would be as some of these accessory structures appear to be large and partially enclosed (ref. Exhibit #9).

To preserve the integrity of the coastal bluff and to be consistent with the bluff face development policies of the Certified LCP, a number of conditions have been included. Special Condition #1 requires the applicant to re-design all accessory structures to be at grade and ephemeral. This condition will minimize any grading of the coastal bluff face for either the patio or the stairway. Special Condition #1 also requires the applicant to re-design the proposed residence to conform to the Commission’s interpretation of the City of Carlsbad’s stringline provisions. While this condition is primarily designed to protect public views and to avoid setting a precedent that would allow seaward extensions of homes, it also serves to protect the coastal bluff, as it will move the development away from the bluff edge. As proposed, the development is cited at the edge of what staff has

determined as the bluff edge. The re-designing of the residence to conform to stringline provisions will also serve as a cushion, or buffer, to protect the bluff from impacts from grading for the proposed subterranean level. Because bluff failure is a concern on this site and development is immediately adjacent to a public beach, development on the bluff may have impacts to public safety should these accessory structures become threatened. Special Condition #10 requires the applicant to, in the event of bluff erosion or failure, remove any threatened accessory structures. This condition also requires the applicant to apply for an amendment to this permit prior to removing any threatened structures. These two conditions will serve to protect the public utilizing the beach below the subject site. Further, due to the geological hazards associated with this site, Special Condition #2 requires the applicant to accept this assumption of risk.

In summary, the development as proposed may result in impacts to the bluff edge and public safety. As such, special conditions are required for all development on the site to be at grade and capable of being removed. Should any of the permissible development on the bluff face become threatened, as conditioned, the applicant would be required to submit an amendment to this permit and remove the structures. The deed restriction included as Special Condition #4 will ensure that any future owners will also be required to conform to these Special Conditions. Therefore, as conditioned, the proposed development is consistent with the policies regulating development on a bluff face.

**6. Water Quality/Drainage.** The proposed development is located along the Carlsbad shoreline. Chapter 15.12, “Stormwater Management And Discharge Control”, of the certified Carlsbad Zoning Ordinance requires “Best Management Practices” (BMPs) to prevent or reduce to the maximum extent practicable (MEP) the discharge of pollutants directly or indirectly into waters of the United States. The purpose of the ordinance is to reduce pollutants in storm water discharges, including those pollutants taken up by storm water as it flows over urban areas (Urban runoff) to the maximum extent practicable and to reduce pollutants in storm water discharges in order to achieve applicable water quality objectives for surface waters in San Diego County. The intent of the ordinance is to protect and enhance the water quality of watercourses and wetlands in a manner pursuant to and consistent with the Clean Water Act and California Regional Water Control Board NPDES Permit No. CA108758, Order 90-42 and any amendment or revision.

Policy 4-6 of the Mello II LUP, “Sediment Control” Practices, provides:

Apply sediment control practices as a perimeter protection to prevent off-site drainage. Preventing sediment from leaving the site should be accomplished by such methods as diversion ditches, sediment traps, vegetative filters and sediment basins. Preventing erosion is of course the most efficient way to control sediment runoff.

Section 21.204.050 of the Coastal Shoreline Development Overlay zone provides:

- 1) ...Building sites shall be graded to direct surface water away from the

top of the bluff, or, alternatively, drainage shall be handled in a manner satisfactory to the City which will prevent damage to the bluff by surface and percolating water..

The project as proposed includes development on a currently vacant site, resulting in increased impermeable surfaces and possible impacts to erosion and water quality. Because the site has been previously graded, the portion of the lot to be developed is relatively flat. However, the remainder of the lot is a coastal bluff substantially sloping toward the beach. The Mello II LCP provides that drainage should go to the street, if feasible. The certified LCP requires that best management practices be utilized to assure the quality of the water leaving the site has been addressed to the maximum extent practicable. The applicant has submitted plans that include the incorporation of vegetated grass-lined swales within the side yard setback of the proposed development. However, based on these plans, it is unclear what the direction of runoff is across the lot and the proposed development. As such, Special Condition #7 requires the applicant to submit final drainage and runoff control plans indicating that the drainage and runoff be directed towards the street (and away from the bluff) and/or directed through landscaping, thus decreasing impacts to erosion and water quality and in conformance with water quality/erosion control policies of the City of Carlsbad's LCP.

**7. Public Views.** The City of Carlsbad has policies pertaining to the protection of public views and state in part:

LCP Section 21.204.100 (B & C) of the Coastal Shoreline Development Overlay Zone states:

- D. Appearance – Buildings and structures will be so located on the site as to create a generally attractive appearance and be agreeably related to surrounding development and the natural environment.
- E. Ocean Views – Buildings, structures, and landscaping will be so located as to preserve the degree feasible any ocean views as may be visible from the nearest public street.

Policy 8-1 of the City of Carlsbad's LCP states:

The Scenic Preservation Overlay Zone should be applied where necessary throughout the Carlsbad coastal zone to assure the maintenance of existing views and panoramas. Sites considered for development should undergo review to determine if the proposed development will obstruct views or otherwise damage the visual beauty of the area. The Planning Commission should enforce appropriate height limitations and see-through construction, as well as minimize alterations to topography.

The proposed development is on a currently vacant bluff-top lot. Unobstructed ocean views currently exist from Tierra Del Oro across the site and to the ocean. The proposal includes construction of a two-story, 30-foot high, 5,649 sq. ft. single-family dwelling.

The surrounding community is comprised of structures of similar size and scale to the proposed structure. The proposed residence meets all height and density requirements of the certified LCP and architecturally is in conformance with the development and design standards of the surrounding community. A variance has been requested and administratively approved for a reduction in front yard setback from 20 ft. to 10 ft. A reduced front yard setback is often approved, given the western constraints of a bluff-top site.

The applicant has not included a finalized landscape plan and further proposes 6' high block walls within the side yard setbacks, both of which have potential impacts to public views. Special Condition #8 therefore requires the applicant to submit a revised landscape plan. This plan shall require the applicant to limit the height of vegetation in the side yard setbacks to three feet or lower. Further, Special Condition #8 also requires the applicant to modify the gating in both the side yard setback areas to be 75% see-through. The City of Carlsbad does have provisions for such see-through construction, as do many other local jurisdictions. Both the City of San Diego and the City of Oceanside have historically used 75% as the minimum percentage necessary to protect public views through side yard gating. This condition will maintain the view corridors remaining in the side yard setback. Therefore, as conditioned, the project can be found consistent with provisions protecting public coastal views.

**8. 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.

As noted, in this case, the project proposes the riprap to remain in its current location, which would impact public access. In addition, the proposed development allows grading on the coastal bluff and an incorrect interpretation of the stringline. As conditioned, public access will be increased, the stringline will be properly interpreted and no substantial grading on the bluff will be permitted. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the ability of the City to continue implementation of its certified LCP.

