

CALIFORNIA COASTAL COMMISSION

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Staff: Fernie Sy-LB
Staff Report: August 24, 2006
Hearing Date: September 13-15, 2006
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NUMBER: 5-06-027

APPLICANT: Danny Crenshaw

AGENT: William B. Guidero

PROJECT LOCATION: 330 62nd Street, City of Newport Beach (County of Orange)

PROJECT DESCRIPTION: Addition and remodel of an existing 1,160 square foot two-story, single-family residence with an attached 400 square foot two-car garage, located on a water front parcel (i.e. Santa Ana River canal). Post project the two-story, single-family residence will be 2,300 square feet with an attached 400 square foot two-car garage. No grading is proposed.

SUMMARY OF STAFF RECOMMENDATION:

Commission staff is recommending **APPROVAL** of the proposed project subject to **Nine (9) Special Conditions** requiring: **1)** an assumption-of-risk agreement; **2)** no future shoreline protective device agreement; **3)** future development agreement; **4)** conformance with the submitted construction staging plan; **5)** conformance with certain requirements related to the storage and management of construction debris and equipment; **6)** conformance with the submitted drainage and run-off control plan; **7)** submittal of a landscaping plan; **8)** adherence to requirements for exterior lighting adjacent to the wetland; and **9)** a deed restriction against the residential property, referencing all of the special conditions contained in this staff report. The major issue of this staff report concerns waterfront development that could be affected by flooding and erosion during extreme storm events and development adjacent to a wetland (Semeniuk Slough).

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 City of Newport Beach only has a certified Land Use Plan. 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.

LOCAL & OTHER AGENCY APPROVALS RECEIVED: City of Newport Beach Planning Department Approval-In-Concept No. 3223-2005 dated January 13, 2006.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan; Coastal Development Permit Permits: 5-05-263-[Olson], 5-04-328-[Sloman], 5-04-427-[Van Schoick]; Letter to William B. Guidero from Commission staff dated February 14, 2006; *Coastal Hazard Assessment at 330 62nd Street, Newport Beach, California (W.O. 308006-01)*, prepared by Coast

Geotechnical, Inc. dated April 20, 2006; and Letter to Commission staff from William B. Guidero received April 25, 2006.

LIST OF EXHIBITS

1. Location Map
 2. Assessor's Parcel Map
 3. Site Plan/Floor Plans/Elevation Plans/Construction Staging Plan/Drainage and Run-Off Control Plan
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I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-06-027 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

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 applicant acknowledges and agrees (i) that the site may be subject to hazards from flooding and erosion; (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. 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. 5-06-027 including, but not limited to, the residence, and any future improvements, in the event that the development is threatened with damage or destruction from flooding, 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.
- B. By acceptance of this Permit, the applicant further agrees, on behalf of himself and all successors and assigns, that the landowner shall remove the development authorized by this permit, including the addition and remodel, 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 wetland before they are removed, the landowner shall remove all recoverable debris associated with the development from the wetland and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

3. FUTURE DEVELOPMENT RESTRICTION

This permit is only for the development described in Coastal Development Permit No. 5-06-027. 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. 5-06-027. Accordingly, any future improvements to the single-family residence 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. 5-06-027 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

4. CONFORMANCE WITH THE SUBMITTED CONSTRUCTION STAGING PLAN

The applicant shall conform with the construction staging plan received on April 25, 2006 showing construction equipment, materials or activity shall not occur outside the staging area and construction corridor identified on the site plan and that construction equipment, materials, or activity shall not be placed in any location which would result in impacts to wetlands.

5. STORAGE OF CONSTRUCTION MATERIALS, MECHANIZED EQUIPMENT AND REMOVAL OF CONSTRUCTION DEBRIS

The permittee shall comply with the following construction-related requirements:

- A.** No construction materials, debris, or waste shall be placed or stored where it may enter a storm drain or be subject to tidal erosion and dispersion;
- B.** Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of construction;
- C.** Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or run-off of construction-related materials, and to contain sediment or contaminants associated with construction activity, shall be implemented prior to the on-set of such activity. BMPs and GHPs which shall be implemented include, but are not limited to: stormdrain inlets must be protected with sandbags or berms, all stockpiles must be covered, and a pre-construction meeting should be held for all personnel to review procedural and BMP/GHP guidelines. All BMPs shall be maintained in a functional condition throughout the duration of the project.
- D.** Construction debris and sediment shall be properly contained and secured on site with BMPs, to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking. Construction debris and sediment shall be removed from construction areas as necessary to prevent the accumulation of sediment and other debris, which may be discharged into coastal waters. Debris shall be disposed at a debris disposal site outside the coastal zone.

6. CONFORMANCE WITH THE SUBMITTED DRAINAGE AND RUN-OFF CONTROL PLAN

The applicant shall conform with the drainage and run-off control plan received on April 25, 2006 showing roof drainage and run-off from all impervious areas directed to vegetated/landscaped areas. 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.

7. 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 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) All landscaping shall consist of native drought tolerant non-invasive plant species appropriate to habitat type. 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.

