



January 14, 2026

Planning Commission  
City of San Diego

Transmitted via Email: [planningcommission@sandiego.gov](mailto:planningcommission@sandiego.gov)

Re: Planning Commission Hearing of December 4, 2025  
8303 La Jolla Shores Drive - CIELO MAR  
Project Number: PRJ-1085883

Dear Planning Commissioners,

This letter is a request for your reconsideration of your December 4, 2025 decision to Approve the project referenced above. More than a month has passed since the December 4 meeting. Nevertheless, your Planning Commission duties require you to function in accordance with the San Diego Municipal Code, which unfortunately did not happen.

The Duties and Functions of the Planning Commission (PC), as posted on the PC's webpage:

#### Duties and Functions

Maintaining the highest standards of honesty, integrity, impartiality and conduct by participants is essential to ensuring the proper performance of City business and the maintenance of citizens' confidence in their government. The avoidance of conflicts of interest on the part of City Planning Commission members (hereinafter "members") through informed judgment is indispensable to maintaining these standards.

Which state "... ensuring the proper performance of City Business ..." which I take to be in accordance with the San Diego Municipal Code. (SDMC); and "... through informed judgement is indispensable to maintaining these standards."

At your December 4 Planning Commission hearing you voted to Approve the referenced project based on false testimony provided by City Staff, and you not having under taken the due diligence required of your position.

My *Merten letter to PC 2015-11-28.pdf* described the numerous ways in which the proposed project was not in compliance with the La Jolla Shores Planned District Ordinance (LJSPDO) and applicable regulations of the San Diego Municipal Code. (SDMC) I provided the relevant SDMC Section numbers assuming Commissioners would familiarize themselves with the applicable code sections so that you could make an informed decision about the project in accordance with the SDMC, rather than relying only on the testimony by City Staff.

### Decision Maker to make Required Findings

A SDMC Sec: 126.0708(a)(3) says a required Finding for a Coastal Development Permit is:

- (3) The proposed *coastal development* is in conformity with the certified *Local Coastal Program land use plan* and complies with all regulations of the certified Implementation Program.

And SDMC Sec: 126.0505(a)(3) states a required Finding for a Site Development Permit is:

- (3) The proposed *development* will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.

SDMC Sec: 126.0708 requires the decision maker to make specific required findings in order to approve a Coastal Development Permit.

### §126.0708 Findings for Coastal Development Permit Approval

An application for a Coastal Development Permit may be approved or conditionally approved only if the decision maker makes all of the *findings* in Section 126.0708(a) and the supplemental *findings* in Section 126.0708(b) that are applicable to the proposed *development*.

- (a) Finding for all Coastal Development Permits
  - (1) The proposed *coastal development* will not encroach upon any existing physical accessway that is legally used by the public or any proposed public accessway identified in a *Local Coastal Program land use plan*; and the proposed *coastal development* will enhance and protect public views to and along the ocean and other scenic coastal areas as specified in the *Local Coastal Program land use plan*;
  - (2) The proposed *coastal development* will not adversely affect *environmentally sensitive lands*; and
  - (3) The proposed *coastal development* is in conformity with the certified *Local Coastal Program land use plan* and complies with all regulations of the certified Implementation Program.

Contrary to this SDMC requirement, and without making the required Findings for the requested permits, Commissioner Malbrough made a motion to simply 'APPROVE the project'. The motion was seconded by Commissioner Reeves. Without any discussion or mention of the required findings to be made, Commissioner Malbrough's motion was Approved by the Commissioners by a vote of 5-0-0.

## Erroneous Minutes Posted on the Planning Commission's web page

The following is an excerpt from the PC Minutes 12-4-2025.pdf posted on the Planning Commission's web page:

### AGENDA ITEMS

#### ITEM 1: \*8303 LA JOLLA SHORES DRIVE - PROJECT NO. 1085883

**Staff:** Veronica Davison  
**City Council District:** 1  
**Plan Area:** La Jolla

Speakers in favor and opposition of the project:

Chandra Slaven, Andy Fotsch, Raphael Rophero, Brian Will, Queenie Cocjin, Daniel Valdez, Lee Andelin, Robin Madaffer, Philip Merten, Lynn Kavanaugh, Artie Kavanaugh, Charlie Race, Natasha Alos, Christian Alos

**COMMISSION ACTION:**

**MOTION BY COMMISSIONER MALBROUGH TO:**

- ADOPT ADDENDUM NO. PRJ-1085883 TO PROGRAM ENVIRONMENTAL IMPACT REPORT (PEIR) NO. 92- 0199 (SCH NO.92071032), CERTIFIED ON JULY 12, 1993
- APPROVE COASTAL DEVELOPMENT PERMIT NO. 3213964
- APPROVE SITE DEVELOPMENT PERMIT NO. 3213965
- APPROVE TENTATIVE MAP NO. 3213966

Seconded by Commissioner Reeves. The motion passed with a vote of 5-0-2. Commissioners Boomhower, Malbrough, Miyahara, Renger, and Reeves voted yes, with Commissioner Modén and Commissioner Mahzari absent.