**9. Violation.** Development has occurred on the subject site not in compliance with the terms and conditions of the previously issued coastal development permit (CDP No.6-92-232). The existing rock revetment (and grading of the bluff to accommodate it) was built four feet west of the approved location and directly on top of a portion of the offer to dedicate lateral public access easement that resulted from this same Commission approval. The applicant is requesting after-the-fact authorization of the unpermitted riprap revetment in its current, as-built, configuration.

In order to ensure that the unpermitted development component of this application is resolved in a timely manner, **Special Condition #12** requires that the applicant satisfy all conditions of this permit, which are prerequisite to the issuance of this permit within 60 days of Commission action, or within such additional time as the Executive Director may grant for good cause. In addition, because the riprap proposed to be retained has already been constructed and through this permit is required to be revised, **Special Condition #17** requires that within 90 days of issuance of the permit, the applicant shall remove the existing riprap and replace it consistent with the plans approved pursuant to Special Condition #13 of this permit.

Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the policies and provisions of the certified City of Carlsbad LCP as well as the public access and recreation policies of Chapter 3 of the Coastal Act. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

**10. California Environmental Quality Act (CEQA).** Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be 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 City of Carlsbad is the lead agency for this project for purposes of CEQA review.

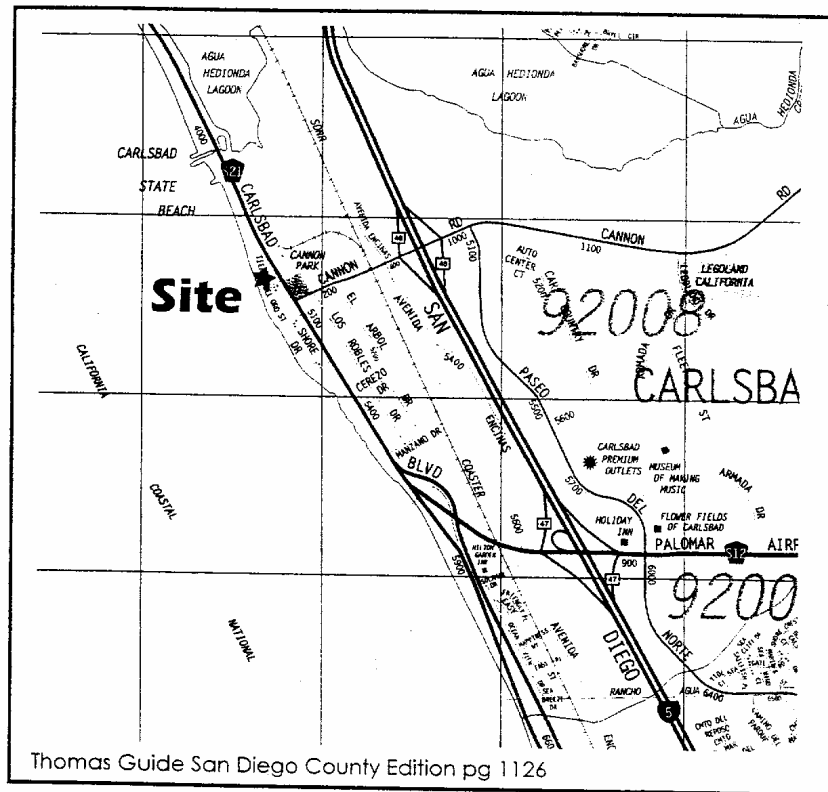
The proposed project has been conditioned in order to be found consistent with the geologic hazard, visual resource, water quality, and public access and recreation policies of the certified LCP as well as with the public access policies of the Coastal Act. Mitigation measures include conditions addressing setbacks, grading on the bluff face, public access and fencing to enhance public views to the ocean. These conditions will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

#### **STANDARD CONDITIONS:**

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

# VICINITY MAP



Riley Residence  
5011 Tierra Del Oro Street  
Carlsbad, CA.

Figure No. 1  
Job No. 05-9042

EXHIBIT NO. 1
APPLICATION NO.
<b>A-6-CII-07-17</b>
Vicinity Map
California Coastal Commission



