



www.MertenArchitect.com

PHILIP A. MERTEN AIA ARCHITECT

1236 MUIRLANDS VISTA WAY LA JOLLA CALIFORNIA 92037 PHONE 858-459-4756 Phil@MertenArchitect.com

November 28, 2025

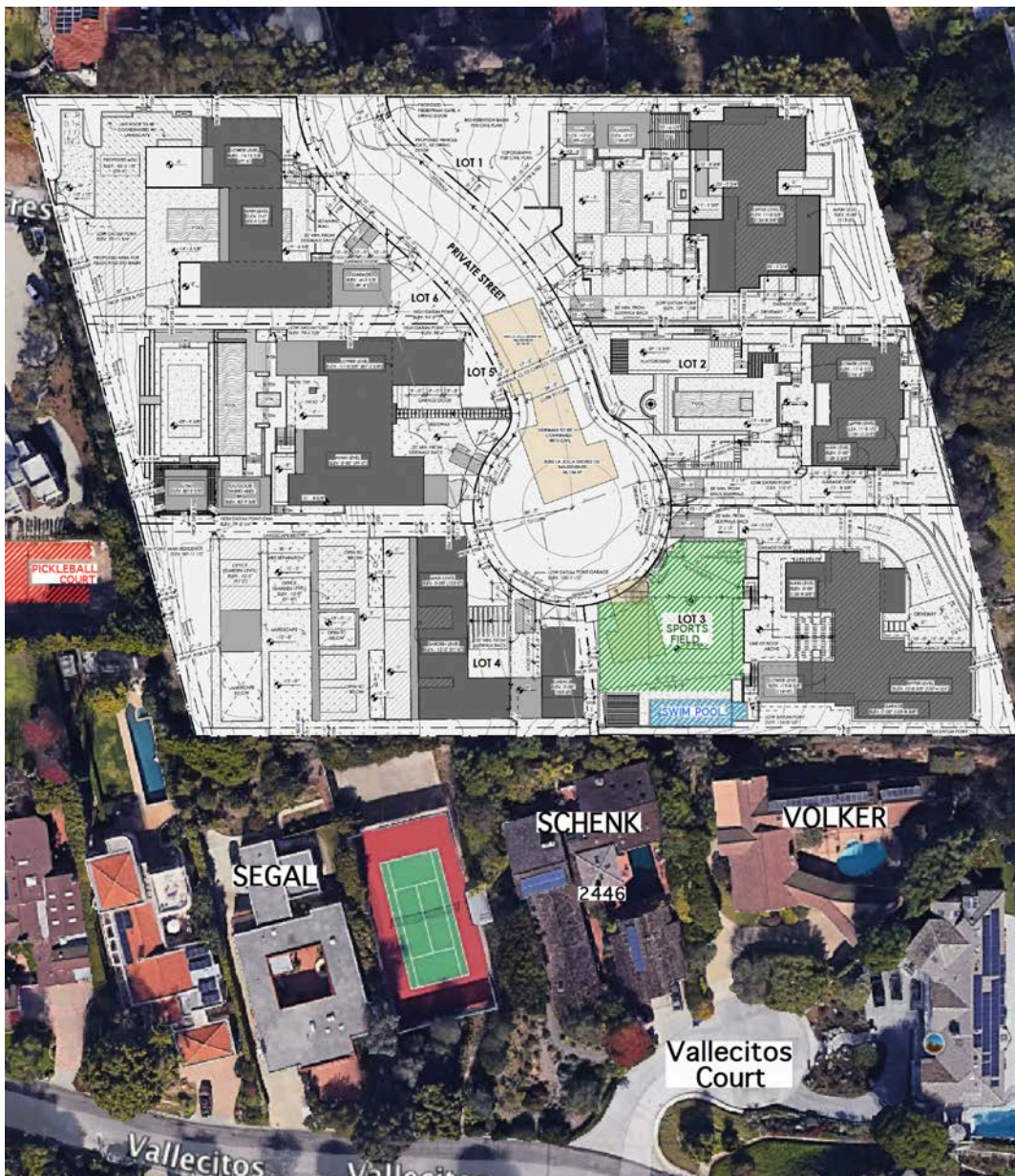
Ladies and Gentlemen of the San Diego Planning Commission

Transmitted Via Email: PlanningCommission@sandiego.gov

Re: December 4, 2025 - Planning Commission Hearing
Item No. 1
8303 La Jolla Shores Drive - CIELO MAR
Project No. 1085883

Ladies and Gentlemen of the San Diego Planning Commission,

I represent Ms. Lynn Schenk who's home at 2446 Vallecitos Court is immediately adjacent the southern boundary of the proposed CIELO MAR subdivision development as depicted below:



Please consider the following issues as to why the proposed project is NOT in compliance with La Jolla Shores Planned District Ordinance and applicable provisions of the San Diego Municipal Code:

1. DISRUPTIVE NOISE EMANATING FROM SWIMMING POOL AND SPORTS FIELD ON LOT 3

Ms. Schenk's Bedroom is just 8.5 ft. from the southern boundary line of Lot 3, and just 13.5 ft. from the swimming pool on Lot 3. (Dwg. No. C-4) Ms. Schenk's peace and quiet will be severely disrupted by noise coming from the proposed sports field, swimming pool and spa due to their close proximity to her living room and bedroom as depicted on the previous page. The likely noise coming from the sports field, swimming pool and spa is exacerbated because the sports field on Lot 3 are proposed to be elevated 9 feet above the current existing grade level at the street; and the swimming pool is proposed to be elevated 5 feet above the current existing grade level at it's western end. Elevating these features places them even closer to Ms. Schenk's home and will only increase the excessive noise being emitted from Lot 3 into Ms. Schenk's property.

Should the Advisory Board decide to recommend approval of the revised project, we respectfully request that your recommendation be conditioned on a requirement that pickleball courts never be allowed or be constructed on the residential lots.

