

CALIFORNIA COASTAL COMMISSION

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W4c

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Staff: RT-LB
Staff Report: December 22, 2005
Hearing Date: January 11-13, 2006
Commission Action:

**STAFF REPORT: CONSENT CALENDAR**

APPLICATION NUMBER: 5-05-303

APPLICANT: Mr. and Mrs. Dennis Berryman

AGENT: Vern Buwalda

PROJECT LOCATION: 6 South La Senda Drive, Laguna Beach, Orange County

PROJECT DESCRIPTION: Demolition of an existing single-family residence and construction of a new two-story 4,473 square foot single-family residence with an attached 431 square foot two-car garage, hardscape improvements, landscaping and retaining walls on a blufftop lot.

SUMMARY OF STAFF RECOMMENDATION:

Commission staff is recommending **APPROVAL** of the proposed project with **Eight (8) Special Conditions** regarding: **1)** assumption of risk; **2)** no future blufftop or shoreline protective devices; **3)** additional approvals for any future development; **4)** submittal of final project plans; **5)** conformance with geotechnical recommendations; **6)** submittal of a final drainage and runoff control plan; **7)** submittal of a revised landscape plan; **8)** a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

SUBSTANTIVE FILE DOCUMENTS: Update Report of Preliminary Geotechnical Investigation, prepared by Geofirm, dated 10/1/03; Response to Geotechnical Report Review Checklist dated 12/3/03, prepared by Geofirm, dated 12/9/03; Response to California Coastal Commission Review dated 6/30/04, prepared by Geofirm, dated 7/26/04, Updated Survey for Top of Bluff Determination, prepared by Geofirm, dated 8/9/04; Geotechnical Update Letter, prepared by Geofirm, dated 8/8/05; City of Laguna Beach certified Local Coastal Program (as guidance only), Coastal Development Permit No. 5-04-205.

LOCAL APPROVALS RECEIVED: City of Laguna Beach Approval in Concept, dated 8/17/05.

LIST OF EXHIBITS

1. Location Map
2. Assessor's Parcel Map
3. Site Plan
4. Elevations

STAFF RECOMMENDATION:

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

MOTION:

I move that the Commission approve the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the 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 applicants acknowledge and agree (i) that the site may be subject to hazards from bluff and slope instability, erosion, landslides and wave uprush; (ii) to assume the risks to the applicants 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 Blufftop or Shoreline Protective Devices**

- A. By acceptance of this Permit, the applicants agree, on behalf of themselves and all other successors and assigns, that no bluff protective device(s) or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-05-303 including, but not limited to, the residence and hardscape and any future improvements, in the event that the development is threatened with damage or destruction from bluff and slope instability, erosion, landslides, wave uprush, storm conditions or other natural hazards in the future. By acceptance of this permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- B. By acceptance of this Permit, the applicants further agree, on behalf of themselves and all successors and assigns, that the landowner shall remove the development authorized by this permit, including the residence and hardscape, if any government agency has ordered that the structure(s) is/are 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.
- C. In the event the edge of the bluff recedes to within ten (10) feet of the principal residence but no government agency has ordered that the structures are not to be occupied, a geotechnical investigation shall be prepared by a licensed coastal engineer and geologist retained by the applicant, that addresses whether any portions of the residence are threatened by bluff and slope instability, erosion, landslides or other natural hazards. The report shall identify all those immediate or potential future measures that could stabilize the principal residence without bluff protection, including but not limited to removal or relocation of portions of the residence. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that the residence or any portion of the residence is unsafe for occupancy, the permittee shall, within 90 days of submitting the report, apply for a coastal development permit

amendment to remedy the hazard which shall include removal of the threatened portion of the structure.

3. Future Development

This permit is only for the development described in Coastal Development Permit No. 5-05-303. 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. 5-05-303. Accordingly, any future improvements to the single-family house authorized by this permit, including but not limited to improvements to the residence, hardscape, 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. 5-05-303 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

4. Final Project Plans

- A. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for review and approval of the Executive Director, two (2) full size sets of final project plans. The final plans shall demonstrate the following:

That the proposed residence shall be, at minimum, setback 25-feet from the bluff edge (consistent with plans submitted by the applicant on August 18, 2005) and any existing hardscape and appurtenances and any proposed hardscape and appurtenances be setback, at minimum, 5 feet from the bluff edge as generally depicted on Exhibit #3 of the this staff report dated December 22, 2005. The bluff edge presently follows the 85-foot elevation contour as generally depicted on Exhibit #3 of the staff report dated December 22, 2005.

- 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 amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

5. Conformance with Geotechnical Recommendations

- A. All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with all recommendations contained in the following geologic engineering investigations: Update Report of Preliminary Geotechnical Investigation, prepared by Geofirm, dated 10/1/03; Response to Geotechnical Report Review Checklist dated 12/3/03, prepared by Geofirm, dated 12/9/03; Response to California Coastal Commission Review dated 6/30/04, prepared by Geofirm, dated 7/26/04, Updated Survey for Top of Bluff Determination, prepared by Geofirm, dated 8/9/04; Geotechnical Update Letter, prepared by Geofirm, dated 8/8/05.

