

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Filed: January 16, 2003
49th Day: March 6, 2003
180th Day: July 15, 2003
Staff: FSY-LB FSY
Staff Report: February 13, 2003
Hearing Date: March 4-7, 2003
Commission Action:

**TU 5b****STAFF REPORT: CONSENT CALENDAR****APPLICATION NUMBER:** 5-02-165**APPLICANT:** Ed Herbst**AGENT:** James Corcoran**PROJECT LOCATION:** 4907 Seashore, City of Newport Beach, County of Orange**PROJECT DESCRIPTION:** Demolition of an existing two-story dwelling and construction of a new beach fronting 2,021 square foot two-story single family residence with an attached 483 square foot two-car garage. There will be 1,170 cubic yards of grading.**LOCAL APPROVALS RECEIVED:** City of Newport Beach approval-in-concept (No. 0683-2002) dated May 7, 2002.

RECORD PACKET COPY

SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing demolition and construction of a new beach fronting single-family residence. The major issue of this staff report concerns beachfront development that could be affected by flooding during strong storm events.

Staff is recommending **APPROVAL** of the proposed project with five (5) special conditions regarding: 1) assumption of risk; 2) no future shoreline protective device; 3) future development; 4) submittal of a Drainage and Run-Off Control Plan; and 5) a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permits: 5-02-306 (Cross); 5-02-274 (Datt); 5-02-255 (Cross); 5-02-211 (Sork); 5-02-198 (Newell); 5-02-177 (Thorne); 5-02-145 (Collins); 5-02-144 (Collins); 5-01-401 (Collins); 5-01-400 (Collins); 5-01-396 (Collins & Fluter); 5-01-304 (Caesar); 5-01-296 (Ryan); 5-01-197 (Jacobs & Dolansky); 5-01-186 (Doukoullos); 5-01-084 (Muench); 5-00-492 (Palm); 5-00-420 (Collins); 5-00-285 (Collins); 5-00-262 (Puntoriero); 5-00-261 (Pearson); 5-00-192 (Blumenthal); 5-00-114 (Heuer); 5-00-086 (Wells); 5-00-059 (Danner); 5-99-477 (Watson); 5-97-380 (Hasket); 5-87-813 (Corona); 5-86-676 (Jonbey); City of Newport Beach certified Land Use Plan, Letter to James Corcoran from Staff dated June 14, 2002; Letter from James Corcoran to Staff dated August 8, 2002; Letter to James Corcoran from Staff dated October 7, 2002; Letter from Mark Botich to Staff dated December 19, 2002; Letter to James Corcoran from Staff dated January 13, 2002; Letter from Mark Botich to Staff dated January 16, 2003; *Preliminary Geotechnical Investigation (Project No. 119i-200-00), Proposed Construction of a Single Family Residence, 4907 Seashore, Newport Beach, CA by Bagahi Engineering Inc. dated October 9, 2002 and Wave Runup & Coastal Hazard Study for 4907 Seashore, Newport Beach, CA prepared by Skelly Engineering dated November 2002.*

LIST OF EXHIBITS

1. Location Map
 2. Assessor's Parcel Map
 3. Site/Floor Plans
 4. Elevations/Roof Plans
 5. Sections
 6. Grading Plan
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STAFF RECOMMENDATION:

Staff recommends that the Commission **APPROVE** the permit application with special conditions.

MOTION:

I move that the Commission approve CDP No. 5-02-165 pursuant to the staff recommendation.

Staff recommends a **YES** 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 **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and 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. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date 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. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. **SPECIAL CONDITIONS**

1. **Assumption of Risk, Waiver of Liability and Indemnity**

- A. By acceptance of this permit, the applicant acknowledge 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.

2. **No Future Shoreline Protective Device**

- A(1). By acceptance of this Permit, the applicant agrees, on behalf of himself and all other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-02-165 including, but not limited to, the residence, and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- A(2). By acceptance of this Permit, the applicant further agree, on behalf of himself and all successors and assigns, that the landowner shall remove the development authorized by this permit, including the house, garage, foundations, and patio, if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

3. **Future Development**

- A. This permit is only for the development described in Coastal Development Permit No. 5-02-165. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-02-165. Accordingly, any future improvements to the single family house authorized by this permit, including but not limited to change in use from a permanent residential unit and

repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-02-165 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

4. Drainage and Run-Off Control Plan

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for review and approval of the Executive Director, a drainage and runoff control plan showing roof drainage and runoff from all impervious areas directed to dry wells or vegetated/landscaped areas. Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants which are non-invasive.
- B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

5. Deed Restriction

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

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

The subject site is located at 4907 Seashore within the City of Newport Beach, Orange County (Exhibits #1-2). The project is located within an existing urban residential area, located generally west of the Newport Pier.

The site is a beachfront lot located between the first public road and the sea. There is a wide sandy beach approximately 250 feet wide between the subject property and the mean high tide line. Due to its location, by the ocean, the project site may be potentially exposed to the hazard of wave uprush during a severe storm event.

The proposed project will not have an adverse effect on public access. The project site is located north of the portion of Oceanfront fronted by the City's paved beachfront public lateral accessway (boardwalk). The Commission has found through previous permit actions in this area that the City's setback in this area is acceptable for maintaining public access. The proposed project is consistent with the City's 5' required setback from the seaward property line. Vertical public access to this beach is available approximately 90 feet to the southeast from the project site at the 49th Street, street end and approximately 60 feet to the northwest from the project site at the 50th Street, street end.

The applicant is proposing to demolish an existing two-story dwelling and construct a new beach fronting approximately 29' above finished grade, 2,021 square foot two-story single family residence with an attached 483 square foot two-car garage (Exhibits # 3-6). In addition, the project consist of 42 square feet for 2nd floor decks and construction of side yard property line walls (Exhibit #3). There will be a total of 1,170 cubic yards of grading for purposes of site preparation. A total of 160 cubic yards of fill will be brought in, which is included in the 1,170 cubic yard total.

