CALIFORNIA COASTAL COMMISSION

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Filed:November 1, 199949th Day:December 20, 1999180th Day:April 29, 2000Staff:ALK-LBNStaff Report:November 18, 1999Hearing Date:December 7-10, 1999Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-99-372

APPLICANT: Stephen and Mary Smith

AGENT: Brent Sears, Architect

PROJECT LOCATION: 520 Ocean Avenue, City of Seal Beach, County of Orange

PROJECT DESCRIPTION: Demolition of an existing one-story single family residence with basement and detached two-car garage and construction of a new 5,725 square foot two-story single family residence with partly subterranean beach level basement, seaside yard and patio, in-ground spa, 6' high property line perimeter walls, various hardscape improvements and an attached 764 square foot three-car garage. Grading of 558 cubic yards is also proposed.

Lot Area:7,840Building Coverage:2329.Paved Area:3205Landscape Coverage:2305.Parking Spaces:ThreeZoning:ResideHt above final grade:25 fee

7,840 square feet 2329.5 square feet 3205 square feet 2305.5 square feet Three Residential Low Density 25 feet street side 35 feet ocean side

LOCAL APPROVALS RECEIVED: City of Seal Beach approval-in-concept dated October 4, 1999.

SUBSTANTIVE FILE DOCUMENTS: Coastal development permits 5-99-072 (Vivian); 5-97-319 (Steffensen); 5-95-185 (Sloan); 5-86-844 (Baldwin), 5-86-153 (Kredell), and 5-85-437 (Arnold); *Preliminary Foundation Soils Exploration at 520 Ocean Boulevard, Seal Beach, CA* (JN:F-9025-99), by Geo-Etka, Inc. of Orange, California.

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending approval of the proposed project with special conditions regarding demonstration of compliance with geotechnical recommendations, an assumption-of-risk deed restriction, notification of coastal development permit requirements for any change in intensity of use of the site, and identification of an appropriate debris disposal site. The major issue of this staff report concerns beachfront development that could be affected by flooding during strong storm events. As of the date of this staff report, the applicant has indicated acceptance of the proposed special conditions.

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STAFF RECOMMENDATION:

Staff recommends that the Commission <u>APPROVE</u> the permit application with special conditions.

MOTION:

I move that the Commission approve CDP No. 5-99-372 pursuant to the staff recommendation.

Staff recommends a <u>YES</u> vote. This will result in adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

RESOLUTION:

I. APPROVAL WITH CONDITIONS

The Commission hereby **GRANTS** a permit, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

II. STANDARD CONDITIONS

- 1. <u>Notice of Receipt and Acknowledgment.</u> 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. <u>Expiration</u>. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. 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. <u>Compliance.</u> All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
- 4. <u>Interpretation.</u> Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 5. <u>Inspections.</u> The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.

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- 6. <u>Assignment.</u> 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. <u>Terms and Conditions Run with the Land.</u> 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.

III. SPECIAL CONDITIONS

1. Conformance of Design and Construction Plans to Geotechnical Report

- A. All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with all recommendations contained in the engineering geologic report *Preliminary Foundation Soils Exploration at 520 Ocean Boulevard, Seal Beach, CA* (JN:F-9025-99), by Geo-Etka, Inc. of Orange, California. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the above-referenced geologic evaluation approved by the California Coastal Commission for the project site.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Assumption of Risk, Waiver of Liability and Indemnity

- A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from flooding and wave uprush; (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.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not

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be removed or changed without a Commission amendment to this coastal development permit.

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3. Future Improvement/Parking

This Coastal Development Permit 5-99-372 is only for the development, located at 520 Ocean Avenue, in the City of Seal Beach, County of Orange, as expressly described and conditioned herein. Any future conversions, including a change in the number of residential units or any other change in the intensity of use of the property, shall require an amendment to this permit or a new coastal development permit from the Coastal Commission or its successor agency.

4. Location of Debris Disposal Site

PRIOR TO ISSUANCE OF A COASTAL DEVELOPMENT PERMIT, the applicant shall identify in writing, for the review and approval of the Executive Director, the location of the disposal site of demolition and construction debris resulting from the proposed project. Disposal shall occur at the approved disposal site. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND LOCATION