2. EXCESSIVE GRADING PROPOSED ON ALL LOTS

The extent of proposed grading (cut and fill) across all six lots as described in the architect's drawings at <https://www.sandiego.gov/sites/default/files/2024-07/cielo-mar-combined.pdf> is far in excess of the limitations on grading described in the La Jolla Shores Planned District Ordinance (SDMC Sec 1510.0301(d); and contrary to the Grading Guidelines described in the La Jolla Shores Design Manual (pages 9 thru 14) <https://www.sandiego.gov/sites/default/files/legacy/planning/community/profiles/lajolla/pdf/lajollashoresdesignmanual.pdf>

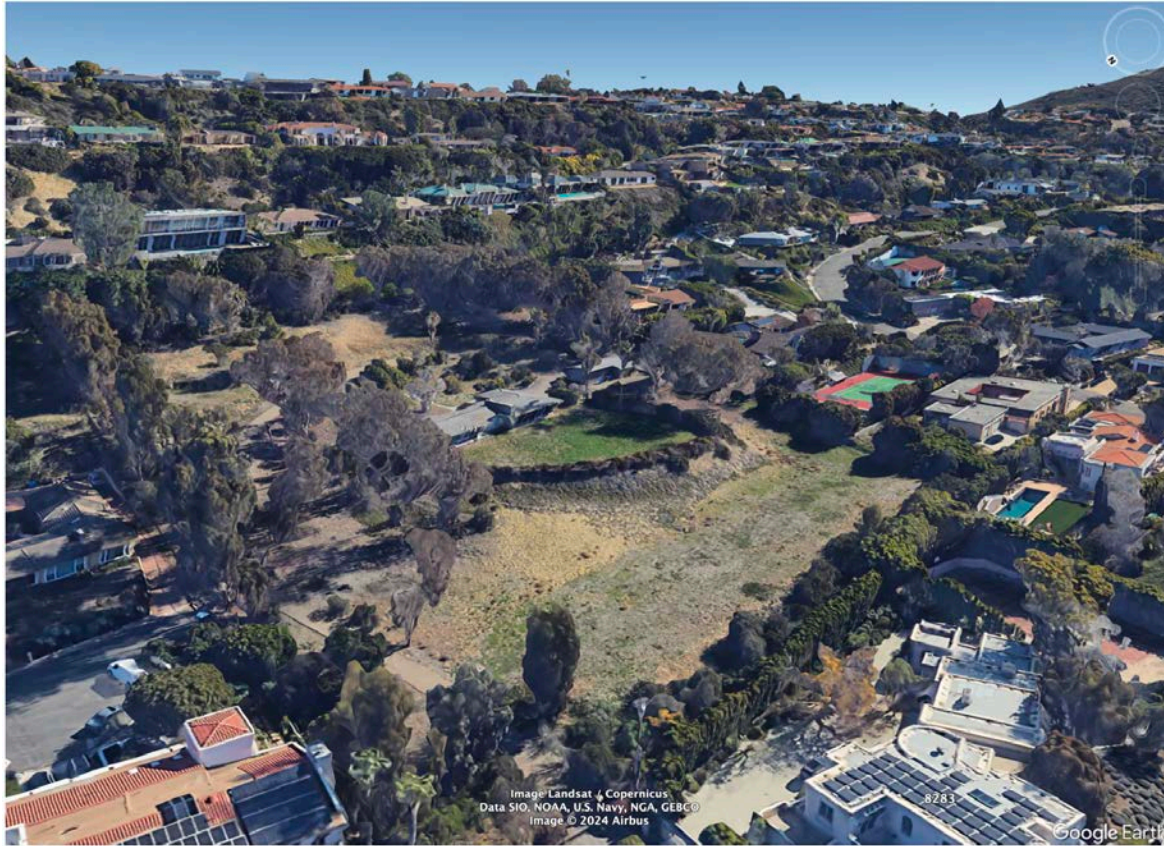
The Grading Guidelines, page 9 of the La Jolla Shores Design Manual and the LJSPDO Sec. 1510.0301(d) both state:

(d) Grading Regulations

- (1)** It is the intent of these regulations to preserve canyons and to prevent the cutting of steep slopes and the excessive filling to create level lots. No grading or disruption of the natural terrain shall be permitted until a permit which includes grading has been approved by the City Manager.
- (2)** Grading plans may be approved if it is concluded that:
 - (A)** The development will result in minimum disturbance of the natural terrain and vegetation commensurate with the proposed use of the lot or premises.
 - (B)** Grading, excavation and filling proposed in connection with the development will not result in soil erosion, silting of lower slopes, slide damage, flooding problems, or excessive cutting or scarring.
 - (C)** The proposed development will strive to preserve and enhance the natural environment and any existing aesthetic qualities of the site.

2. EXCESSIVE GRADING PROPOSED ON ALL LOTS (continued)

Below is a bird's eye view (looking southeasterly) of the existing project site showing the existing terrain and existing mature trees, and the existing homes on the surrounding properties:



Compare the existing sloping terrain above with the proposed excessively graded cut and filled lots and the destruction of existing mature trees depicted in the architect's submittal rendering below:



2. EXCESSIVE GRADING PROPOSED ON ALL LOTS (continued)

Below is a bird's eye view (looking northeasterly) of the existing project site showing the existing terrain and existing mature trees, and the existing homes on the surrounding properties:



Compare the existing sloping terrain and existing trees depicted above with the proposed excessively graded cut and filled lots and the destruction of existing trees depicted in the architect's rendering below:



2. EXCESSIVE GRADING PROPOSED ON ALL LOTS (continued)

According the Civil Engineer's Grading Tabulations and Grading Plans (Dwg. Nos. C-2 thru C-7 posted at <https://www.sandiego.gov/sites/default/files/2025-04/cielo-mar-combined.pdf> the proposed Depth of Cut, and Depth of Fill earth placed over the existing terrain on various lots is:

Proposed Depth of Cut and Fill on the Lots

Lot 1	12 ft. Depth of Cut	10 ft. Depth of Fill
Lot 2	20 ft. Depth of Cut	14 ft. Depth of Fill
Lot 3	18 ft. Depth of Cut	8 ft. Depth of Fill
Lot 4	12 ft. Basement Excavation	16 ft. Depth of Fill
Lot 5	10 ft. Basement Excavation	12 ft. Depth of Fill
Lot 6	10 ft. Basement Excavation	12 ft. Depth of Fill

Contrary to the LJS PDO Sec. 1510.0301(d) Grading Regulations, the excessive Cut and Fill on the various lots is intended to create level building pads and stepped level yard areas supported by high retaining walls which will result in the obliteration of the natural terrain. In particular, the raised grade level on Lot 3 will put the swimming pool and sports field closer to Ms. Schenk's home and exacerbate the disruptive noise into Ms. Schenk's property.

Some of the proposed flat building pads and flat yard areas, and the extent of grading can be seen on the architect's Overall Site Sections on Dwg. No. A509.