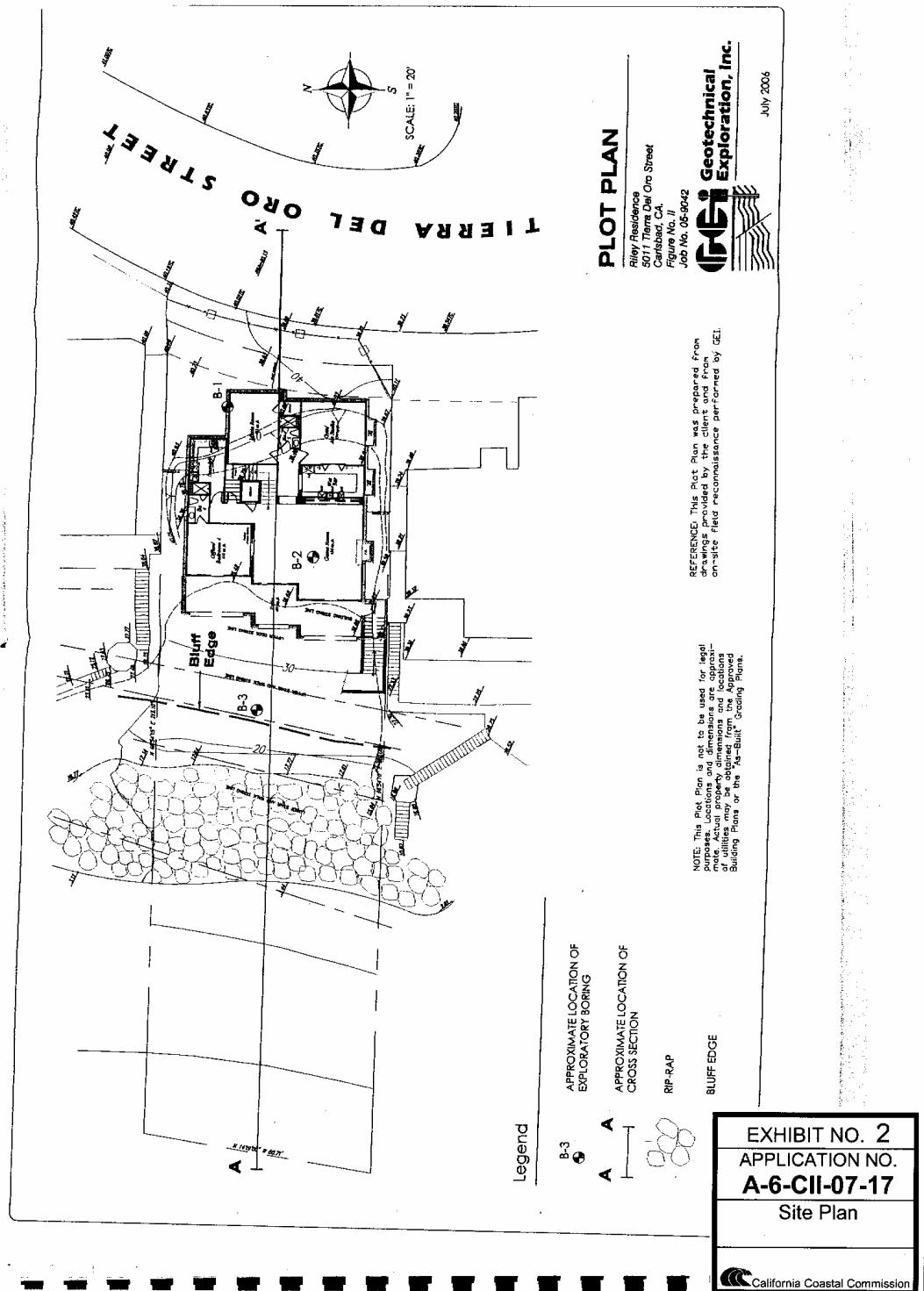





EXHIBIT NO. 3
APPLICATION NO.
<b>A-6-CII-07-17</b>
Aerial Photograph of Site
Page 1 of 2
 California Coastal Commission