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. LIGHTING

No lighting associated with the project shall significantly impact adjacent wetland habitat. All replaced or new lighting within the development shall be directed and shielded so that light is directed toward the ground and away from the wetlands (Semeniuk Slough).

9. 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 residential parcel 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 residential parcel 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 project site is located at 330 62nd Street in the City of Newport Beach, Orange County (Exhibits #1-2). The lot size is approximately 2,480 square feet and the City of Newport Beach Land Use Plan (LUP) designates use of the site for Medium Density Residential and the proposed project adheres to this designation. The project site faces upon the tidally influenced Semeniuk Slough located inland of Pacific Coast Highway. Semeniuk Slough is a remnant channel of the Santa Ana River, which formed when the Santa Ana River entered Newport Bay in the vicinity of present day River Avenue. Semeniuk Slough branches off the Santa Ana River and receives water from the Banning Channel and adjacent oil fields, wetlands and upland areas. While Semeniuk Slough is tidally influenced, there is presently no open boating passage between the slough and the bay or ocean. Semeniuk Slough is a wetland considered an environmentally sensitive habitat area and unique coastal resource in the City's Certified Land Use Plan. The Semeniuk Slough is within the City of Newport Beach and is designated as an Environmental Study Area (ESA) in the certified Land Use Plan. The land on the far side of the slough is relatively undeveloped where there are wetlands and some oil production facilities. This relatively vacant land is within unincorporated Orange County and is part of the approximately 75-acre area known as the Newport Banning Ranch. The City's certified Land Use Plan indicates that lateral public access along the slough is present on the far (north) side of the slough. Public access is also available at the Lancaster Street and Cedar Street, street ends.

The project site is composed of two separate but adjacent areas of land. The 1st property is the applicant's owned property where there is an existing two-story single-family residence with an attached 400 square foot two-car garage located on site (a.k.a. 'residential parcel/property'). In

addition, approximately ½ of an existing 18-foot (L) x 25-foot (W) wooden deck is located at the rear of this residential parcel/property. The 2nd property is public land located between the Semeniuk Slough and the residential property. This 2nd property currently contains the remaining approximately ½ of an existing 18-foot (L) x 25-foot (W) wooden deck used by the applicant. The existing single-family residence is located approximately a maximum 44-feet (the existing habitable area of the residential development is setback approximately 23-feet from the existing 18-foot long wooden deck and the deck is setback 3-feet from the slough) from the Semeniuk Slough. The water's edge is actually located adjacent to the public land. No work is proposed under this application on this public property adjacent to the water (Semeniuk Slough).

The residential parcel is flanked on the north and south by single-family residences; on the west by 62nd Street; and on the east by public land and the Semeniuk Slough. On this eastern area of public land is approximately ½ an existing pre-coastal 18-foot (L) x 25-foot (W) wooden deck.

On the Residential Property Owned by the Applicant

The applicant is proposing an addition and remodel of an existing 1,160 square foot two-story, single-family residence with an attached 400 square foot two-car garage, located on a water front parcel (Semeniuk Slough). The proposed project includes: 1) an addition of 375 square feet to the existing 1st floor at the rear (waterside) of the residence; 2) an addition of 765 square feet to the existing 2nd floor at the rear (waterside) of the residence; and 3) and a 110 square foot roof deck located towards the middle of the new roof. Post project the two-story, 27-feet above existing grade, single-family residence will be 2,300 square feet with an attached 400 square foot two-car garage (Exhibit #3). No grading is proposed.

The new additions will be encroaching a maximum 19-feet and a minimum 12-feet towards the Slough.

On the Public Land Located Between the Residential Property and the Semeniuk Slough

No work is proposed on the public land located between the Residential Property and the Semeniuk Slough, where approximately ½ of an existing pre-coastal 18-foot (L) x 25-foot (W) wooden deck is located.

B. VISUAL QUALITY

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The proposed project includes the remodel and addition to an existing residential structure on a waterfront lot. If not sited appropriately, this structure would have adverse impacts upon views to

and along the slough and would be visually incompatible with the character of the surrounding area. Furthermore, appropriate siting can restore and enhance visual quality.

The site is visible from a trail, which runs along the north side of the slough on the opposite shore from the proposed development. Development on this waterfront parcel can affect public views along the coast from the public areas. Degradation of those views would be inconsistent with Section 30251 of the Coastal Act. Degradation of views can occur when development is not consistent with the character of surrounding development. For instance, development seaward of the line of development established for an area can interfere with views to and along the shoreline leading to degradation of those views.

The Commission has recognized that, in a developed area, where new construction is generally infilling and is otherwise consistent with the Coastal Act policies, no part of the proposed development should be built further seaward than a line drawn between the nearest adjacent corners of either decks or structures of the immediately adjacent homes. In this case, the structural and deck stringlines would be drawn from the properties flanking the subject site at 326 and 334 62nd Street. The proposed development does conform with the stringline drawn between the flanking properties. Accordingly, the proposed development will not encroach beyond the existing line of development. Therefore, the Commission finds that the proposed project is consistent with Section 30251 of the Coastal Act.

