

CALIFORNIA COASTAL COMMISSION

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Filed: October 31, 2005
49th Day: December 19, 2005
180th Day: April 29, 2006
Staff: FSY-LB
Staff Report: January 19, 2006
Hearing Date: February 8-10, 2006
Commission Action:

**STAFF REPORT: CONSENT CALENDAR****APPLICATION NUMBER:** 5-05-367**APPLICANTS** Charles and Christine Unsworth**AGENT:** BAM Construction/Design Inc. (ATTN: Brian Murphy & John Robinson)**PROJECT LOCATION:** 2100 East Oceanfront, City of Newport Beach, County of Orange

PROJECT DESCRIPTION: Demolition of an existing single-family residence and construction of a new ocean-fronting, 4,102 square foot, 27-feet above finished grade, two-story single-family residence with an attached subterranean 1,392 square foot four (4)-car garage. In addition, the project will consist of a pool located at the west side yard, a rear yard property line beach front wall 6'-6" in height (3'-6" solid retaining wall with a 3' high glass guardrail on top) and a 11' high maximum block wall along the western side yard adjacent to the "M" street, street end. Grading will consist of 150 cubic yards of export to a location outside of the Coastal Zone.

LOCAL APPROVALS RECEIVED: City of Newport Beach Approval-In-Concept (No. 1830-2005) dated September 7, 2005; Modification Permit No. MD2005-071 (PA2005-167); and Modification Permit No. MD2005-040 (PS2005-108).

SUMMARY OF STAFF RECOMMENDATION:

The applicants are proposing 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)** conformance with the submitted drainage and run-off control plan (including landscape controls); and **5)** a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

Section 30600(c) 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 City of Newport Beach only has a certified Land Use

Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan; Letter from Commission staff to BAM Construction dated October 19, 2005; Letter from BAM Construction to Commission staff dated October 24, 2005; Letter from BAM Construction to Commission staff dated October 27, 2005; *Geotechnical Engineering Investigation of Proposed New Residence and Lap Pool at 2100 East Ocean Front, Newport Beach, California (W.O. 290305)* prepared by Coast Geotechnical dated October 5, 2005; and *Coastal Hazard and Wave Runup Study, 2100 East Oceanfront, Newport Beach, CA* prepared by *Geosoils, Inc.* dated September 2005.

LIST OF EXHIBITS

1. Location Map
 2. Assessor's Parcel Map
 3. Site Plan
 4. Floor Plans
 5. Elevations
 6. Drainage 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 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

By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from flooding 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 Shoreline Protective Device

- A. By acceptance of this permit, the applicants agree, on behalf of themselves 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. 5-05-367 including, but not limited to, the residence, garage, foundations, and patio, 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 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 landowners shall remove the development authorized by this permit, including the residence, 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 landowners 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

This permit is only for the development described in Coastal Development Permit No. 5-05-367. 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. 5-05-367. Accordingly, any future improvements to the single-family house authorized by this permit, including but not limited to 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. 5-05-367 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

The applicants shall conform with the drainage and run-off control plan received on October 31, 2005 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. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive 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 proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved 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 applicants shall submit to the Executive Director for review and approval documentation demonstrating that the landowners have 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, DESCRIPTION AND LOCAL APPROVALS

1. Project Location and Description

The subject site is located at 2100 East Oceanfront within the City of Newport Beach, Orange County (Exhibits #1-2). The lot size is 2,577 square feet and the City of Newport Beach Land Use Plan (LUP) designates use of the site for Single-Family Detached Residential and the proposed project adheres to this designation. The project is located within an existing urban residential area, located generally south of the Balboa Pier.

The site is a beachfront lot located between the first public road and the sea. There is a wide sandy beach approximately 500-feet wide between the subject property and the Pacific Ocean. 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 south of the portion of Ocean Front fronted by the City's paved beachfront public lateral access way (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 10-foot required setback from the seaward property line. Vertical public access to this beach is available to the adjacent west at the "M" Street, street end. Lateral public access is available along the wide sandy beach seaward of the subject site (Exhibit #2). There are no existing or proposed encroachments.

The applicants are proposing to demolish an existing single-family residence and construct a new ocean-fronting, 4,102 square foot, 27-feet above finished grade, two-story single-family residence with an attached subterranean 1,392 square foot four (4)-car garage (Exhibits #3-5). In addition, the project will consist of a total of 388 square feet for 2nd floor decks, a pool located at the west side yard, a rear yard property line beach front wall 6'-6" in height (3'-6" solid retaining wall with a 3' high glass guardrail on top) and a 11' high maximum block wall along the western side yard adjacent to the "M" street, street end (Exhibits #3-5). Grading will consist of 150 cubic yards of export to a location outside of the Coastal Zone.

The applicants are proposing water quality improvements as part of the proposed project, including downspouts and on site drainage directed to permeable areas (Exhibit #6). Any vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive 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.

The placement of vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society (www.CNPS.org) in their publications.

Furthermore, 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>.

2. Local Approvals

a. Modification Permit No. MD2005-040 (PS2005-108)

On May 23, 2005 the City of Newport Beach Zoning Administrator approved the construction of a raised deck and related guardrail with an overall height of 6'-6" (3'-6" solid retaining wall with a 3' high glass guardrail on top within the 10' front yard setback adjacent to the public walkway and beach. The guardrail is required by the Building Code for safety purposes regarding pools. The Zoning Code limits the heights of fences, walls, and uncovered accessory structures located within a front yard setback to 5' maximum, the upper 3' of which must be at least 40% open construction, for properties located in Old Corona Del Mar, West Newport, the Balboa Peninsula, and on Balboa Island.

b. Modification Permit No. MD2005-071 (PS2005-167)

On August 22, 2005 the City of Newport Beach Zoning Administrator approved the construction of a block wall within the westerly side yard setback, which ranges in height from 6'-11" to 11', where the Zoning Code limits the height to a maximum 6' measured from existing grade. The location of the proposed block wall is on the westerly side of the property adjacent to the "M" Street, street end. The wall is required by the Building Code for safety purposes regarding pools.

B. HAZARDS

Development adjacent to the ocean 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 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, as conditioned, 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.