**ADJOURNED @ 10:12 a.m. by Vice-Chair Matthew Boomhower**

The posted Minutes are factually false. Commissioner Malbrough's motion was only to 'Approve the project'. Commissioner Malbrough did not mention an Environmental Impact Report, CDP, SDP or Tentative Map in his Motion to Approve. Later a staff person asked if his motion included Approval of the Memo sent to the Commission; and Malbrough said it did. The Memo only includes revised drawings with new top of wall elevations.

You can view a video of the entire PC hearing at [https://www.youtube.com/watch?v=tzyYvNR\\_pFA](https://www.youtube.com/watch?v=tzyYvNR_pFA). Commissioner Marbrough's motion is at 1 hr. 10 minutes and 45 second point of the video.

My *Merten letter of 11-18-2025.pdf* specifically described how a retaining wall on Lot 4 was not in compliance with the La Jolla Shores Planned District Ordinance (LJSPDO) because it exceeded the maximum height allowed for a retaining wall in a required side yard setback as defined by the LJSPDO. When one Commissioner questioned Development Services staff about my statement, the staff person said the retaining walls complied. Another staff person said the LJSPDO did not contain any provisions governing heights of retaining walls; and that retaining walls were only regulated by neighborhood character in La Jolla Shores, which was patently false. (Note: The identified south *side yard setback* on Lot 4 is not in general conformance with those in the vicinity as required by the LJSPDO)

The number and height of retaining walls within *required yards* are limited by SDMC Chapter 14, Article 2 Division 3 (Fence regulations). Contrary to Staff's false statement, the LJSPDO specifically includes: Chapter 14, Article 2 Division 3 (Fence Regulations), as depicted on the following SDMC excerpt:

San Diego Municipal Code  
(4-2024)

Chapter 15: Planned Districts

When the California Environmental Quality Act requires that an Environmental Impact Report be prepared in conjunction with an application within the La Jolla Shores Planned District, the Advisory Board shall review this report before submitting its recommendation to the City Manager. It shall also recommend to the Planning Commission any changes to the regulations, provided such changes are necessary for the proper execution of the adopted plan, and to adopt rules of procedure to supplement those contained within the La Jolla Shores Planned District Ordinance. The Advisory Board shall utilize architectural criteria and design standards adopted by the City Council in evaluating the appropriateness of any development for which a permit is applied under the La Jolla Shores Planned District Ordinance.

*("La Jolla Shores Planned District Advisory Board" added 3-27-2007 by O-19587 N.S.; effective 4-26-2007.)*

**§1510.0106 General Regulations**

The general regulations as defined herein shall apply in the La Jolla Shores Planned District.

*("General Regulations" added 3-27-2007 by O-19587 N.S.; effective 4-26-2007.)*

**§1510.0107 Applicable Regulations**

(a) Where not otherwise specified in the La Jolla Shores Planned District, the following provisions of the Land Development Code apply:

Chapter 11 (Land Development Procedures);

Chapter 12 (Land Development Reviews);

**Chapter 13, (Zones);**

Chapter 14, Article 2, Division 1 (Grading Regulations);

Chapter 14, Article 2, Division 2 (Drainage Regulations);

**Chapter 14, Article 2, Division 3 (Fence Regulations);**

Chapter 14, Article 2, Division 5 (Parking Regulations);

Chapter 14, Article 2, Division 6 (Public Facility Regulations);

Please note that the LJSPDO Applicable Regulations also includes Chapter 13, (Zones).

### **Swimming pools greater than 3 feet above grade not permitted in a *street yard***

SDMC Chapter 13 (Zones), 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. (Note: The SDMC states structure height is to measured from finish grade or existing grade, whichever is lower.)

- (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*.

