

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-8036

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Permit Application No. 6-95-144/10

Date February 5, 1996

ADMINISTRATIVE PERMIT**F4a**

APPLICANT: Patrick Bownes

PROJECT DESCRIPTION: Construction of a 454 sq.ft., second-story deck on the west and south sides of an existing two-story, 1,384 sq.ft. single family residence on a 7,000 sq.ft. oceanfront lot.

PROJECT LOCATION: 2649 Ocean Street, Carlsbad, San Diego, San Diego County.  
APN 203-140-10

EXECUTIVE DIRECTOR'S DETERMINATION: The findings for this determination, and for any special conditions, are discussed on subsequent pages.

NOTE: The Commission's Regulations provide that this permit shall be reported to the Commission at its next meeting. If one-third or more of the appointed membership of the Commission so request, a permit will not be issued for this permit application. Instead, the application will be removed from the administrative calendar and set for public hearing at a subsequent Commission meeting. Our office will notify you if such removal occurs.

This permit will be reported to the Commission at the following time and place:

DATE and TIME: March 15, 1996  
9:00 a.m., Friday

LOCATION: Radisson Hotel - Santa Barbara  
1111 East Cabrillo Boulevard  
Santa Barbara, Ca

IMPORTANT - Before you may proceed with development, the following must occur:

For this permit to become effective you must sign the enclosed duplicate copy acknowledging the permit's receipt and accepting its contents, including all conditions, and return it to our office. Following the Commission's meeting, and once we have received the signed acknowledgment and evidence of compliance with all special conditions, we will send you an authorization to proceed with development. BEFORE YOU CAN OBTAIN ANY LOCAL PERMITS AND PROCEED WITH DEVELOPMENT, YOU MUST HAVE RECEIVED BOTH YOUR ADMINISTRATIVE PERMIT AND THE PERMIT AUTHORIZATION FROM THIS OFFICE.

PETER DOUGLAS  
Executive Director

By: Laurinda R. Owens

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. 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. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. 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.
7. 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.

EXECUTIVE DIRECTOR'S DETERMINATION (continued):

Pursuant to Public Resources Code Section 30624, the Executive Director hereby determines that the proposed development, subject to Standard and Special Conditions as attached, is in conformity with the provisions of Chapter 3 of the Coastal Act of 1976, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3, and will not have any significant impacts on the environment within the meaning of the California Environmental Quality Act. Any development located between the nearest public road and the sea is in conformity with the public access and public recreation policies of Chapter 3.

Proposed is the construction of a 454 sq.ft., second story wooden deck on the south and west sides of an existing two-story single family residence on a 7,000 sq.ft. oceanfront lot. The project site is located on Ocean Street in northern Carlsbad. The parcel extends seaward from Ocean Street and slopes to the west over a relatively gradual slope located on the western portion of the site. The home is located at approx. +40 ft. MSL to +25 ft. MSL. The parcel

slopes in a westerly direction to an elevation of +5 ft. MSL at the western property line, terminating at the sandy beach.

The residence contains a lower level deck seaward of the home that is approx. 55 feet away from the western property line which is also the mean high tide line. The subject site does not contain any shoreline protection nor is any proposed. The only improvement between the existing residence and western property line is a small "sandbox" structure composed of wood which is sited approx. five feet inland of the western property line. The upper level of the house, along with a detached garage, are located at the street level. As viewed from the beach, the home appears as a two-story structure and at its street elevation, as a one-story structure.

Relative to shoreline hazards and visual quality, since the bluff parcel is an oceanfront lot, the Commission has traditionally been concerned with the siting of new development directly along the shoreline. In reliance upon Coastal Act Section 30253, the Certified Carlsbad LCP Mello II segment contains the Coastal Development overlay zone which includes a policy addressing the "stringline" of development as it relates to visual resource protection and geologic stability. With regard to visual resources, the existing residence is visible from the adjacent beach. Most of the oceanfront residences in the area have decks, patios, and other structures which extend seaward of the principal residential structure. Some residences have private beach access stairways extending down the bluff face to the beach. In the subject proposal, the only improvement is a proposed deck seaward of the home at the second level. No enclosed additions to the principal structure are proposed.