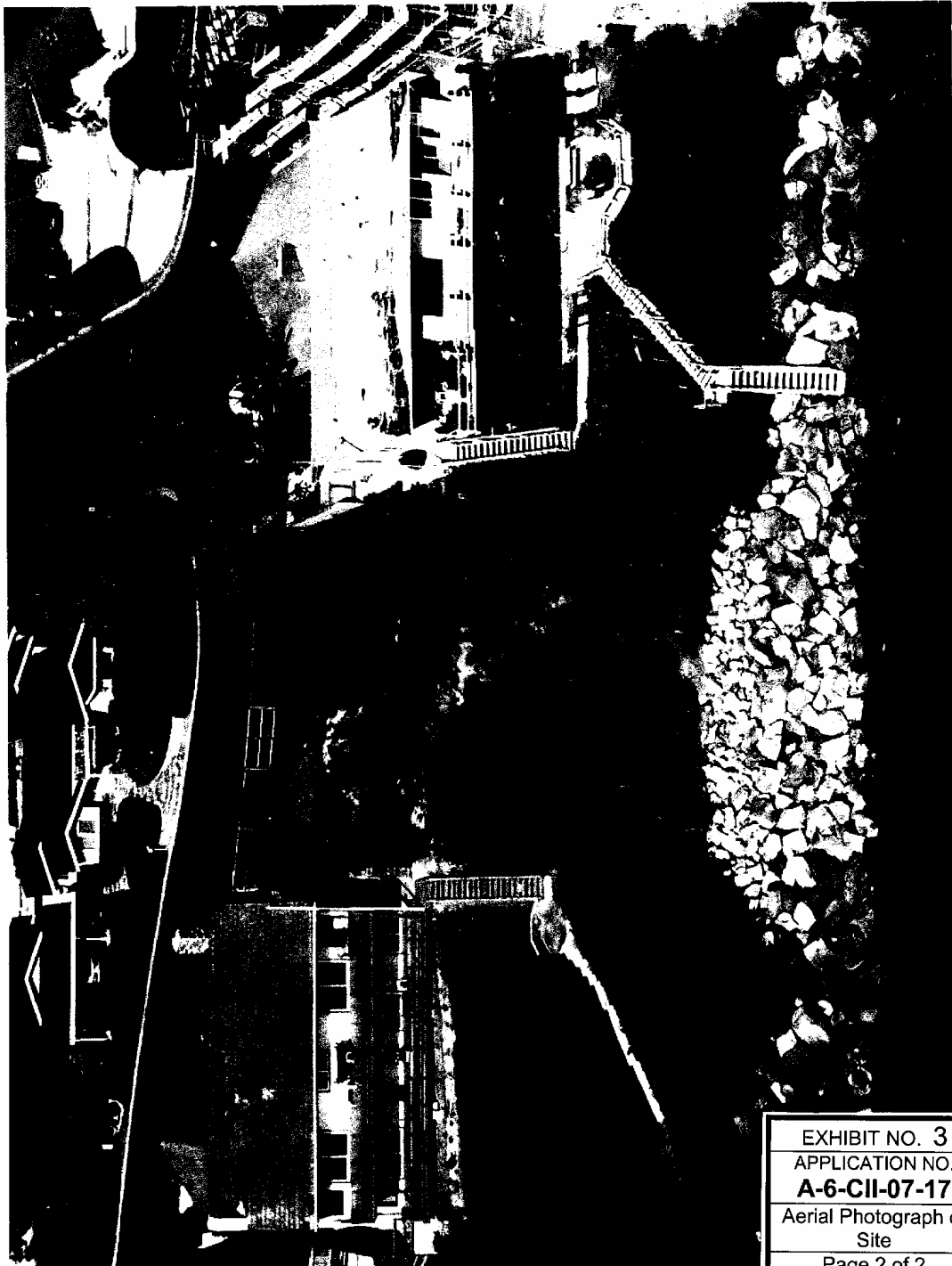

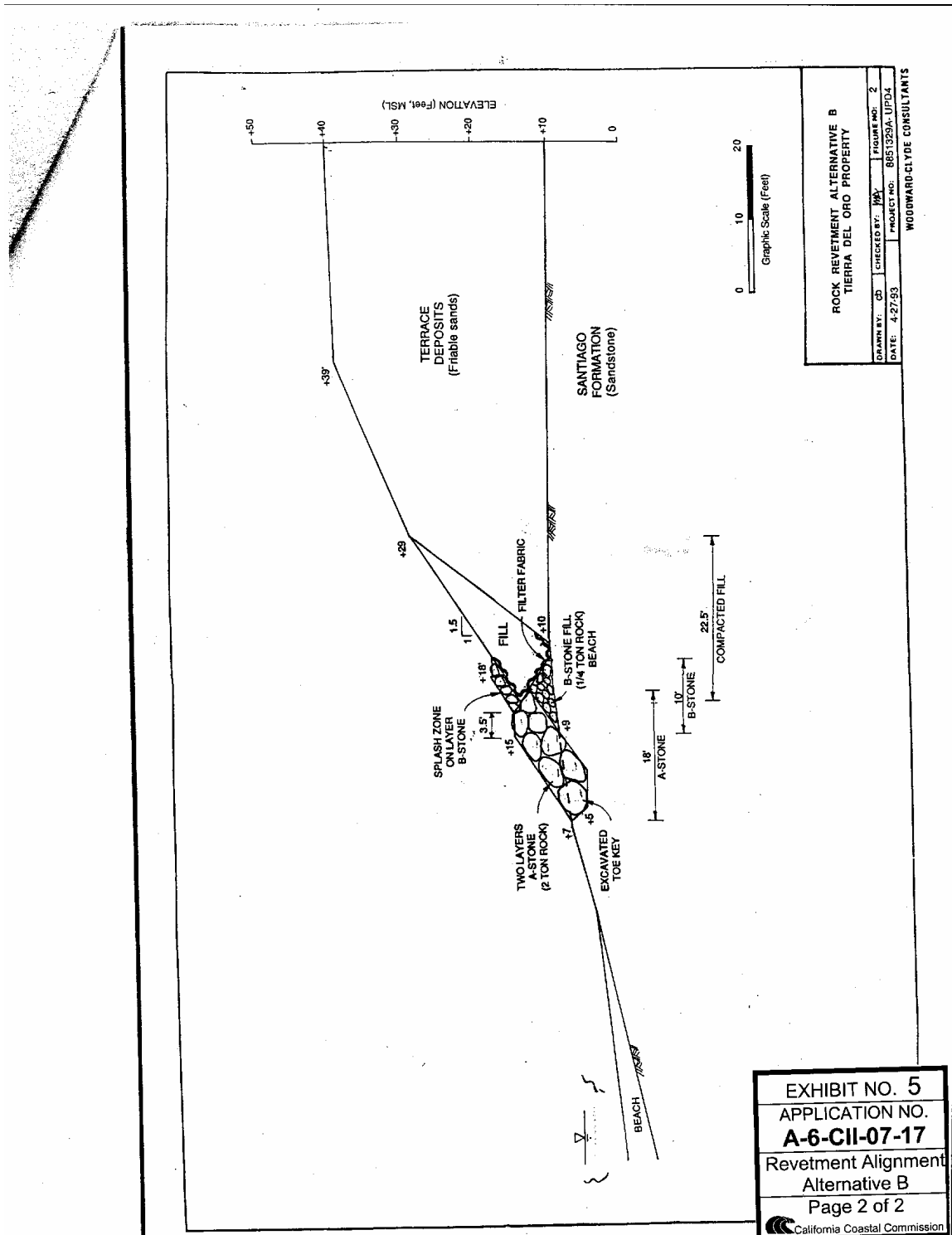


EXHIBIT NO. 3
APPLICATION NO.
<b>A-6-CII-07-17</b>
Aerial Photograph of Site
Page 2 of 2
 California Coastal Commission