The proposed EARTHWORK QUANTITIES of CUT, FILL and EXPORT/IMPORT below are summarized in the GRADING TABULATION of the Engineer's Grading Plans (Dwg. Nos. C-2 thru C-7) as follows:

Lot	Cut	Fill	+Export / -Import*
1	1,950 cu. yds.	850 cu. yds	+1,100 cu. yds. Export
2	1,850 cu. yds.	460 cu. yds	+1,390 cu. yds. Export
3	4,860 cu. yds.	1,150 cu yds.	+3,710 cu. Yds. Export
4	280 cu. yds.	2,240 cu.yds.	-1,960 cu. yds. Import*
5	600 cu. yds.	2,525 cu. yds.	-1,925 cu. yds. Import*
6	565 cu. yds.	1,005 cu. yds.	-440 cu. yds. Import*
Road	200 cu. yds.	1,250 cu yds.	-1,050 cu. yds. Import*
TOTALS	10,305 cu yds.	9,480 cu. yds.	825 cu. yds. Export

825 cu. yds. of Exported Soil, divided by 14 cu. yds. per dump truck load equals 59 truck loads exported (leaving the site) and 59 empty trucks returning to the site.

***Note:** The Engineer's Earthwork Quanties in red above as stated on the Engineer's Grading Plans Dwg. Nos. C-2 thru C-7 **are different from and do not match** the CUT / FILL CALCULATIONS on the Architect's .pdf file page 11, SITE PLANS & INFORMATION drawings posted at <https://www.sandiego.gov/sites/default/files/2025-04/cielo-mar-combined.pdf>

2. EXCESSIVE GRADING PROPOSED ON ALL LOTS (continued)



Ledwell

14 Yard Dump Truck | Loose Material ...

The environmental impact of **118** dump truck vehicle trips (59 entering and 59 leaving the site) alone through the neighborhood on surface streets will be significant; not to mention the additional vehicle trips during house construction.

3. ELEVATED SWIMMING POOLS NOT ALLOWED WITHIN A STREET YARD OR SIDE YARD SETBACK

The proposed elevated swimming pools on Lots 1 and Lot 2 are located within the *street yards* of both proposed homes.

- (10) Unroofed *structures*: An unroofed portion of a *structure* not in excess of 3 feet above *proposed grade*, with an open safety railing not exceeding 42 inches in height, is permitted within a required side or rear *yard*.
- (11) **Swimming pools, spas**, and hot tubs are permitted within a required *yard* subject to the following:
 - (A) Swimming pools that project 3 feet or less above grade may be located a minimum of 3 feet from the *property line*.
 - (B) **Swimming pools that project greater than 3 feet above grade are not permitted to encroach within a required *street yard* or interior side yard setback,** but may encroach into the rear *yard* setback if located a minimum of 4 feet from the rear *property line*.

3. ELEVATED SWIMMING POOLS NOT ALLOWED WITHIN A STREET YARD OR SIDE YARD SETBACK (continued)

A *street yard* is defined as:

Street yard means the area of a *lot* or *premises* that lies between the edge of the nearest *street* and the *street wall line*.

A *street wall* line is defines as

Street wall means all contiguous walls of a building whose overall limits make up the *building facade*. See Section 113.0264 for additional information on determining the *street wall*.

SDMC Sec. 131.0461(a)(11)(B) prohibits the placement of a swimming pool in a *street yard* or interior *side yard* setback if the pool is greater than 3 feet above grade.

- (10) Unroofed *structures*: An unroofed portion of a *structure* not in excess of 3 feet above *proposed grade*, with an open safety railing not exceeding 42 inches in height, is permitted within a required side or rear *yard*.
- (11) *Swimming pools, spas*, and hot tubs are permitted within a required *yard* subject to the following:
 - (A) Swimming pools that project 3 feet or less above grade may be located a minimum of 3 feet from the *property line*.
 - (B) *Swimming pools* that project greater than 3 feet above grade are not permitted to encroach within a required *street yard* or interior *side yard setback*, but may encroach into the rear *yard* setback if located a minimum of 4 feet from the rear *property line*.

Contrary to the SDMC Section above, the swimming pool on Lot 2 (Elev 116.5') is located within the *street yard* and is 13.5 feet above existing grade (Elev: 103') and 6.5 feet above finish grade (Elev: 110.') at its west side.

Contrary to SDMC Sec. 131.0461(a)(11)(B) the swimming pool on LOT 3 (Elev: 112') is located within the proposed 10' interior *side yard* building setback and is 5 feet above existing grade (Elev:107') at its west end.

4. INDIVIDUAL LOTS HAVE NO STREET FRONTAGE ON A DEDICATED PUBLIC STREET

According the San Diego Municipal Code (SDMC) Sec. 113.0237(a)(4) a legal lot must have a minimum of 15 feet of street frontage on a dedicated public street; as do each of the three existing lots depicted on Dwg. No. A000.1. The current project proposes a private street behind a private gate. Because the 6 proposed new lots front on a private street, not a dedicated public street, and because the project is not seeking a Planned Development Permit, the proposed new lots are not in compliance with the SDMC, and not legal for purposes of development; and a Tentative Map cannot be approved.

5. PROPOSED SETBACKS NOT IN GENERAL CONFORMITY WITH THOSE IN THE VICINITY

According to the Single Family Zone - Development Regulations of the La Jolla Shores Planned District Ordinance, San Diego Municipal Code (SDMC) Sec. 11510.0304(b)(4), says 'Building and structure setbacks shall be in general conformity with those in the vicinity.'

(b) Siting of Buildings

- (1) Buildings with openings (i.e., doors and/or windows) facing the side property line shall be constructed not closer than four feet from said property line, in some circumstances, provided the see-through provisions in Section 1510.0301(c) are observed.
- (2) Buildings without openings facing the side property line may be constructed on the side property line in some circumstances, provided the see-through provisions in Section 1510.0301(c) are observed and provided the drainage of storm water falling on the roof of such building is carried off on the subject property and shall in no way endanger or interfere with an abutting property, easement, or rights-of-way.
- (3) Increased yard dimensions may be required for development adjacent to a public park to avoid any detrimental impact on the park.
- (4) Building and structure setbacks shall be in general conformity with those in the vicinity.

The LJSPDO does not say building and structure setbacks shall be in conformity with the average setbacks within 300 feet of the project.

The LJSPDO says: 'Building and structure setbacks shall be in general conformity with those in the vicinity.'