In addition, there will be no significant adverse impacts on views to and along the coast as a result of this project. The proposed deck addition to an existing residence will be located in a well-developed single family residential neighborhood, will be compatible in design and height to other similar accessory improvements in the area, and will be consistent with the existing surrounding development.

With regard to geologic stability, the Commission's concern has been that new development should minimize risks to life and property and should not necessitate the need for future shoreline protective devices, which often alter natural landforms and encroach onto sandy beach areas. A geologic report prepared for the project site indicates that the site is geologically stable to support the proposed deck addition and that there was no evidence of bluff failure or structural damage on the subject property or adjacent properties due to geologic or wave action conditions. Based on site observations and the condition of the existing structure and decks, the geology report concluded the deck addition may be constructed as designed. As noted previously, no shoreline protection is proposed or warranted. The proposed deck will observe a significant setback of approx. 55 feet from the shoreline, thus making the posts which support the second level deck sufficiently removed from the shoreline both in distance and elevation, to not be subject to wave action.

Also, the proposed improvements will not encroach further seaward than the existing structure. Therefore, since the proposed accessory improvements will not extend further seaward than the accessory improvements on the lots to the north and south, and no new construction to the principal residence is proposed seaward of the home, the proposal can be found consistent with the Coastal Development Bluff Overlay stringline regulations contained in the certified LCP for the area.

However, due to the inherent risk of development on the site from the hazards of ocean waves and flooding, and the Commission's mandate to minimize risks (Section 30253), the Commission's standard waiver of liability condition has been attached as Special Condition No. 1. Pursuant to Section 13166(a)(1) of the Commission's California Code of Regulations, an application may be filed to remove Special Condition No. 1 from this permit if the applicant presents newly discovered material information regarding the existence of any hazardous condition which was the basis for the condition, if he could not with reasonable diligence have discovered and produced such information before the permit was granted.

With regard to public access, Section 30211 of the Coastal Act states:

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 sandy and rocky coastal beaches to the first line of terrestrial vegetation.

In addition, Section 30212 of the Act states, in part:

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

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby....

Also, Section 30604(c) of the Act requires that a specific access finding be made for any project located between the first coastal roadway and the sea. The project site is located between the ocean and the first coastal roadway (Shore Drive). Depending on tidal fluctuations, there is approx. 5-8 feet of sandy beach area on the subject site between the sandbox structure and the western property line. The applicant's property ownership extends to the mean high tide line (MHTL); this results in the inclusion of some existing sandy beach area on the applicant's property. There is evidence of historic public use of the sandy beach area seaward of the bluff face; thus, potential prescriptive rights to public access may exist. Additionally, this area may be subject to the public trust. However, the proposed deck addition to the residence does not result in any direct impact on the public's use of the beach seaward of the site, nor does it adversely affect either lateral or public access opportunities in this area or extend further seaward than

existing development on the site.

Existing public vertical access to the beach is available approx. ten lots to the north at a public access stairway, and also both to the north and south at Carlsbad State Beach. Therefore, the project, as conditioned, is found to be consistent with all applicable public access and recreation policies of the Coastal Act.

The subject property is located within the jurisdiction of the City of Carlsbad's Mello II segment. Although the Commission approved both the Land Use Plan for the Mello II LCP and the zoning regulations (implementing ordinances), there still remains unresolved issues. As such, the City has declined to implement the certified LCP. It is expected that several amendment requests will be forthcoming to address inconsistencies between the LCP and General Plan, however, effective certification is not anticipated in the immediate future. Therefore, the LCP is the standard of review for the areas subject to Mello II, but the Commission is still responsible for issuing coastal development permits for this area.

The project site is designated for residential use in the certified LCP Mello II segment. The proposed use is consistent with that designation and with adjacent uses and is thus consistent with the certified LCP. Project approval, as conditioned, will not prejudice the ability of the City of Carlsbad to prepare a certifiable local coastal program.

SPECIAL CONDITIONS:

1. Assumption of Risk: Prior to the authorization to proceed with development, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from waves during storms and from erosion or flooding and the (b) applicant hereby waives any future claims of liability against the Commission or its successors in interest for damage from such hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens.

ACKNOWLEDGEMENT OF PERMIT RECEIPT/ACCEPTANCE OF CONTENTS:

I/We acknowledge that I/we have received a copy of this permit and have accepted its contents including all conditions.

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Applicant's Signature

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Date of Signing