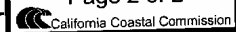


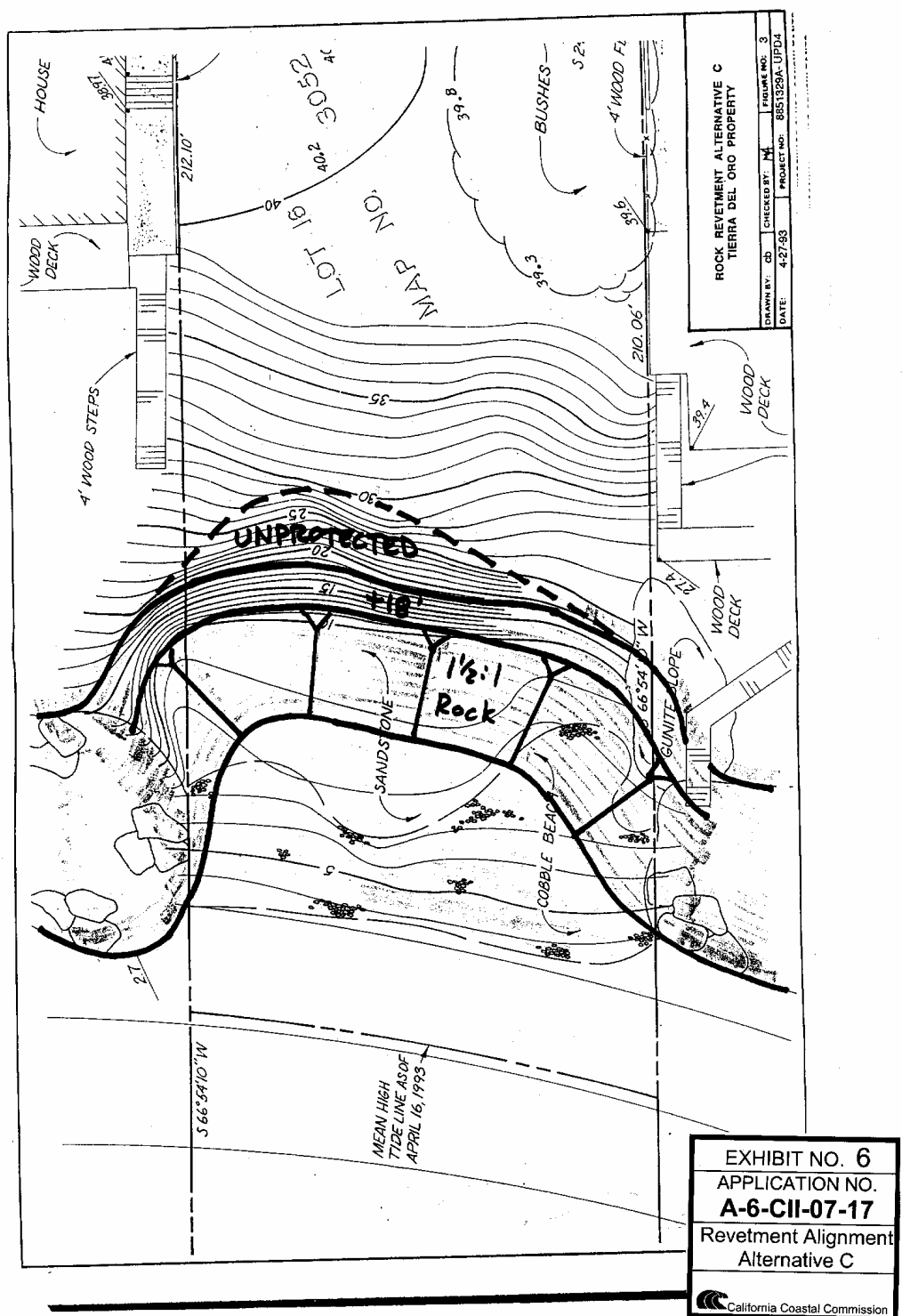
ROCK REVETMENT ALTERNATIVE B  
TIERRA DEL ORO PROPERTY

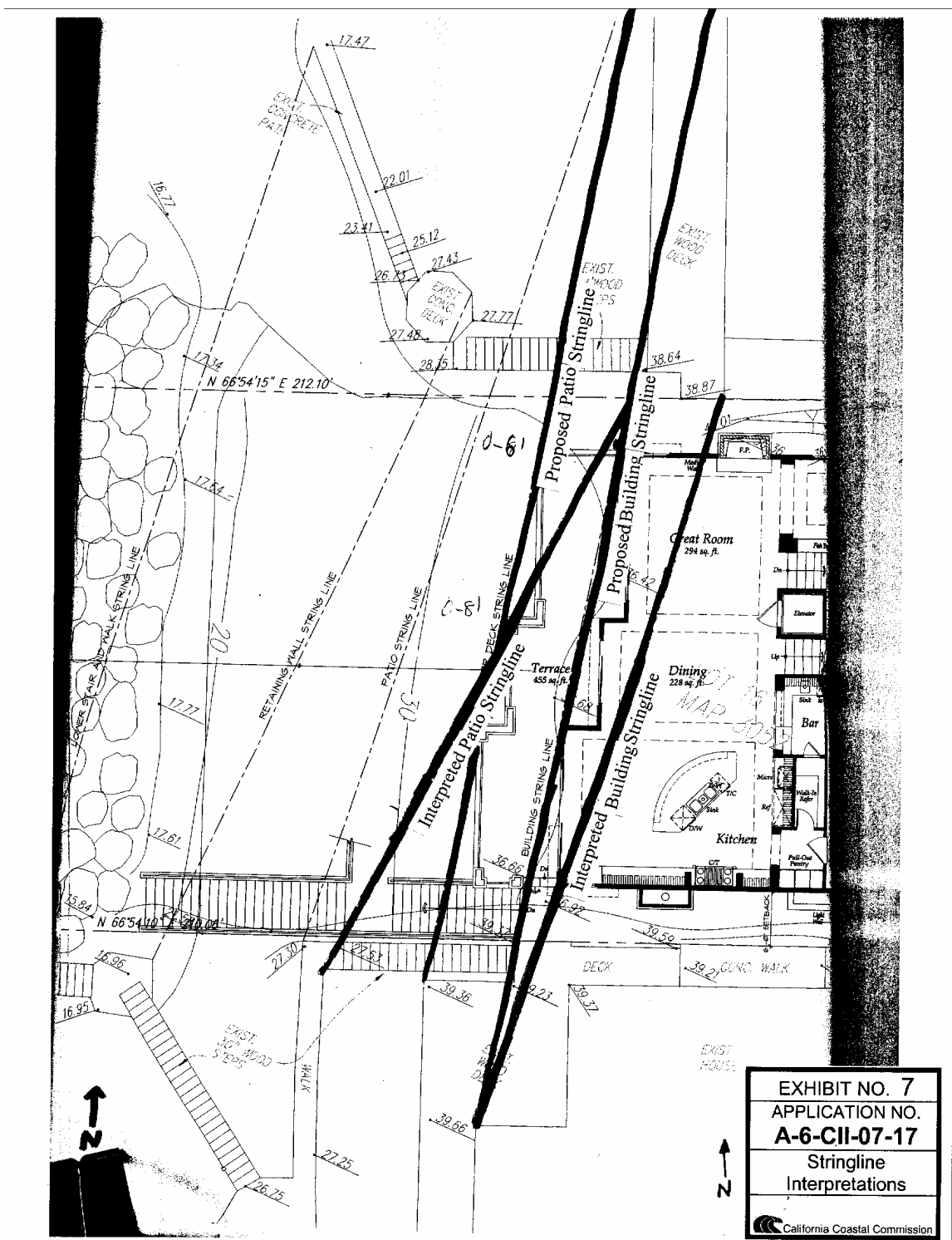
DRAWN BY: CD CHECKED BY: JBY FIGURE NO: 2  
DATE: 4-27-93 PROJECT NO: 8851329A-UPDA  
WOODWARD-CLYDE CONSULTANTS

EXHIBIT NO. 5  
APPLICATION NO.  
**A-6-CII-07-17**

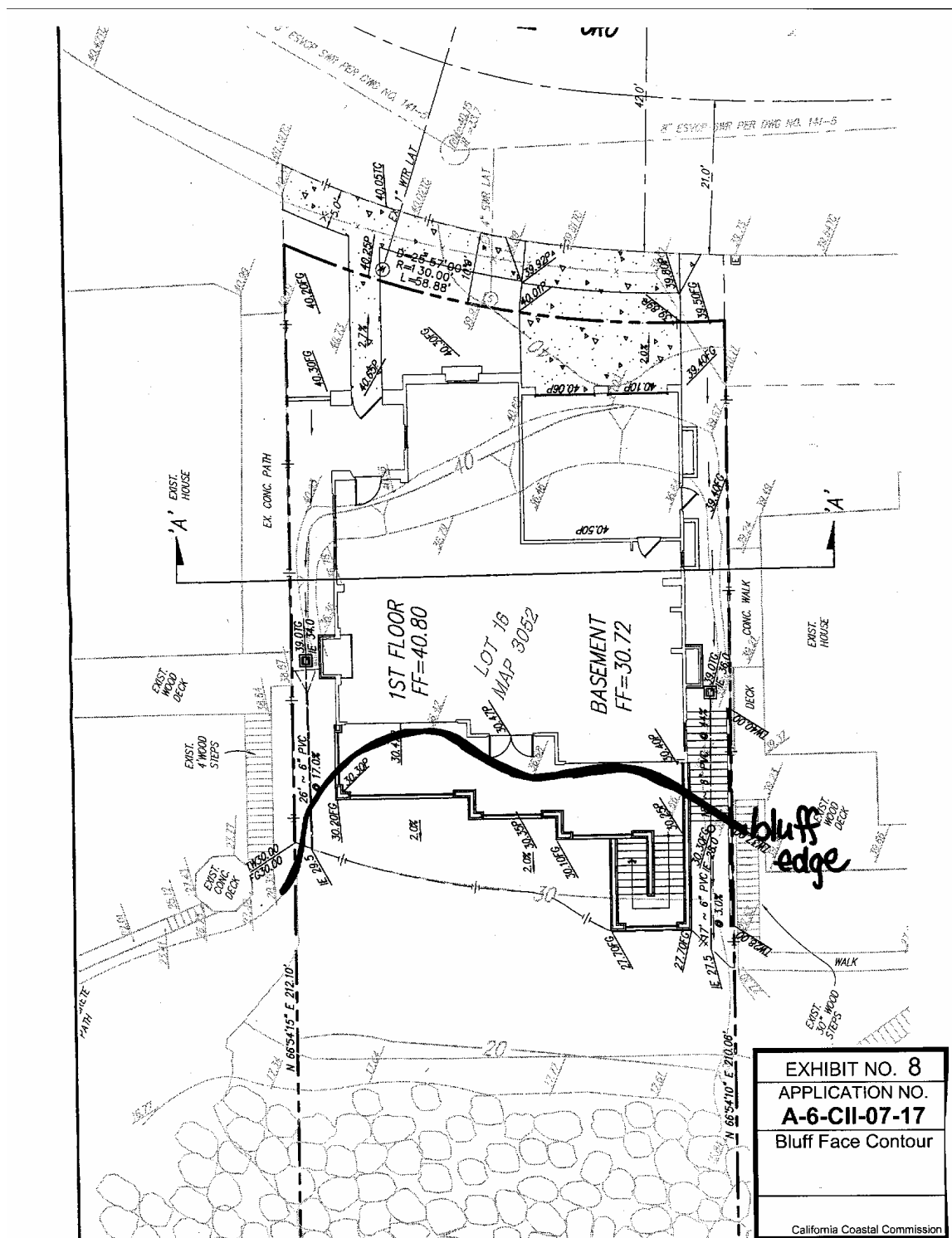
Revetment Alignment  
Alternative B  
Page 2 of 2