The applicant is proposing to construct a 5,725 square foot 2-story single family residence (plus a partly subterranean beach level "basement"), with an attached 764 square foot 3-car garage. A seaside lawn and patio, in-ground spa, spa equipment enclosure, built-in barbecue and fire pit are also proposed. In addition, a new 6' high, concrete block, property line wall is proposed to enclose the subject site. A sliding gate will provide access from the enclosed vard to the beach (Exhibit 2). The subject site is currently developed with a one-story single family residence with a basement and detached two-car garage. The existing residence will be demolished as part of the proposed project. The site slopes from approximately 23 feet above sea level at street grade to approximately 11.5 feet above sea level at beach grade. The proposed structure will be 25 feet high from the street level (2 stories visible) and 35 feet high on the ocean side beach level (3 stories visible). Accordingly, the beach level living area (i.e. partly subterranean basement) will not be visible from street level. Grading will consist of 482 cubic yards of cut and 76 cubic yards of fill (558 cubic yards total). At this time, the disposal site for soils exported from the project site has yet to be identified. Therefore, a condition has been imposed that requires the identification of an appropriate disposal site prior to permit issuance.

The subject site is located at 520 Ocean Avenue, in the City of Seal Beach, Orange County (Exhibit 1). The site is a beachfront lot located between the first public road and the sea. The project is replacement development within an existing urban residential area, located generally northwest of the Seal Beach Municipal Pier. The proposed structures, including the spa and 6' perimeter block walls, are consistent with development approved in the surrounding area (as described below), including 5-99-072 (Vivian) and 5-97-319 (Steffensen). There is a wide sandy beach (approximately 950 feet) between the subject property and the mean high tide

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line. Vertical public access to this beach is available approximately 137.5 feet northwest of the subject site at the end of Fifth Street, and 107.5 southeast of the subject site at the end of Sixth Street.

B. PREVIOUS COMMISSION ACTION IN PROJECT AREA

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1. <u>Coastal Development Permit 5-99-072</u>

On June 11, 1999, the California Coastal Commission approved Coastal Development Permit 5-99-072 for construction of a 4,260 square foot, 3-story (including basement) single family residence with a seaside patio, lap pool and spa, property line perimeter walls and an attached 565 square foot, 2-car garage. The project also involved 720 cubic yards of grading. The approved development is 25 feet high on the street side and 35 feet high on the beach side. The site is located at 506 Ocean Avenue, three lots northwest of the subject site.

Issues explored included public access and recreation and hazards related to beach erosion, wave action and flood hazards. In order to find the proposed development consistent with Section 30253 of the Coastal Act, the Commission imposed a prior to permit issuance Assumption-Of-Risk Deed Restriction special condition requiring the applicant to execute and record a deed restriction stating that the owner was aware of, and assumed, the liability for hazards related to beach erosion, wave action and flood hazards.

2. Coastal Development Permit 5-97-319

On March 10, 1998, the California Coastal Commission approved Coastal Development Permit 5-99-319 which included the following development at the project site: 1) Merge two lots (308 and 310 Ocean Avenue) into one lot; 2) demolish the existing residence at 310 Ocean Avenue; 3) expand the existing residence at 308 Ocean Avenue by 4,655 square feet, with most of the proposed expansion located within the footprint of the residence to be demolished; 4) 231 cubic yards of grading (100 cubic yards cut and 131 cubic yards fill); 5) construct a swimming pool, spa, planters, fences, and patio in the rear yard, and 6) construct a four foot high (above natural grade) concrete block wall along the easterly side property line and along the easterly portion (310 Ocean Avenue portion) of the seaward property line to match existing walls along the property lines. The resultant structure is 3 stories (35 feet high) on the beach side and 2 stories (25 feet high) on the street side.

Issues explored included geologic hazards, flood hazards, visual impacts and public access. In order to find the proposed development consistent with Section 30253 of the Coastal Act, the Commission imposed a prior to permit issuance special condition regarding conformance with geologic recommendations.

On June 11, 1999, the Commission approved Coastal Development Permit amendment 5-99-319-A1, which allowed the applicant to construct a new 116 square foot potting shed/ accessory structure in the rear yard, raise the block walls on the east, west and south so that they will be six feet high above adjacent grade, and build a new block wall on the east side to be six feet high above adjacent grade. Issues explored with regard to the proposed amendment included public access and visual resources. No new special conditions were imposed.

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3. Seaside Perimeter Walls

Staff has conducted substantial investigation, at the request of the Commission and in association with specific coastal development permit applications, to determine the prevalence and historical background of seaside perimeter walls in the project area. Through site visits and a review of Commission files at the South Coast District office, staff has determined that virtually all lots along this segment of Ocean Avenue (northwest of the Seal Beach Municipal Pier) are enclosed by some type of solid wall or fencing. In addition, the majority of property owners in the project vicinity have erected solid walls along their seaside property lines. Walls in the project vicinity vary in height from approximately 4' to 8' 6". Many are constructed of solid concrete block or a combination of transparent Plexiglas and concrete block.