The San Diego Municipal Code does not define 'vicinity'. However the legal definition in *Black's Law Dictionary* defines 'Vicinity' as 'Quality or state of being near, nearness, propinquity, proximity, near or adjacent.'

5. PROPOSED SETBACKS NOT IN GENERAL CONFORMITY WITH THOSE IN THE VICINITY (continued)

The applicant's 300' RADIUS MAP (Revised Drawing No. A000.1) shows the adjacent one story VOLKER House being setback **12.6 ft.** from the common south boundary line.

Contrary to being in general conformity with the existing **12.6 ft.** building setback of the one story house in the *vicinity*, the proposed two story Single Family Residence on Lot 3 is set back just **10 ft.** from the common south boundary line.

Swimming Pool Structure Setback

According to the applicant's Topographic Survey and Boundary Survey (Dwg. No. M-1) the existing swimming pool in the side yard at 2350 Vallecitos is setback **11.5 ft.** from the west subdivision boundary of the Lot 4.

Contrary to being in general conformity with the existing **11.5 ft.** swimming pool setback in the *vicinity*, the proposed swimming pool on Lot 3 is setback just **5 ft.** from the common south boundary line; and the proposed swimming pool on LOT 4 is setback just **9'-4"** from the common south boundary line;

The proposed setbacks of the swimming pools are not in general conformity with those in the '*vicinity*'.

6. SOUTH SIDE PROPERTY LINE RETAINING WALL ON LOT 4 EXCEEDS THE MAXIMUM HEIGHT ALLOWED

SDMC Sec. 142.0340(d)(1) limits the height of retaining walls in a required side yard:

San Diego Municipal Code
(5-2023)

Chapter 14: General Regulations

- (1) Two *retaining walls* with a maximum height of 6 feet each are permitted in the required side and rear *yard* if the two *retaining walls* are separated by a minimum horizontal distance equal to the height of the upper wall. See Diagram 142-03H.

Contrary to this 6 ft. height limitation, the single proposed retaining wall within the required side yard and adjacent the south side property line on Lot 4, is 12 ft. in height (91.0' TW minus 79.0' BW = 12 ft.) at it's west end and 9 ft. in height at the mid point of common property line with 2406 Vallecitos.

7. OBSTRUCTED DRIVEWAY VISIBILITY AREAS ON LOT 2 AND LOT 3

Where a driveway intersects with a street SDMC Sec. 113.0273(a) requires a 10' by 10' clear triangular *visibility area*. The maximum allowed height of visual obstructions within the *visibility area* is 3 feet.

Contrary to this SDMC **3 ft.** height limitation, and contrary to the VISIBILITY TRIANGLE NOTE ON Dwg. No. C-3 the proposed retaining wall on the south side of the driveway on Lot 2 is more than **5** feet above the driveway surface. (109.0 TW - 103.5 driveway surface = **5.5 ft.**)

And, Contrary to the **3 ft.** SDMC height limitation, and contrary to the VISIBILITY TRIANGLE NOTE ON Dwg. No. C-4 the proposed retaining wall on the south side of the driveway on Lot 3 exceeds **3** feet above the driveway surface. (107.0 TOW - 103.5 driveway surface = **3.5 ft.**)

8. PLUMB LINE STRUCTURE HEIGHT ON LOT 2 EXCEEDS THE MAXIMUM ALLOWED

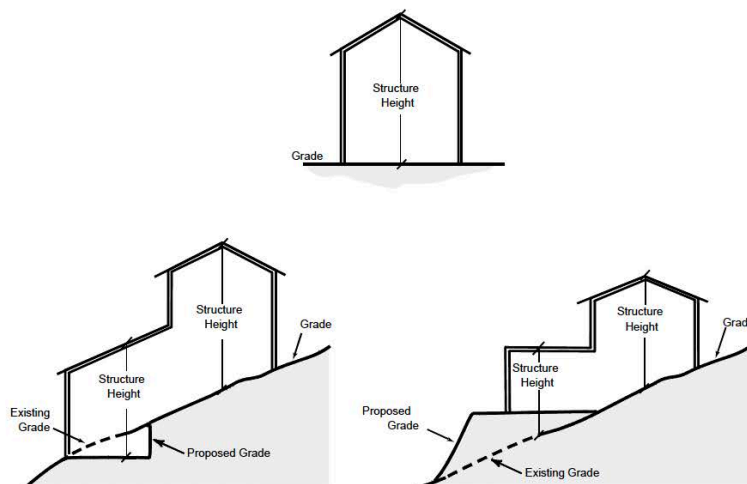
According to SDMC Sec. 1510.0304(c) the Maximum allowed Plumb Line Structure Height in La Jolla Shores is 30 feet, measured in accordance with SDMC Sec. 113.0270(a)(2)(A).

(2) A two part calculation is required to measure *structure height* including:

(A) Plumb line measurement. The *structure height* is measured from all points on top of a *structure* to *existing grade* or *proposed grade*, whichever is lower, directly below each point, except as described in Section 113.0270(a)(4). This measurement is taken vertically through the *structure* at each point where *structure height* is being measured, as shown in Diagram 113-2KK.

Diagram 113-02KK

Measurement of Structure Height



8. PLUMB LINE STRUCTURE HEIGHT ON LOT 2 EXCEEDS THE MAXIMUM ALLOWED
(continued)

Contrary to the 30 foot Plumb Line Structure Height limitation, the proposed Plumb Line Structure Height of the proposed dwelling on Lot 2 as depicted on submittal drawings posted at <https://www.sandiego.gov/sites/default/files/2025-04/cielo-mar-combined.pdf> is **34'- 6 3/4"** as clearly shown on the LOT 2 -WEST ELEVATION on Dwg. No. A404.