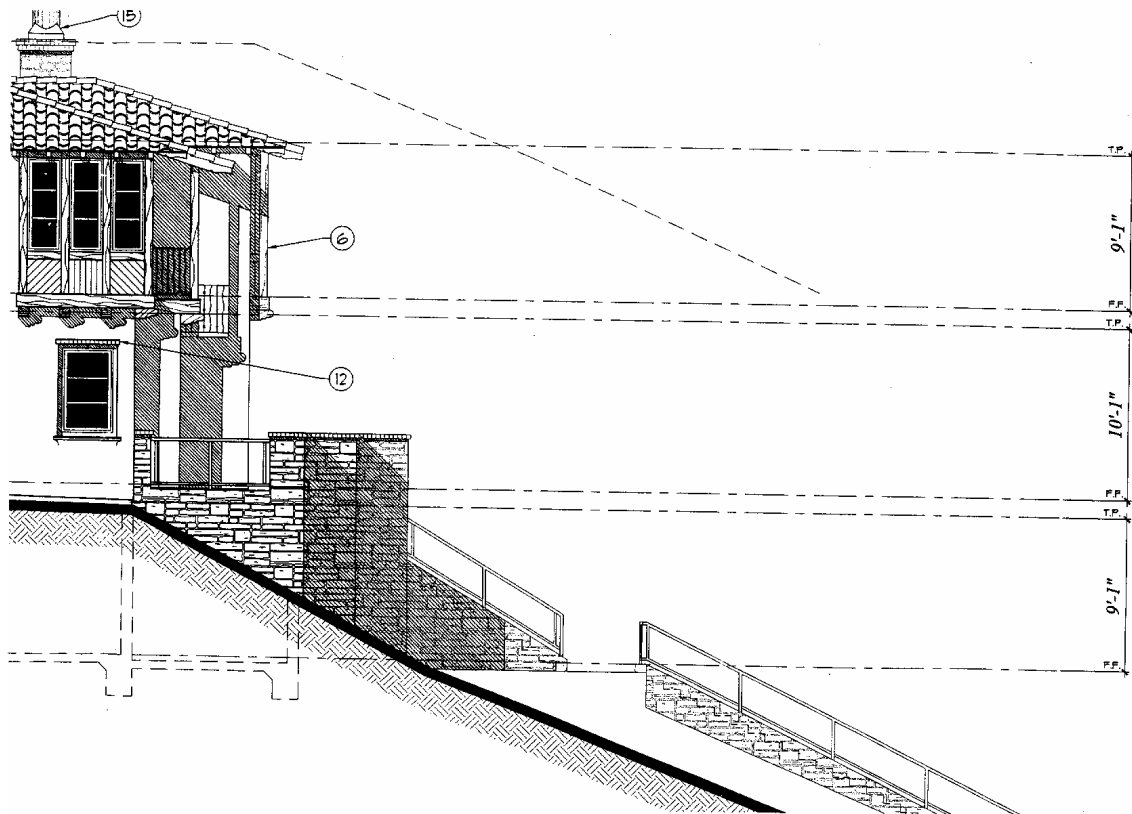


EXHIBIT NO. 9  
APPLICATION NO.  
**A-6-CII-07-17**  
Accessory Structures  
Proposed on Bluff  
Face  
 California Coastal Commission

MAY-21-2007 04:47 PM

P.02

**Hofman**  
Planning & Engineering

Planning Engineering Fiscal Services Coastal

May 21, 2007

Toni Ross  
Coastal Program Analyst  
7575 Metropolitan Avenue, Suite 103  
San Diego, CA 92108-4402

**Riley Residence (CDP 06-05): Request to Include Rip Rap with Project**

Dear Toni:

Per our recent discussions, and on behalf of our client Mickie Riley, please add the rip rap to the project description for this project as it concludes the current Appeal process during the June 2007 hearings.

This existing rip rap was permitted by a previous Coastal Development Permit issued by the California Coastal Commission (CCC) in 1993 and was ultimately signed off by the City of Carlsbad after its construction/inspection process.

It is our understanding that by including this feature with the current Appeal process, our team will have the opportunity to contest staff recommendations that may require its re-configuration (on the scale of approximately a 4-foot eastward adjustment) to precisely match the 1993 CCC approval.

Therefore, please include the rip rap into the Appeal for the Riley residence.

Sincerely,

Signature on File

ERIC MUNOZ  
Director of Planning - HPE

**RECEIVED**

MAY 22 2007

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

c: Mickie Riley, property owner  
Jay Heiser, geotechnical consultant

**EXHIBIT NO. 10**

APPLICATION NO.

**A-6-CII-07-17**Letter including  
revetment in  
proposed project

5900 Pasteur Court • Suite 150 • Carlsbad • CA 92008 • (760) 438-1465 • Fax

California Coastal Commission

STATE OF CALIFORNIA -- THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, GOVERNOR

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400



April 2, 2007 (Draft)  
May 18, 2007 (Corrected Copy)

TO: Toni Ross, Coastal Program Analyst  
FROM: Lesley Ewing, Sr. Coastal Engineer  
SUBJECT: A-6-C11-07-17; Riley House

I have reviewed the following material related to the above referenced project:

California Coastal Commission (1993) Revised Findings, 6-92-232

Woodward-Clyde Consultants (October 26, 1988) Pages 2 – 11, excerpted from Mr. Charles Weldon, Project No. 8851268E-SI01/COS1.

Geotechnical Exploration, Inc. (GEI) (28 February 2006) Report of Preliminary Geotechnical Investigation and Geologic Reconnaissance.

Geotechnical Exploration, Inc. (GEI) (6 July 2006) Addendum to Report of Geotechnical Investigation, Proposed Riley Residence, Letter Report to Mr. Mickie Riley from Jaime Cerros and Leslie Reed.

Geotechnical Exploration, Inc. (GEI) (26 March 2007) Addendum to Report of Geotechnical Investigation, Proposed Riley Residence, Letter Report to Mr. Mickie Riley from Jay Heiser, Jaime Cerros and Leslie Reed.

In addition to the cited materials, I visited the beach portion of the site on the afternoon of March 27, 2007 with you, Lee McEachern and Gary Cannon.

As I understand it, the issue before us is that the 1993 Coastal Commission action was approval of a residence and a revetment; however, the residence was never built and the revetment was not built in accordance with the permit conditions. While the issue of bluff edge may not be of concern at this point, some of the materials from GEI have incorrectly located the edge of bluff and I have provided a short discussion of this issue after the main discussion of the revetment alignment.