The applicant is proposing water quality improvements as part of the proposed project, including the direction of roof runoff and surface runoff to area drains leading to two dry wells on the project site.

B. HAZARDS

Development adjacent to the ocean is inherently hazardous. Development which may require a protective device in the future can not be allowed due to the adverse impacts such devices have upon, among other things, public access, visual resources and shoreline processes. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned to: require an appropriate set-back from the water; require a drainage and runoff control plan to direct, treat, and minimize the flow of water offsite; prohibit construction of protective devices (such as a seawall) in the future; and to require that the landowner and any successor-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

C. DEVELOPMENT

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission finds that a future improvements special condition be imposed. As conditioned the development conforms with the Chapter 3 policies of the Coastal Act.

D. PUBLIC ACCESS

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, as proposed the development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

E. WATER QUALITY

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment. These

design features include, but are not limited to, the appropriate management of equipment and construction materials, reducing runoff through the use of permeable surfaces, the use of non-invasive drought tolerant vegetation to reduce and treat the runoff discharged from the site, and for the use of post-construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

F. DEED RESTRICTION

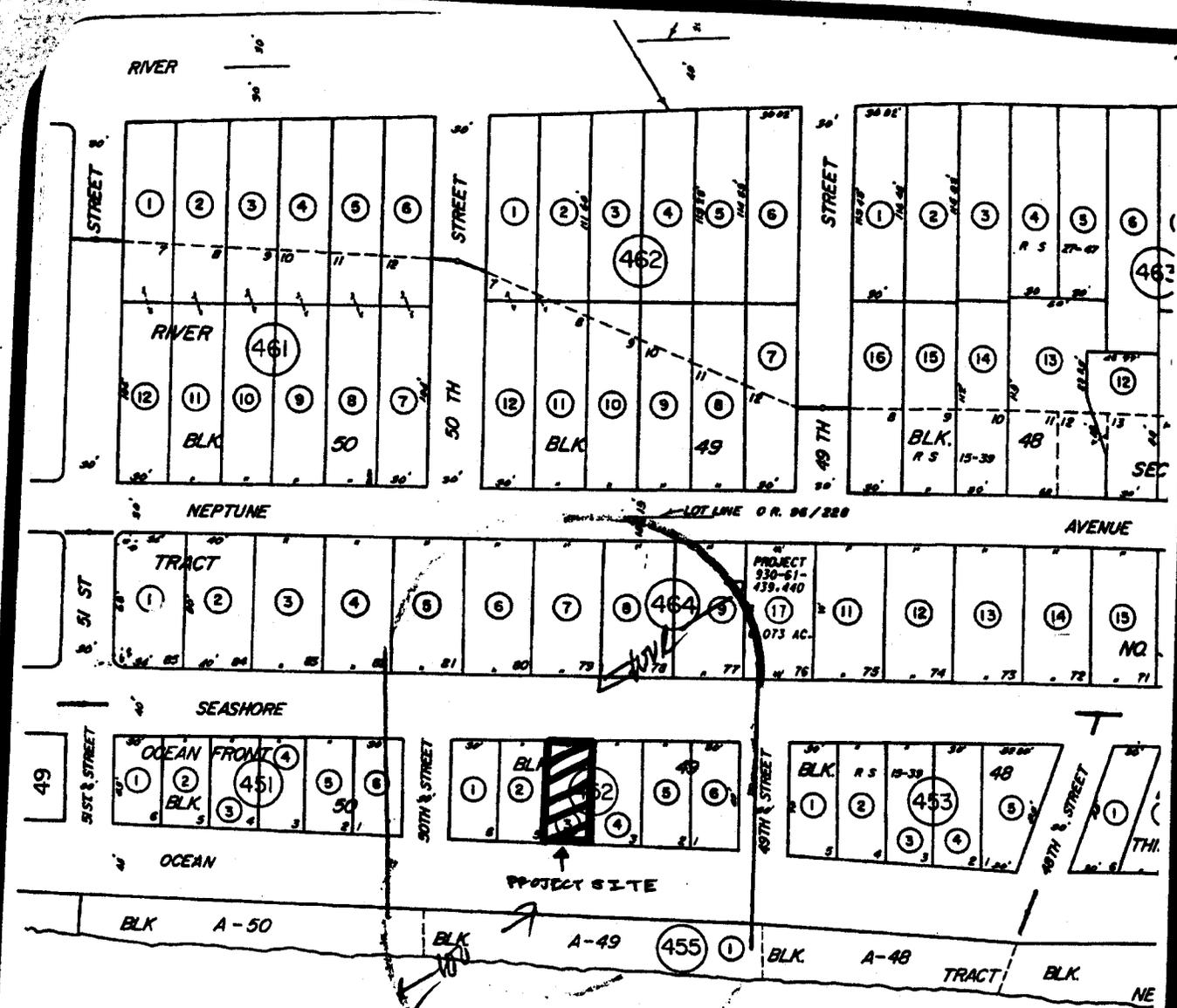
To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes one additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

G. LOCAL COASTAL PROGRAM

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The Land Use Plan for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on January 9 1990. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.



COASTAL COMMISSION
3 MILES

EXHIBIT # 2
PAGE 1 OF 1

MARCH 1984 THIRD ADDITION TO
NEWPORT BEACH
OCEAN FRONT TRACT

M.M. 3-31
M.M. 4-12

NOTE - ASSESSOR'S BLOCK &
PARCEL NUMBERS
SHOWN IN CIRCLES

RECEIVED
South Coast Region

MAY 24 2002

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5-02-165