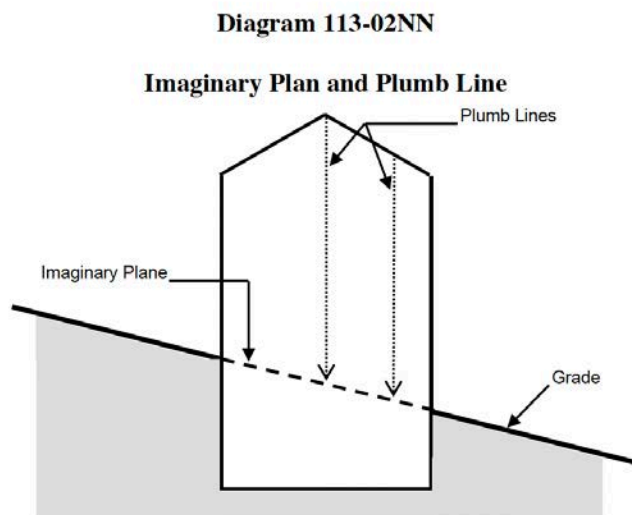
And on LOT 2 ROOF PLAN, Dwg. No. A207 posted at <https://www.sandiego.gov/sites/default/files/2025-04/cielo-mar-combined.pdf> shows the relative driveway elevation at the south side of the house as Elev: -11'- 8 3/8", and the top of roof parapet directly above at Elev: +22'-8 3/4" for a total Plumb Line Structure Height of 34'- 4 3/4"; which exceeds the **30 foot** maximum allowed.

Additionally, LOT 2 SECTION 1 on Dwg. No. A504 posted at <https://www.sandiego.gov/sites/default/files/2025-04/cielo-mar-combined.pdf> shows the Plumb Line Structure Height from the garage floor level (-11'-8 3/8") to the top pf the roof parapet (22'-8 3/8") as **34'-4 3/4"**, which exceeds the **30 foot** maximum allowed.

SDMC Sec:113.0270(a)(2)(B)(i) describes how Plumb Line *structure height* is measured for subterranean areas:

(B) Measuring *Structure Height* for Subterranean Areas

- (i) Interior Subterranean Areas. Where a *basement*, *underground parking structure*, *interior court*, or other similar interior subterranean area is proposed, the plumb line measurement to the lower of existing grade or proposed grade shall be measured to an imaginary plane through the building that connects the adjacent grade elevations on both sides of the structure as shown in Diagram 113-02NN.



Note the Imaginary Plane extends through structure and connects the grade elevations at the exterior walls./

8. PLUMB LINE STRUCTURE HEIGHT ON LOT 2 EXCEEDS THE MAXIMUM ALLOWED
(continued)

The applicant's LOT 2 SOUTH ELEVATION on Dwg No. A10 shows a Plumb Line measurement from the roof parapet to an imaginary plan @ building face (shown dashed lines). The depicted imaginary plane is not the same as the imaginary plane described in SDMC Sec:113.0270(a)(2)(B)(i) above; because according to the SDMC the '*... imaginary plane is to extend through the building that connects the adjacent grade elevations on both sides of the structure.*' The imaginary plane depicted on Dwg. No. A10 only connects two grade levels outside of and on just one side of the *structure*. The two grade levels depicted on Dwg. No. A10 are well above the lower finish grade level at the exterior basement wall that defines one side of an imaginary plane through the structure.

9. NUMBER AND HEIGHT OF RETAINING WALLS WITHIN THE FRONT YARD SETBACK OF LOT 3 EXCEED THE MAXIMUM ALLOWED

SDMC Sec. 142.0340 (c) limits the number and height of retaining walls height in Front Yards as follows

(c) *Retaining Wall Height in Required Front Yards and Required Street Side Yards*

- (1) Two *retaining walls* with a maximum height of 3 feet each are permitted in the required front and *street side yard* if the two *retaining walls* are separated by a minimum horizontal distance equal to the height of the upper wall. See Diagram 142-03H.

Contrary to this 3 foot height limitation, the Proposed GRADING PLAN on Dwg. No. C-4 posted at <https://www.sandiego.gov/sites/default/files/2024-07/cielo-mar-combined.pdf> shows the retaining wall adjacent the sidewalk being **4 feet** in height (107.0 TW - 103.0 BW = **4 ft.**), and the second retaining wall from the sidewalk being **4 feet** in height (111.0 TW - 107.0 BW = **4 ft.**).

Contrary to the two retaining wall limitation, Dwg. No. C-4 shows **three** curved parallel retaining walls within the front yard setback. The fourth curved wall is behind the front yard setback line.

10. HEIGHT OF RETAINING WALL WITHIN THE SIDE YARD SETBACK OF LOT 3 EXCEEDS THE MAXIMUM ALLOWED

(d) *Retaining Wall Height in Required Side Yards and Required Rear Yards*

- (1) Two *retaining walls* with a maximum height of 6 feet each are permitted in the required side and rear *yard* if the two *retaining walls* are separated by a minimum horizontal distance equal to the height of the upper wall. See Diagram 142-03H.
- (2) An *open fence* not to exceed 3 feet, 6 inches in height is permitted on top of the upper *retaining wall*.

10. HEIGHT OF RETAINING WALL WITHIN THE SIDE YARD SETBACK OF LOT 3 EXCEEDS THE MAXIMUM ALLOWED (continued)

The height of the retaining walls adjacent the western property line of LOT 3 and within the western side yard setback of Lot 3 depicted on Dwg. No. A208 and A210 and C-4 is not called out. This is a glaring omission, and should be added the submittal drawings.

NOTE: From the Grading Plan for LOT 3 the finish grade elevation of the large flat area is 111'-0" and the existing grade elevation on the adjacent LOT 4 is 102'-0" for a grade height differential of **9 ft.** A single **9 ft.** retaining wall adjacent the western side boundary line and within the 5 ft. side yard setback would exceed the maximum **6 ft.** height allowed within a side yard per SDMC Sec.142.0340(d)(1).

Contrary to the *open fence* requirement of SDMC Sec. 142.0340(d)(2), the project proposes a 3'-6" high **solid fence / wall** on top of the retaining wall within the side yard setback.

11. DRAFT ENVIRONMENTAL DOCUMENT NOT POSTED FOR PUBLIC REVIEW AND COMMENT

The POSTED Final Environmental Impact Report No. 92-0199 for the project only applies to the La Jolla and Pacific Beach Community Plan and Local Coastal Program Land Use Plan and fails to address the proposed six lot development of 8303 LA JOLLA SHORES DRIVE - CIELO MAR, Project No. 1085883. Additionally, Environmental Impact Report No. 92-0199 was never adopted by the City of San Diego.

The design and size of the six individual homes and the proposed site work for the six lot 8303 LA JOLLA SHORES DRIVE - CIELO MAR project are/is unlike any of the previously proposed homes and site work for the eight lot 8280 CALLE CIELO (2017) project. As such, it makes no sense to apply the Draft Mitigated Negative Declaration for the 8 lot 8280 CALLE CIELO (2017) project to the six lot 8303 LA JOLLA SHORES DRIVE - CIELO MAR (2023) project. The Draft Mitigated Negative Declaration for the 8280 CALLE CIELO project fails to address the six unique homes proposed for 8303 LA JOLLA SHORES DRIVE - CIELO MAR. The environmental impact of the proposed six unique homes at 8303 LA JOLLA SHORES DRIVE - CIELO MAR must be addressed in a separate Environmental Impact Report.