- B. **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 the recommendations specified in the above-referenced geologic engineering report.
- C. 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 amendment unless the Executive Director determines that no amendment is required.

6. **Drainage and Runoff Control Plan**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for review and approval of the Executive Director, two (2) full size sets of final drainage and run-off control plans. The drainage and runoff control plan shall show that all roof drainage, including roof gutters and collection drains, and sub-drain systems for all landscape and hardscape improvements for the residence and all yard areas, shall be collected on site for discharge to the street through piping without allowing water to percolate into the ground.
- 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.
- C. The applicant shall maintain the functionality of the approved drainage and runoff control plan to assure that water is collected and discharged to the street without percolating into the ground.

7. **Revised Landscape Plan**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, in a form and content acceptable to the Executive Director, two (2) full size sets of revised landscaping plans prepared by an appropriately licensed professional which demonstrates the following:
 - (1) The plan shall demonstrate that:
 - (a) All planting shall provide 90 percent coverage within 90 days and shall be repeated if necessary to provide such coverage;
 - (b) All plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan;

- (c) Landscaped areas not occupied by hardscape shall be planted and maintained for slope stability and erosion control. To minimize the need for irrigation and minimize encroachment of non-native plant species into adjacent or nearby native plant areas, all landscaping shall consist of native and/or drought tolerant non-invasive plant species. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. Any existing landscaping that doesn't meet the above requirements shall be removed.
- (d) No permanent irrigation system shall be allowed within the property. Any existing in-ground irrigation systems shall be disconnected and capped. Temporary above ground irrigation to allow the establishment of the plantings is allowed. The landscaping plan shall show all the existing vegetation and any existing irrigation system.

(2) The plan shall include, at a minimum, the following components:

- (a) A map showing the type, size, and location of all plant materials that will be on the developed site, the irrigation system, topography of the developed site, and all other landscape features, and
- (b) A schedule for installation of plants.

B. The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

8. **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 DESCRIPTION

The applicant proposes to demolish an existing single-family residence and construct a new, 4,473 square foot, two-story, 24 foot high from finished grade (10.5 feet as measured from centerline of frontage road), single-family residence with an attached 431 square foot, two-car garage, on an oceanfront, blufftop lot (see Exhibit #3). The project also includes hardscape improvements (rear yard patio and side yard walkways, landscaping and retaining walls to help stabilize the downstairs (below grade) living area. The applicant proposes a standard, shallow foundation system. No caissons are proposed.

The subject site is located within the locked gate community of Three Arch Bay in the City of Laguna Beach (see Exhibit #1). Laguna Beach has a certified Local Coastal Program (LCP) except for the four areas of deferred certification: Irvine Cove, Blue Lagoon, Hobo Canyon, and Three Arch Bay. Certification of the Three Arch Bay area was deferred due to access issues arising from the locked gate nature of the community. The proposed development needs a coastal development permit from the Coastal Commission because it is located in the Three Arch Bay area of deferred certification. Because the site is located within a locked gate community, no public access exists in the immediate vicinity. The nearest public access exists at 1000 Steps County Beach approximately one half mile upcoast of the site.

The subject site is an oceanfront bluff top lot. The lot slopes gently seaward between the road and the bluff edge, and then slopes to the rocky beach below. The bluff has an overall height of 80+/- feet, consisting of a moderately sloping upper bluff, which is backed by terrace deposits, and a steep, locally vertical, lower sea cliff which is backed by bedrock materials.

The applicant's geologic consultant has determined that the edge of the bluff on this site is generally located along the 85 foot contour elevation (see Exhibit #3). Commission staff has reviewed the applicant's bluff edge determination and concurs. The bluff edge determination is based on the definition contained in Section 13577 of the California Code of Regulations which states, in part: "the edge shall be defined as that point nearest the cliff beyond which the downward gradient of the land surface increases more or less continuously until it reaches the general gradient of the cliff."

In the project vicinity, the Commission typically imposes a minimum bluff top setback of 25 feet from the edge of the bluff for primary structures (e.g. the enclosed living area of residential structures). The minimum 25-foot setback from the bluff edge is deemed acceptable within the Three Arch Bay community based on the relatively stable, underlying San Onofre formation bedrock. The intent of the setback is to substantially reduce the likelihood of proposed development becoming threatened given the inherent uncertainty in predicting geologic processes in the future, and to allow for potential changes in bluff erosion rates as a result of rising sea level.

Another method of bluff top setback the Commission sometimes employs is a method known as a stringline set back. A stringline is the line formed by connecting the nearest adjacent corners of the adjacent residences. In the case of the subject site and proposed development, application of

a stringline would be more restrictive setback than the 25-foot setback (see exhibit 3). In the case of the subject site, due to the undulating nature of the bluff, application of a stringline would create an unusually large setback compared with adjacent development. Both the lower and upper level living areas of the proposed single-family residence comply with the 25-foot set back from the bluff edge (see Exhibit #3).