An approximately 5' high concrete block wall currently exists along the westerly and southerly (seaside) property lines of the subject site. The existing wall will be removed and replaced as part of the proposed project. Based on the existence and continuity of seaside perimeter walls in the project vicinity and prior Commission approvals of such walls, the proposed 6' high wall is found to be compatible with the character of surrounding development and consistent with past Commission actions in the project area.

C. HAZARDS

Section 30253 of the Coastal Act states, in relevant part:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

1. Wave and Flooding Hazards

In 1983, severe winter storms caused heavy damage to beachfront property in the vicinity of the municipal pier as well as to the area known as Surfside, southeast of the pier, and to Anaheim Bay. The beaches in these parts of the City do not adequately buffer beachfront homes from wave uprush during heavy storm events. Since then, the Commission has required assumption-of-risk deed restrictions for new homes on beachfront lots in Seal Beach. During heavy winter storms, such as those most recently in 1998, temporary sand berms were constructed between the ocean and homes northwest and southeast of the municipal pier to provide some protection against wave uprush and flood hazards. However, some flooding was still encountered.

The subject site is located on a beach front parcel, northwest of the municipal pier within the Old Town area of Seal Beach. Presently, there is a wide sandy beach between the subject property and the ocean. The agent has indicated that the mean high tide line is approximately 950 feet from the seaward edge of the property. The seaward edge of the structure is 96 feet from this property line; therefore, based on the information provided, the house is 1046

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feet from the mean high tide line. This wide sandy beach presently provides homes in the area some protection against wave uprush and flooding hazards. However, similar to the City's Surfside area, southeast of the subject site, the wide sandy beach is the only protection from wave uprush hazards.

Beach areas are dynamic environments which may be subject to unforeseen changes. Such changes may include modifications to beach processes, including sand regimes. The mechanisms of sand replenishment are complex and may change over time, especially as beach process altering structures, such as jetties, are modified, either through damage or deliberate design. Therefore, the presence of a wide sandy beach at this time does not preclude wave uprush damage and flooding from occurring at the subject site in the future. The width of the beach may change, perhaps in combination with a strong storm event like those which occurred in 1994 and 1998, resulting in future wave and flood damage to the subject property.

Therefore, the Commission finds that it is necessary to require the recordation of an assumption-of-risk deed restriction. With this standard waiver of liability condition, the applicant is notified that the home is being built in an area that is potentially subject to flooding and wave uprush hazards that could damage the applicant's property. The applicant is also notified that the Commission is not liable for such damage as a result of approving the permit for development. In addition, the condition ensures that future owners of the property will be informed of the risks and the Commission's immunity of liability.

The assumption-of-risk condition is consistent with prior Commission actions for homes in Seal Beach since the 1982-83 El Nino storms. For instance, the Executive Director issued Administrative Permits 5-86-676 (Jonbey), 5-87-813 (Corona), and more recently 5-97-380 (Haskett) with assumption-of-risk deed restrictions for improvements to existing homes. In addition, the Commission has consistently imposed assumption-of-risk deed restrictions on construction of new beachfront homes throughout Seal Beach, whether on vacant lots or in conjunction with the demolition and replacement of an existing home (as is the case of the proposed development). Examples include coastal development permits for similar projects in Seal Beach including 5-99-072 (Vivian), 5-86-844 (Baldwin), 5-86-153 (Kredell), and 5-85-437 (Arnold).

The applicant understands that the proposed development may be subject to an assumption-of-risk deed restriction and is willing to record the deed restriction if required. The Commission finds that extraordinary hazards potentially exist from wave uprush and flooding at the subject site. Therefore, per Special Condition 2, an assumption-of-risk deed restriction is imposed. As conditioned, the Commission finds that the proposed project is consistent with section 30253 of the Coastal Act.

2. <u>Geologic Hazards</u>

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A Preliminary Foundation Soils Exploration was performed by Geo-Etka, Inc. of Orange, California, for the subject site. This report explored soils conditions at the site in order to make recommendations for the foundation design for the proposed residence. Recommendations were provided for load values to be used for the foundation design. In addition, construction guidelines regarding sequence, materials, and soil compaction were identified. Finally, recommendations for the design of excavation shoring was provided to prevent impacts upon adjacent existing structures. This report concluded, based upon implementation of the recommendations regarding foundation and shoring design, the site was

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suitable for the construction of a residential structure and that the proposed development would not affect the stability of surrounding structures.