Therefore, please post a DRAFT Environmental Document for the 8303 LA JOLLA SHORES DRIVE CIELO MAR Project No. 1085883 online for public review and comment before a FINAL Environmental Document is posted online.

SUMMARY

The proposed project is **not** in compliance with the La Jolla Shores Planned District Ordinance and applicable provisions of the San Diego Municipal Code because:

1. DISRUPTIVE NOISE WILL EMANATE FROM THE SWIMMING POOL AND SPORTS FIELD ON LOT 3 WILL NEGATIVELY IMPACT MRS. SCHENK'S HOME AND OTHERS IN THE AREA;
2. PROPOSED GRADING ON ALL LOTS EXCEEDS THE MAXIMUM ALLOWED and WILL OBLITERATE THE EXISTING TERRAIN AND DESTROY 72 EXISTING MATURE TREES;
3. ELEVATED SWIMMING POOLS MORE THAT 3 FEET ABOVE GRADE ARE NOT ALLOWED WITHIN A *STREET YARD OR SIDE YARD SETBACK*;

SUMMARY (continued)

4. EACH OF THE SIX PROPOSED NEW LOTS DO HAVE DIRECT ACCESS TO A DEDICATED PUBLIC STREET;
5. PROPOSED BUILDING AND STRUCTURE *SETBACKS* ON LOT 3 ARE NOT IN GENERAL CONFORMITY WITH THOSE IN THE VICINITY;
6. SOUTH SIDE PROPERTY LINE RETAINING WALL ON LOT 4 EXCEEDS THE MAXIMUM HEIGHT ALLOWED;
7. DRIVEWAY *VISIBILITY AREAS* ARE OBSTRUCTED ON LOT 2 AND LOT 3;
8. PLUMB LINE STRUCTURE HEIGHT ON LOT 2 EXCEEDS THE MAXIMUM ALLOWED.
9. NUMBER AND HEIGHT OF RETAINING WALLS WITHIN THE FRONT *YARD* SETBACK OF LOT 3 EXCEED THE MAXIMUM ALLOWED.
10. THE HEIGHT OF RETAINING WALLS WITHIN THE WEST SIDE *YARD* SETBACK OF LOT 3 IS NOT SPECIFIED. THE SOLID FENCE / WALL ON TOP OF THE RETAINING WALL IS NOT ALLOWED.
11. A DRAFT ENVIRONMENTAL DOCUMENT WAS NEVER POSTED FOR PUBLIC REVIEW AND COMMENT.

RECOMMENDATION / REQUEST

Because the project is **not** in compliance with the La Jolla Shores Planned District Ordinance and applicable provisions of the San Diego Municipal Code as unanimously determined by the La Jolla Shores Planned District Advisory Board (LJSPDAB);

Board Motion: The LJSPDAB moved to recommend denial of the project. Motion made by Board Member Neil, seconded by Board Member Lightner. Motion approved 5-0-0.

the required Findings for a Coastal Development Permit and Site Development Permit CANNOT be made; we respectfully request the Planning Commission DENY the project as currently proposed and require the project be fully corrected in revised drawings and re-submitted to the DSD for further review.

Respectfully,



Philip A. Merten AIA

California Architect License Number: C-6437

ec: DSD Director Elyse Lowe ELowe@sandiego.gov
DSD Deputy Director Raynard Abalos RAbalos@sandiego.gov
Development Project Manager, H. Veronica Davison HDavison@SanDiego.gov
Staff Liaison, Melissa Garcia MGarcia@sandiego.gov
Development Project Manager, Morris Dye MDye@sandiego.gov
LDR Planning Reviewer, Gracia Aceves. GAceves@sandiego.gov
DSD Senior Planner, J. Szymanski JSzymanski@sandiego.gov

Kenneth C. Jones

Partner

jonesk@higgslaw.com

D: (619) 595-9663

December 3, 2025

**VIA E-MAIL
AND U.S. MAIL**

Planning Commission
Development Services Department
7650 Mission Valley Road, MS DSD-1A
San Diego, California 92108

**Re: Planning Commission Hearing December 4, 2025 – 8303 La Jolla Shores Drive
Project (PRJ-1085883) – Drainage System and Easement Issues Along Calle
Frescota**

Dear Commissioners:

We submit this letter on behalf of our clients, Arthur and Lynn Kavanaugh, for consideration at the December 4, 2025, Planning Commission hearing on the 8303 La Jolla Shores Drive Project (PRJ-1085883). Our clients oppose the current approach to offsite drainage along the private right of way known as Calle Frescota and request that the Commission require resolution of the drainage design, easement, and utility-right issues described below before any approvals are granted.

The Kavanaugh residence at 8275 La Jolla Shores Drive lies downhill and downstream of the project site at the corner of La Jolla Shores Drive and Calle Frescota, and is therefore especially vulnerable to any concentrated discharges or failures in the proposed drainage system serving the project and adjoining parcels. The applicant previously indicated, and the staff report appears to confirm, an intent to utilize the private driveway/right of way along Calle Frescota to convey stormwater downhill toward the Kavanaugh property. Our clients and other adjacent homeowners would be directly affected by any surface or subsurface discharge routed through that corridor.

Unresolved Easement in the Right of Way; Consent Required. A threshold issue remains unresolved: the applicant asserts it holds an easement within the right of way “for road and street purposes” and “for the installation, repair and replacement of public utilities,” based on a 1949 grant deed benefitting the original five co-tenants and their successors. Our understanding is that the applicant’s counsel contends this easement authorizes installation of underground pipes across the right of way without permission of the other co-owners. We dispute that contention

as applied to the private drainage and sewer improvements now proposed for the project. Our clients contend that their consent is required before utilities are installed within this private right of way, and that any reliance on easement language concerning “public utilities” does not authorize private drainage and sewer facilities serving a single development without co-owner approval. The claimed easement, its scope, and any required consents must be conclusively resolved prior to City approval. For your reference and additional context, we have attached prior correspondence from our office on this issue as well as the response from the applicant’s legal counsel.