When this property was reviewed by the Commission in 1993, the subject property was the "only remaining undeveloped lot in the Tierra Del Oro Subdivision. Additionally, the subject site is the only lot which does not have shoreline protection in place." The applicant and his consultants proposed the installation of shore protection in conjunction with development on the lot since "the existing bluff is only marginally stable and if left unsupported (i.e. without compacted fill slope and revetment) it should be expected to slough back to an approximate 1:1 to 1.5:1 inclination with time;" "there may be an increased potential for adverse lateral erosion

**A-6-CII-07-17**

Letter from Staff  
Engineer

Page 1 of 3

California Coastal Commission

on the adjacent properties which may compromise the stability of the adjacent slopes;" and, "the existing protection on these (adjacent) properties funnels wave energy onto the applicant's property causing more severe erosion that would normally occur"(6-92-232)

In its review of this project in 1993, the Commission concurred with the installation of some type of protection; however, the alignment was of great concern at the time of the initial permit, as was the possibility that there might be additional protection in the future. In the initial application and material that was reviewed for the 1993 Commission action, the Commission was provided with three possible alignments for the proposed revetment and the applicant's engineer provided a brief analysis of the pros and cons of each feasible alignment. Alignment A was a straight-line alignment between the armor on the adjacent properties with compacted fill between the bluff face and the revetment; Alignment B was a curved revetment with less compacted fill between the bluff face and the revetment; and Alignment C was a revetment abutting the eroded bluff face with no compacted fill between the bluff face and the revetment. The Commission, through a permit condition, required revised plans that would comply with the Alignment B. In the revised findings, the Commission recognized that there could be some focused wave energy from Alignment B, but it would reduce encroachment onto the beach and "Only as conditioned to implement Alternative B, can the Commission find the proposed project consistent with Sections 30235 and 30253 of the Coastal Act and the hazard and public access policies of the Mello II LCP.

The GEI 26 March 2007 notes that the revetment was not built along the alignment that was required by the Commission. "Apparently due to opinions stated in the Woodward-Clyde report, combined with field conditions that we could not verify nor research further, field construction of the revetment varies from that on the Alternative B plan. In addition, the toe construction differs from the City of Carlsbad As-built plans [...]." Thus, despite the clear concern expressed by the Commission concerning revetment alignment and the requirement by the Commission that the revetment be built to follow Alignment B, the revetment was built to follow Alignment A, the alignment proposed initially by the applicant and the one that provided the largest fill area between the bluff face and the revetment. Field modifications are rarely initiated without some communication with the Commission or staff to explain the need for field modifications; field modifications that negate the intent of a Commission applied conditions would most likely require a permit amendment.

The applicant is not now providing any information about the problems with Alignment B that were not considered by the Commission in 1993. If the "cove" developed by Alignment B were to refocus wave energy, the main impact area for this energy refocusing would be the revetment itself. One of the reported benefits of a revetment over a vertical wall is that the rip-rap rock in the revetment can better reduce reflected and refocused wave energy. However, if the refocusing of wave energy from Alignment B remained a concern to the applicant, the added energy focusing could have been addressed through engineering design, placement and sizing of the revetment rock, rather than by changing the required alignment. Possible engineering options to address this concern were never explored since the cove was removed through "field modifications".

EXHIBIT NO. 11


APPLICATION NO.

**A-6-CII-07-17**

Letter from Staff

Engineer

Page 2 of 3

 California Coastal Commission

I participated in the staff analysis of the various Alignment options that were part of the Commission 1993 approval. At the time I did not think the wave energy refocusing would pose a significant design constraint to Alignment B. In re-examining the concerns about Alignment B, I do not find any reason to change my initial opinion. This alignment is feasible, it could have been constructed and it would have less beach encroachment than the alignment that was constructed.

Reconstruction of the revetment in the approved alignment (Alignment B) is possible. Since the slope between the revetment and the bluff face is compacted fill, it should be possible to remove the revetment and fill slope and reconstruct both as approved in 1993 by the Commission without disturbance to the natural bluff face. There will be additional disturbance to beach access and recreation from this construction, so some conditions on timing of the work may be needed.


The 2006 and 2007 GEI reports discuss the bluff edge as being at the seaward edge of the "lower bluff" – "between elevation 10 and 20 feet above mean sea level". This contradicts the information in the 1993 staff report that stated there can be "no grading for the proposed residence beyond the bluff edge, as shown at elevation 40.5 ft mean sea level (Special Condition 1B). Special Condition 1(b) does allow some excavation of the pre-disturbed bluff to elevation +36.6' MSL, but only for the patio and access to the lower level. However, the discussion plans provided by GEI (Geologic Cross section A-A' and Plot Plan July 2006) both incorrectly locate the bluff edge farther seaward than was considered in the 1993 Commission action.

EXHIBIT NO. 11

APPLICATION NO.

**A-6-CII-07-17**Letter from Staff  
Engineer

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 California Coastal Commission

STATE OF CALIFORNIA -- THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

## 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: Sara Wan  
Mailing Address: 45 Fremont St.  
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: Construction of a 5,619 sq. ft.  
single-family residence to include a two-car garage and basement on a 12,517 sq.  
ft. vacant lot
3. Development's location (street address, assessor's parcel no., cross street, etc.):  
5011 Tierra Del Oro, Carlsbad, San Diego County APN#210-020-16
4. Description of decision being appealed:
  - a. Approval; no special conditions: ☐
  - b. Approval with special conditions: ☒
  - c. Denial: ☐

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-07-17

DATE FILED: February 5, 2007

DISTRICT: San Diego

**RECEIVED**

FEB 05 2007

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

**EXHIBIT NO. 12****APPLICATION NO.****A-6-CII-07-17**

Appeal Forms

Page 1 of 12

California Coastal Commission

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT  
Page 2

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: January 17, 2007

Local government's file number (if any): CDP 06-05

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:

Mickie & Hansi Riley  
30-885 Date Palm Drive  
Cathedral City, Ca 92234

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" dated 2/5/07

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: Laura J. Allan  
Appellant or Agent

Date: 2/5/07

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

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

Date: \_\_\_\_\_

(Document 2)

3 of 12

STATE OF CALIFORNIA -- THE RESOURCES AGENCY

GRAY DAVIS, Governor

## CALIFORNIA COASTAL COMMISSION

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



Attachment A  
Riley Appeal – 5011 Tierra Del Oro, Carlsbad  
February 5, 2007

The proposal includes the construction of a 5,619 sq. ft. single-family residence to include a two-car garage and basement on a 12,517 sq. ft. vacant lot. The project site is a coastal blufftop lot located on the west side of Tierra Del Oro, just north of Cannon Road in the City of Carlsbad. The site slopes down from Tierra Del Oro, transitioning into a steep coastal bluff. The bluff face is currently covered with a large riprap revetment that extends up to approximately +18 Mean Sea Level (MSL) and seaward of the bluff toe onto the beach approximately 30 ft. Also proposed is a patio and upper deck/terrace seaward of the home and a stairway that leads down the slope and beyond the identified edge of bluff, terminating at the top of the riprap.