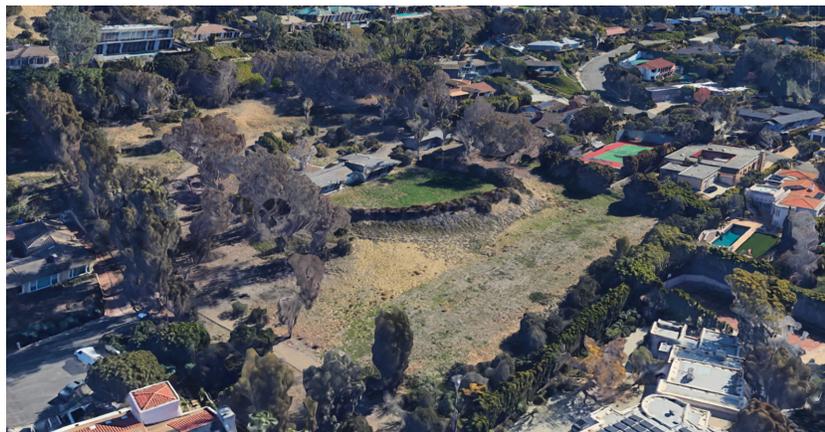
Contrary to this limitation, the proposed swimming pools on Lots 1, 2 and 3 are within a *street yard* and are more than 3 feet above grade, and are not permitted. In spite of the prohibition the Planning Commission voted to approve the illegal location of three swimming pools.

### **Proposed Grading**

As called to your attention in my *Merten Letter to PC 11-18-2025.pdf*, the La Jolla Shores Planned District Ordinance Sec. 1510.0301(d) states:

- (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.

As can be clearly seen in the following photo, only the center portion of the project site had been previously graded. The remainder of the site remained in its original natural topography. The open area in the foreground encompasses Lots 4, 5 and 6.



But contrary to the LJSPDO Grading Regulations, you voted to Approve a project that destroys the original natural terrain in the open area by adding (according to the Civil Engineer's Grading Tabulations and Grading Plans) 11 feet of fill soil on Lot 3, 16 feet of fill soil on Lot 4, 12 ft. of fill soil on Lot 5, and 12 ft. of fill on Lot 6.

### **Lack of Due Diligence to make an Informed Judgement**

Instead of doing your own due diligence to make an informed judgement, you relied on the Staff Report which erroneously said: 'The project conforms with the ... regulations of the Land Development Code without deviations', and you relied upon erroneous testimony by Development Services Department Staff.

### **Conclusion:**

The Planning Commission erroneously Approved a project based on erroneous and false testimony by City Staff, and without making the required findings for the requested permits. In my opinion, the decision by the Planning Commission is therefore incomplete and not valid.

### **Request:**

To correct your unfortunate decision, I respectfully request the Planning Commission reconsider its December 4, 2025 decision and hear the project again, after the Commissioners do their due diligence by researching and becoming familiar with the applicable SDMC regulations, in order to make an informed decision in accordance with the San Diego Municipal Code.

Thank you for your consideration.

I await your reconsideration of your December 4 decision.

Respectfully,



Philip A. Merten AIA

California Architect License Number C-6437

Ec:    Todd Gloria                      Mayor  
       Elyse Lowe                        Director, DSD  
       Michael Prinz                     Assistant Deputy Director, DSD  
       Veronica Davison                Development Project Manager

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## INTRODUCTION

In March 1967, the City Council adopted the overall La Jolla Community Plan which, within its general framework, provided for the development of a more precise plan for La Jolla Shores. The subsequent Precise Plan for the Shores area was in turn adopted by the City Council on November 2, 1972, as a more detailed guide to the development of this portion of the greater La Jolla community. The environmental consequences of several alternative developments within current economic and legal limitations were considered. The plan that was adopted is calculated to preserve and enhance the environment of La Jolla Shores and the region.

The overriding goals adopted as a part of the Plan were; to protect the health, safety, and general welfare of Shores residents and visitors; to preserve and enhance the natural beauty, ambience, and amenities of the Shores; and to implement the La Jolla Community Plan wherever practicable.

Future decisions affecting the environment of the area will be based upon the general considerations above as well as upon the specific intentions which follow:

- TO PRESERVE AND ENHANCE THE RESIDENTIAL CHARACTER OF THE COMMUNITY
- TO PRESERVE SEA VIEWS AND NATURAL LAND FORMS

- (2) At the time of appointment and during incumbency five of the seven-member board shall be resident property owners of the La Jolla Shores Planned District. The sixth member shall be a resident of the district but need not own property and the seventh member shall own property in the district but need not be a resident. Members of the Board shall be persons who shall be specifically qualified by reason of interest, training or experience in art, architecture, land development, landscape architecture, planning, urban design, or other relevant business or profession to judge the effects of a proposed development upon the desirability, property values, and development of surrounding areas. At least one member of such Board shall be a registered architect in the State of California.