Right of Way Scope: Public Utilities versus Private Improvements. The right of way, as characterized by the applicant, allows use “for road and street purposes” and “for the installation, repair and replacement of public utilities.” By contrast, the project’s drainage and sewer improvements, as described, are purely private, serving the project rather than constituting public utility infrastructure, and thus exceed the scope of any easement permitting “public utilities.” City approvals should not rely on private works being shoehorned into public-utility easement language without clear legal basis and documented consent from all necessary parties.

Ownership and Authority Within the Private Right of Way. The right of way parcel is privately owned in undivided fee by five co-owners, including the applicant, and there is no recorded easement burdening that parcel in favor of the project’s proposed private stormwater discharge over the other owners’ interests. The applicant lacks written consent from the other co-owners for such use. This raises fundamental authority and access concerns that should be resolved before any City approval dependent on the use of the private right of way.

Drainage System Concerns Requiring Commission Direction. In addition to the easement and authority issues above, our clients request that the Commission ensure the following issues are addressed to the City’s satisfaction and reflected as enforceable conditions of approval:

1. Disruption During Construction. Our clients are concerned about disruption during construction of the project, including the utilities along Calle Frescota. Construction within the narrow private right of way will disrupt access and daily use for the co-owners and adjacent residents. Any trenching, staging, and installation must be minimized, phased, and subject to a detailed traffic and access plan protecting resident ingress/egress and emergency access. The plans appear to bury all drainage infrastructure within the right of way. If so, the City should require construction-phase mitigation and restoration standards commensurate with the level of excavation and utility work within a private, shared access facility.

2. Maintenance Responsibilities. Our clients do not want any maintenance responsibilities for the utility improvements installed to serve the project. The City should require a recorded maintenance agreement allocating responsibility and cost among the project proponent and any other responsible parties for inspection, cleaning, repair, and replacement of all drainage and sewer improvements installed within the private right of way, including access rights for maintenance, indemnity in favor of non-project co-owners, and insurance. The applicant has claimed there will be “no permanent impact” on the right of way; nonetheless, long-term maintenance is unavoidable and must not fall on non-consenting co-owners.
3. Potential Drainage Problems and Downstream Impacts. Concentrating runoff from the project and surrounding parcels into a single underground conveyance presents risk to downstream properties, including the Kavanaugh residence, if capacity is exceeded or facilities are not properly maintained. We understand the project will collect, detain, filter, and pipe runoff to the municipal system, reducing surface flow across the right of way and abutting properties. The City should require hydraulic modeling, detention sizing, and backflow protections demonstrating no increase in peak flow or volume at the point of connection and no increase in risk to downstream homes.
4. Risk of Backup at the 12” PVC Pipe Outlet. Our clients are concerned about surcharge and backup risk at the point where any proposed 12” PVC outlet would connect or discharge, potentially directing flows back toward the right of way and abutting properties. The City should require a detailed outlet design, non-clogging inlet structures, backflow prevention, maintenance access, and an operations plan to prevent blockage-induced surcharge, along with emergency overflow routing that protects adjacent properties.
5. Hedge Replacement and Surface Restoration. Our clients are also concerned about the potential removal of hedges in front of their home to install sewer utilities, as indicated in the Proposed Sewer & Offsite Drainage Plan. Any trenching or utility installation within or adjacent to the right of way must include restoration to equal or better condition, including replacement of any hedges, landscaping, walls, or surface improvements disturbed by construction, with like-kind materials and sizes, and warranties for establishment of replacement planting. Restoration specifications and timelines should be conditions of approval.

Given the outstanding legal and technical issues, we respectfully request that the Commission: (a) require the applicant to provide conclusive documentation establishing authority to install the proposed utilities within the private right of way, including all necessary consents from co-owners; (b) require a clear showing that the right of way easement language for “public utilities” is not being used to authorize purely private improvements without consent; and (c) condition any approval on comprehensive construction mitigation, recorded maintenance and indemnity

Planning Commission
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December 3, 2025
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agreements, drainage capacity and backflow protections, and full restoration including hedge replacement. Alternatively, the item should be continued to allow resolution of the easement and consent issues and to finalize a drainage design that avoids impacts to downstream properties and the private right of way.

We appreciate your consideration and request notice of all future hearings and staff actions on this project.

Very truly yours,



KENNETH C. JONES
of
HIGGS FLETCHER & MACK LLP

KCJ:mv

cc: Dr. and Ms. Kavanaugh (via e-mail: lynn2957@san.rr.com)
Veronica Davison (via e-mail: HDavison@sandiego.gov)



AANNESTAD ANDELIN & CORN LLP

160 CHESTERFIELD DRIVE • SUITE 201
CARDIFF-BY-THE-SEA • CALIFORNIA 92007
www.aac.law • (760) 944-9006

Coastal Property Rights, Land Use & Litigation

May 13, 2025

VIA EMAIL

Kenneth C. Jones
Higgs Fletcher Mack
401 West A Street, Suite 2600
San Diego, California 92101
(619) 595-9663
jonesk@higgslaw.com

Re: Proposed project at 8303 La Jolla Shores Drive (PRJ-1085883)

Dear Mr. Jones:

I have been retained to represent the applicant, Cielo Mar La Jolla, LLC (“Cielo Mar”), in the above referenced project. Please include me in all future communications regarding this matter.

I write in response to your letter to Chandra Slaven dated April 2, 2025. Regarding the cotenants’ respective shares of ownership in the right-of-way parcel, I am continuing to investigate the matter and will provide any title information I am able to confirm. In any event, there is no doubt that Cielo Mar owns at least a one-fifth undivided fee interest in the right-of-way parcel.

The respective shares of the cotenants’ ownership, however, are immaterial to the issue at hand. What matters is the easement that Cielo Mar holds in the right-of-way. In particular, the deed by which the right-of-way was granted to the original five cotenants, including Cielo Mar’s predecessor, reserved for each of the cotenants and their successors the right “to use all the above described property for road and street purposes and also to use said property for the installation, repair and replacement of public utilities.” I am enclosing a copy of the deed for your reference.

California courts have “consistently adopted a broad and flexible interpretation” of public right-of-way easements, which is justified by “the need to accommodate the extensive infrastructure that accompanies modern development.” (*Bello v. ABA Energy Corp.* (2004) 121 Cal.App.4th 301, 311.) Thus, in *Bello*, the court held that the defendant, which operated natural gas wells, had the right to install an underground natural gas pipeline across private property burdened with a public right-of-way easement—without the landowner’s permission.