Since the geotechnical report provides recommendations regarding the design of shoring necessary to assure the stability of adjacent structures during excavation for the proposed project, the Commission finds it is necessary to impose a special condition requiring the submission of revised plans for grading and foundation which incorporates the recommendations contained in the above referenced geotechnical investigation. These revised plans shall contain a statement prepared and signed by the geotechnical consultant certifying that the recommendations contained in the *Preliminary Foundation Soils Exploration at 520 Ocean Boulevard, Seal Beach, CA* (JN:F-9025-99), by Geo-Etka, Inc. of Orange, California, have been incorporated into the revised plans. The plans as submitted do not indicate that the recommendations in the geotechnical investigation have been incorporated, nor do they indicate that the geotechnical consultant has approved the plans to ensure that the recommendations have been incorporated.

To affirm that the proposed development will assure stability and structural integrity, and neither create nor contribute significantly to geologic instability, or destruction of the site or surrounding area and to assure that risks to life and property are minimized, pursuant to Special Condition 1, the Commission finds that the applicant shall, as a condition of approval, incorporate the geologist's recommendations into the final design and construction plans of the proposed project. Therefore, as conditioned, the Commission finds the proposed project to be consistent with Section 30253 of the Coastal Act.

D. PUBLIC ACCESS

Section 30212 of the Coastal Act states, in relevant 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:

(2) adequate access exists nearby...

Section 30252 of the Coastal Act states, in part:

The location and amount of new development should maintain and enhance public access to the coast by: (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation.

The subject site is a beachfront lot located between the nearest public roadway and the shoreline in the Old Town area of the City of Seal Beach. The beach seaward of the subject site is available for lateral public access. Vertical access to this beach is available 107.5 feet (3 lots) southeast of the subject site at the end of Sixth Street and 137.5 feet (4 lots) northwest of the subject site at the end of Fifth Street. Therefore, the Commission finds adequate access is available nearby and the proposed development is consistent with Section 30212 of the Coastal Act.

When a private development does not provide adequate on-site parking, users of that development are forced to occupy public parking used by visitors to the coastal zone. Thus, all private development must provide adequate on-site parking to minimize adverse impacts on public access.

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The Commission has consistently found that two parking spaces is adequate to satisfy the parking demand generated by one individual residential unit. The proposed single family residence provides three parking spaces, which exceeds the standard of two parking spaces per residential dwelling unit. However, the proposed single family dwelling is designed with living accommodations on the beach level partly subterranean "basement" that includes a bar area, separate from kitchen facilities on the street level (i.e. "first floor"), that may be used for food and drink preparation. This basement could, through simple modifications, be made into a second dwelling unit. If a dwelling unit were created, the parking demand at the subject site would increase from two parking spaces to four parking spaces. Since the proposed structure has only three parking spaces, the site would be deficient by one parking space, thus leading to adverse impacts on public access.

Therefore, the Commission finds that it is necessary to place a condition informing the current permittee and future owners of the subject site that a new coastal development permit, or an amendment to this permit, would be required for any future conversion of the basement to a second unit which would result in increased parking demand. Thus, as conditioned, the Commission finds that the proposed development is consistent with Section 30252 of the Coastal Act.

E. LOCAL COASTAL PROGRAM

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Section 30604 of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be issued if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

On July 28, 1983, the Commission denied the City of Seal Beach Land Use Plan (LUP) as submitted and certified it with suggested modifications. The City did not act on the suggested modifications within six months from the date of Commission action. Therefore, pursuant to Section 13537(b) of the California Code of Regulations, the Commission's certification of the land use plan with suggested modifications expired. The LUP has not been resubmitted for certification since that time.

The proposed development, as conditioned, is consistent with the Chapter Three policies of the Coastal Act. Therefore, the Commission finds that the proposed development as conditioned would not prejudice the ability of the City to prepare a certified coastal program consistent with the Chapter Three policies of the Coastal Act.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096(a) of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, 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.

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The proposed project is located in an urban area. All infrastructure necessary to serve the site exist in the area. As conditioned, the proposed project has been found consistent with the hazard and public access policies of Chapter Three of the Coastal Act. Mitigation measures requiring conformance with geotechnical recommendations, an assumption-of-risk deed restriction, and notification regarding coastal development permit requirements for any change in intensity of use of the site, will minimize all significant adverse effects which the activity may have on the environment.

As conditioned, no feasible alternatives or feasible mitigation measures are known, beyond those required, which would substantially lessen any identified significant effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is the least environmentally damaging feasible alternative and is consistent with CEQA and the policies of the Coastal Act.