Along with a blufftop setback for enclosed living area, the Commission typically imposes a setback for hardscape/patio type development. Hardscape/patio type improvements can be moved away from hazards more readily than primary structures. In addition, consistently applying an appropriate bluff edge setback provides equitability for developments within the same general area. In this case, the Commission finds that a minimum 5-foot bluff edge setback is appropriate for these ancillary improvements. At the subject site, an at-grade patio currently exists very near to the edge of the bluff along with an approximately 3 foot high wall along the bluff edge. The existing patio and wall would be demolished and the patio would be replaced further landward to comply with the 5-foot setback (see Exhibit #3).

The proposed project's plans indicate that all drainage will be collected in area drains, and then be directed toward the street. Drainage from the seaward side of the property is proposed to be collected and pumped to the street. The proposed drainage plan is consistent with Section 30253 of the Coastal Act which requires that hazards be minimized.

Because of the fragile nature of coastal bluffs and their susceptibility to erosion, the Commission requires a special condition regarding the types of vegetation to be planted. The installation of in-ground irrigation systems, inadequate drainage, and landscaping that requires intensive watering are potential contributors to accelerated weakening of some formations; increasing the lubrication along geologic contacts and increasing the possibility of failure, landslides, and sloughing, which could necessitate protective devices. The applicants have submitted a preliminary landscape plan, which proposes to landscape 1,319 square feet of their property. Use of non-native vegetation that is invasive can have an adverse impact on the existence of native vegetation. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.caleppc.org/>) and California Native Plant Society (www.CNPS.org) in their publications. Commission staff reviewed the landscape plan and determined that the plan does contain invasive species: *Helichrysum petiolare*, *Limonium perezii*, and *Zantadeschia aethiopica*.

As discussed previously, any plants in the landscaping plan should be drought tolerant to minimize the use of water. The term "drought tolerant" is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>.

Commission staff reviewed the submitted landscaping plan for drought tolerant vegetation and determined that *Azalea*, *Camellia japonica*, *Pittosporum crassifolium*, *Podocarpus gracilior*, *Pennisetum setaceum*, *Erigeron karvinskianus*, *Distictus 'Rivers'*, *Parthenocissus tricuspidata*, and *Stephanotis floribunda* are not drought tolerant.

The Commission imposes Special Condition #7, which requires that prior to the issuance of this permit, the applicants shall prepare a revised landscape plan, which shall be submitted for the review and approval of the Executive Director. To minimize the potential for the introduction of

non-native invasive species and to minimize the potential for future bluff failure, a revised landscaping plan shall be prepared by a licensed landscape architect. As conditioned, to minimize infiltration of water and invasive plant species, the development will be consistent with section 30253 of the Coastal Act.

On May 14, 2004, the Commission approved Coastal Development Permit Application #5-04-054-[Collins] for the demolition of an existing single-family residence with a basement and construction of a new ocean-fronting 4,839 square foot two-story single-family residence with a basement and an attached subterranean 510 square foot two

Prior applications for this site include coastal development permit application no. 5-04-205, which proposed a single-family residence which did not comply with the required blufftop setbacks and was eventually withdrawn by the applicant before going to hearing and coastal development permit application no. 5-01-240, which was for a remodel and addition to an existing single-family residence and was approved by the Commission on January 8, 2002.

B. HAZARDS

Development adjacent to a blufftop is inherently hazardous. Development, which may require a protective device in the future cannot 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 blufftop; require a drainage and runoff control plan to reduce and treat the runoff discharged from the site; prohibit construction of protective devices (such as blufftop or shoreline protective devices) in the future; and to require that the landowner and any successor-in-interest assume the risk of undertaking the development.

Therefore, 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 project is located within an existing locked gate community located between the sea and the first public road paralleling the sea. Public access through this community does not currently exist. The proposed development, demolition and construction of a single-family residence on an existing residential lot, will not affect the existing public access conditions. It is the locked gate community, not this home that impedes public access. As conditioned, the proposed

development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Thus, as conditioned, the proposed 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. Due to the potential for increased hazards in blufftop areas, which could be caused by encouraging water infiltration for water quality purposes, maximizing on site retention of drainage is not required. 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, no permanent irrigation, 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, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, 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 City of Laguna Beach Local Coastal Program was certified with suggested modifications, except for the areas of deferred certification, in July 1992. In February 1993 the Commission concurred with the Executive Director's determination that the suggested modification had been properly accepted and the City assumed permit issuing authority at that time.

The subject site is located within the Three Arch Bay area of deferred certification. Certification in this area was deferred due to issues of public access arising from the locked gate nature of the community. However, as discussed above, the proposed development will not further decrease or impact public access within the existing locked gate community. Therefore the Commission finds that approval of this project, as conditioned, will not prevent the City of Laguna Beach from

preparing a total Local Coastal Program for the areas of deferred certification that conforms with and is adequate to carry out the Chapter 3 policies 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.