We have no doubt that if the present case were litigated, the same result would follow, particularly given the deed’s express allowance “for the installation, repair and replacement of public utilities.” The installation of underground pipes to transmit runoff to the public storm drain fits squarely within this purpose.

Kenneth C. Jones
May 13, 2025
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While Cielo Mar has the right to install underground pipes without the consent of your clients or the other cotenants, the last thing we want is to be at odds with them. I emphasize that the current plans no longer include any above-ground swales and bury all the drainage infrastructure underneath the right-of-way. Thus, there will be no permanent impact on the right-of-way. I am enclosing a copy of the latest set of plans for the drainage improvements per your request.

Besides creating no adverse impact on your clients, the drainage improvements will provide significant benefits. I understand that runoff from the Cielo Mar property and surrounding parcels is an ongoing problem. Our project when completed will collect this runoff on Cielo Mar's property, detain and filter it, and direct it through underground pipes directly to the municipal stormwater system along La Jolla Shores Drive. Surface runoff over the right-of-way and the abutting properties will be greatly reduced.

It is also worth noting that the project will reduce traffic on Calle Frescota because the property will be accessed through Calle del Cielo.

We respectfully request the opportunity to meet with you and your clients in person to explain the drainage plans and address their concerns. We will have our civil engineer present to answer questions. The meeting would preferably take place at the site, but alternatively we could host you and your clients at Mr. Fotsch's office in La Jolla. We are confident that your clients will support the project after being presented with all the facts.

Please let me know when you and your clients might be available for a meeting.

Very truly yours,

AANNESTAD ANDELIN & CORN LLP



Lee M. Andelin

cc: Andy Fotsch
Chandra Slaven

Enclosures

Kenneth C. Jones

Partner

jonesk@higgslaw.com

D: (619) 595-9663

February 6, 2025

**VIA E-MAIL
AND U.S. MAIL**

H. Veronica Davison
Development Project Manager
City of San Diego
Development Services Department
1222 First Avenue
San Diego, CA 92101
HDavison@sandiego.gov

**Re: CIELO MAR
PRJ-1085883 - 8303 La Jolla Shores Drive**

Dear Ms. Davison:

This firm represents Arthur and Lynn Kavanaugh in regard to the Cielo Mar Project – PRJ-1085883, and specifically in opposition to the unacceptable stormwater drainage system that will have a significant detrimental impact on their home. Please consider the issues below in the City staff review of this project.

**THE PROPOSED OFFSITE STORMWATER DRAINAGE SYSTEM IS INADEQUATE
TO PROTECT THE DOWNSTREAM KAVANAUGH HOME FROM ADVERSE IMPACTS
WHICH CANNOT BE MITIGATED**

The Kavanaughs own the property located at 8275 La Jolla Shores Drive in La Jolla, which is their personal residence. It is located downhill and downstream from the proposed project on the corner of La Jolla Shores Drive and the private driveway known as Calle Frescota. There are also other homes along the uphill slope between the Kavanaugh home and the proposed project. Our clients understand from speaking with the applicant's architect that the applicant proposes to use the private driveway to carry stormwater drainage from the proposed project and discharge it down the driveway adjacent to the Kavanaugh home via an above-ground swale. The Kavanaugh home not only is downhill from the proposed project, but also slopes down from the private driveway which will cause the discharged stormwater drainage from the project onto and across their property. The applicant is required to design its public drainage system to connect to an improved drainage system within the public right of way, not over private

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February 6, 2025

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property and private homes. Furthermore, the Kavanaughs are not the only downhill and downstream neighbors who will be subjected to the project's stormwater drainage's concentrated discharge onto their property. Their adjacent neighbors will suffer the same adverse impact.

THE APPLICANT LACKS AN EASEMENT FOR THE PROPOSED OFFSITE STORMWATER DRAINAGE SYSTEM ON THE PRIVATE DRIVEWAY

The applicant possesses no easement for the stormwater drainage on the private driveway. The applicant has no written document providing for such use along the private driveway and the applicant has not obtained from the owners of the private driveway any written consent for such use.

THE APPLICANT HAS LIMITED AND INADEQUATE LEGAL OWNERSHIP INTEREST IN THE OFFSITE PRIVATE DRIVEWAY FOR ITS PRIVATE STORMWATER DRAINAGE SYSTEM AND ACCESS

The private driveway is a separate legal parcel owned in fee interest by the Kavanaughs and four other separate parcel owners, which includes the applicant, each with an undivided one-fifth interest. There exists no easement on that driveway parcel. The applicant has made no effort to obtain consent from the four other record owners, who together own four-fifths of the driveway parcel, nor can the applicant demonstrate a legal right to use the private driveway parcel to discharge stormwater drainage over the other owners' properties.

THE APPLICANT DOES NOT YET HAVE THE SUPPORT OF THE LA JOLLA SHORES PLANNED DISTRICT ADVISORY BOARD

The La Jolla Shores Planned District Advisory Board held a hearing on August 21, 2024, at which several objections to the project were raised. We understand the hearing was continued off calendar so that the project proponent could address these issues and the hearing has not been rescheduled as of the date of this letter. We also understand that the La Jolla Community Planning Association's ("LJCPA") La Jolla Shores Permit Review Committee held a hearing on this project on November 21, 2024, and voted that the required findings can be made for the project. The minutes from that meeting make reference to storm water drainage being enhanced with underground storm water and better percolation from the property, but it is not clear whether proposed above-ground swale on the private driveway has been abandoned. The project was discussed most recently at the LJCPA Trustees Meeting on January 9, 2025, where community members cited concerns about the project, including the lack of environmental documents and the applicant's failure to discuss the project with the neighboring property owners.

H. Veronica Davison

February 6, 2025

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Significant issues need to be addressed for this project and, in particular, the offsite stormwater drainage system proposed for the private driveway which will severely and adversely impact the Kavanaugh's property and their neighbors adjacent to the private driveway. Please give this serious consideration by the City staff in reviewing this proposed project.

We also asked to be notified of any future meetings and public hearings on this proposed project, as well as the commencement of the public comment period when a draft environmental document under the California Environmental Quality Act is released for review.

Thank you for your consideration.

Very truly yours,



KENNETH C. JONES

of

HIGGS FLETCHER & MACK LLP

KCJ:mv

cc: Dr. and Ms. Kavanaugh (via e-mail: lynn2957@san.rr.com)
Melissa Garcia, Senior Planner, City of San Diego (via email: magarcia@sanidiego.gov)