The City found that the subject single-family residence is consistent with the blufftop development provisions of the certified LCP. However, the development as approved by the City raises several LCP consistency issues with regard to blufftop setbacks, the need for shoreline protection, landform alteration and coastal bluff preservation, public access and protection of public views.

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 Overlays 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 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 City found that the project is consistent with the stringline provisions of the LCP. However, as approved, the stringline is measured incorrectly (is measured from the furthest portion of the adjacent residence to the north when it should be measured from the adjacent corner of the structure). This results in the structure being sited approximately 7 feet seaward of the allowable stringline, inconsistent with the overlay and resulting in new development being sited further seaward. Additionally, the project is inconsistent with the stringline for accessory structures. The proposed deck and terrace are seaward of the stringline for similar accessory structures on the adjacent lots to the north and south.

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February 5, 2007  
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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.

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 section 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 makes such improvements more "permanent". The project is proposing a permanent structure (concrete stairs down slope and onto the bluff face to the top of the revetment) seaward of the residence on the bluff face which will require excavation and, as such, appears to be inconsistent with the above provisions of the certified LCP.

As noted, there is an existing riprap revetment located on the beach, seaward of the toe of the bluff. Commission staff have researched the subject site and determined that the riprap was placed on the beach fronting this site sometime after 1989, without the benefit of a coastal development permit and thus is unpermitted. The City, in its review did not address the existing revetment. Section 21.204.110 4b of the Coastal Shoreline Development Overlay Zone states:

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.

The overlay requires that new development be sited appropriately with respect to hazards. The City's approval identifies that the proposed development will conform to the Coastal Shoreline Development Overlay Zone but the findings are not substantiated by the geotechnical report. The geotechnical report found that bluff stability would be unaffected by the development. A slope stability analysis was done and the City found that appurtenant structures were sited such that they are safe from ocean hazards. However, the analysis did

Riley Appeal  
February 5, 2007  
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not address wave action or erosion potential as required by the overlay. Section 21.204.110(8) requires the effects of marine erosion on bluffs be evaluated and subsection (2) of the same section requires that "historic current and foreseeable cliff erosion and possible changes in shore configuration" be evaluated. The geotechnical report also failed to identify the nature and purpose of the existing riprap on the beach or address the need for existing protection, the potential need for future protection and/or the associated impacts to public access. While the LCP and Coastal Act allow shoreline protection to protect existing development, in this case, the subject site is vacant and the existing riprap is unpermitted. In addition, the City failed to address or evaluate the proper siting of the home without the need for the riprap.

The City did not address preserving public views in perpetuity. Section 21.204.100(c) of the overlay states:

"Ocean Views - Buildings, structures, and landscaping will be so located as to preserve to the degree feasible any ocean views as may be visible from the nearest public street.

Currently public views of the ocean are available across the subject site. While the City found that the project maintains 6-foot side yard setbacks, it did not assure their preservation as a view corridor. The site plan indicates 6-ft. high block walls will be installed in both the side yards such that public views from Tierra Del Oro to the ocean will be blocked. The City failed to address this issue as no condition was imposed that required side yard fencing be open or that the side yards be maintained and open in the future.

Relative to public access, the subject site is a vacant ocean fronting lot. As such, the need to address public access is important. The City did make specific public access findings and in fact, included a condition requiring the applicant to offer a 25 ft. lateral access easement on the beach. In addition, the City made findings that vertical access at the subject site was not required because the certified LCP does not identify the site for future public access and because adequate public vertical access exists nearby. However, based on review of photographs of the site back to 1972, there appears to be some evidence of historic trails across the site to access the beach. However, the City failed to address use by the public to access the beach at this location.

(G:\San Diego\LEE\Attachment A. 2.1.07.doc.doc)

STATE OF CALIFORNIA -- THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

## 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: Patrick Krueer  
Mailing Address: The Monarch Group  
7727 Herschel Ave.  
La Jolla, Ca 92037

Phone Number: (415) 904-5200SECTION II. Decision Being Appealed

1. Name of local/port government: City of Carlsbad
2. Brief description of development being appealed: Construction of a 5,619 sq. ft. single-family residence to include a two-car garage and basement on a 12,517 sq. ft. vacant lot
3. Development's location (street address, assessor's parcel no., cross street, etc.):  
5011 Tierra Del Oro, Carlsbad, San Diego County APN#210-020-16
4. Description of decision being appealed:
  - a. Approval; no special conditions: ☐
  - b. Approval with special conditions: ☒
  - c. Denial: ☐

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-07-17DATE FILED: February 5, 2007DISTRICT: San Diego**RECEIVED**

FEB 05 2007

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

7 of 12

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT  
Page 2

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: January 17, 2007

Local government's file number (if any): CDP 06-05

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:

Mickie & Hansi Riley  
30-885 Date Palm Drive  
Cathedral City, Ca 92234

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

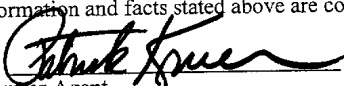
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attachment "A" dated 2/5/07

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:   
Appellant or Agent

Date: 2/5/07

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

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

Date: \_\_\_\_\_

(Document2)

STATE OF CALIFORNIA -- THE RESOURCES AGENCY

GRAY DAVIS, Governor

## CALIFORNIA COASTAL COMMISSION

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



Attachment A  
Riley Appeal -- 5011 Tierra Del Oro, Carlsbad  
February 5, 2007

The proposal includes the construction of a 5,619 sq. ft. single-family residence to include a two-car garage and basement on a 12,517 sq. ft. vacant lot. The project site is a coastal blufftop lot located on the west side of Tierra Del Oro, just north of Cannon Road in the City of Carlsbad. The site slopes down from Tierra Del Oro, transitioning into a steep coastal bluff. The bluff face is currently covered with a large riprap revetment that extends up to approximately +18 Mean Sea Level (MSL) and seaward of the bluff toe onto the beach approximately 30 ft. Also proposed is a patio and upper deck/terrace seaward of the home and a stairway that leads down the slope and beyond the identified edge of bluff, terminating at the top of the riprap.

The City found that the subject single-family residence is consistent with the blufftop development provisions of the certified LCP. However, the development as approved by the City raises several LCP consistency issues with regard to blufftop setbacks, the need for shoreline protection, landform alteration and coastal bluff preservation, public access and protection of public views.

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The City found that the project is consistent with the stringline provisions of the LCP. However, as approved, the stringline is measured incorrectly (is measured from the furthest portion of the adjacent residence to the north when it should be measured from the adjacent corner of the structure). This results in the structure being sited approximately 7 feet seaward of the allowable stringline, inconsistent with the overlay and resulting in new development being sited further seaward. Additionally, the project is inconsistent with the stringline for accessory structures. The proposed deck and terrace are seaward of the stringline for similar accessory structures on the adjacent lots to the north and south.



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(G:\San Diego\LEE\Attachment A. 2.1.07doc.doc)