C. FLOODING AND EROSION 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.

The subject site is located adjacent to Semeniuk Slough, a tidally influenced wetland that branches off the Santa Ana River. Semeniuk Slough is part of the Lower Santa Ana River Marsh. Water elevation within the slough is presently controlled by a series of flood control gates and one-way drainage pipes. These water elevation control devices allow for normal tidal circulation but minimize flooding hazards present when higher water levels occur within the Santa Ana River during storm events. The purpose of the culvert and drainage pipe system is to allow unrestricted circulation and normal tidal flows into and out of the marsh area and prevent flooding of the interior marsh and slough during times of river flood stage. The existing flood control devices are part of a 1.84 square mile marsh restoration and enhancement project known as the Federal Lower Santa Ana River Project, which is part of the Santa Ana River Mainstem Project designed by the U.S. Army Corps of Engineers. The Federal Lower Santa Ana River Project includes habitat restoration, tidal circulation improvements, and flood control devices.

To further analyze the suitability of the site for the proposed development, Commission staff requested the preparation of a flooding and erosion hazard analysis and an analysis for the potential for tidal currents to erode the project site which might result in the need for protective

devices in the future, prepared by an appropriately licensed professional (e.g. coastal engineer). In response, the applicant submitted, a *Coastal Hazard Assessment at 330 62nd Street, Newport Beach, California (W.O. 308006-01)*, prepared by Coast Geotechnical, Inc. dated April 20, 2006 that states that: *"The site in its current condition has minimal risk from coastal hazards. The proposed site additions and remodel will not alter this risk and should reduce it even further through improved site drainage. It is unlikely that over the life of the structure that it will be affected in a negative manner by coastal hazards. The use of coastal protection devices such as bulkheads or seawalls is not foreseen."*

Although the applicant's report indicates that site is safe for development at this time, coastal areas are dynamic environments, which may be subject to unforeseen changes. Such changes may affect flooding and erosion regimes. Hydraulics are complex and may change over time, especially as flood control structures such as flood control gates and drainage pipes are modified, either through damage or deliberate design.

Flood and erosion hazards at the site are presently managed by mechanical structures. These existing flood control devices in the project area function in a manner that reduces flooding hazards. However, damage to these flood control devices could dramatically change flooding hazards at the site. In turn, flooding could cause increased erosion at the site. In order to address this situation with respect to Coastal Act policy, special conditions are necessary.

1. **Assumption of Risk**

Given that the applicant has chosen to implement the project despite potential risks from erosion or flooding, the applicant must assume the risks. Therefore, the Commission imposes **Special Condition No. 1** for an assumption-of-risk agreement. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand the hazards. In addition, the condition ensures that future owners of the property will be informed of the risks and the Commission's immunity from liability.

2. **Future Shoreline Protective Device**

The Coastal Act limits construction of protective devices because they have a variety of negative impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach and habitat areas. Under Coastal Act Section 30235, a shoreline protective structure must be approved if: (1) there is an existing principal structure in imminent danger from erosion; (2) shoreline altering construction is required to protect the existing threatened structure; and (3) the required protection is designed to eliminate or mitigate the adverse impacts on shoreline sand supply.

The Commission has generally interpreted Section 30235 to require the Commission to approve shoreline protection for development only for existing principal structures. The construction of a shoreline protective device to protect new development would not be required by Section 30235 of the Coastal Act. The proposed project involves the addition and remodel of an existing structure, which is considered new development. Allowing new development that would eventually require a shoreline protective device would conflict with

Section 30251 of the Coastal Act; which states that permitted development shall minimize the alteration of natural landforms, including beaches and wetland habitat areas, which would be subject to increased erosion from such devices.

In the case of the current project, there currently is no seawall/bulkhead located on site nor does the applicant propose the construction of any shoreline protective device to protect the proposed development. However nearby beachfront communities have experienced flooding and erosion during severe storm events, such as El Nino storms. Therefore, it is not possible to completely predict what conditions the proposed development may be subject to in the future. Consequently, it is conceivable the proposed development may be subject to flooding and erosion hazards.

Section 30253 (2) of the Coastal Act states that new development shall neither create nor contribute to erosion or geologic instability of the project site or surrounding area. Therefore, if the proposed structure requires a protective device in the future it would be inconsistent with Section 30253 of the Coastal Act because of the explicit statutory prohibition and because such devices contribute to erosion. In addition, the construction of a shoreline protective device to protect new development would also conflict with Section 30251 of the Coastal Act, which states that permitted development, shall minimize the alteration of natural land forms. This includes sandy beach and wetland habitat areas, which would be subject to increased erosion from shoreline protective devices. The applicant is not currently proposing a shoreline protective device and do not anticipate the need for one in the future. The coastal processes and physical conditions are such at this site that the project is not expected to engender the need for a shoreline protective device to protect the proposed development.

To further ensure that the proposed project is consistent with Section 30253 of the Coastal Act, and to ensure that the proposed project does not result in future adverse effects to coastal processes, the Commission imposes **Special Condition No. 2** which prohibits the applicant, or future land owner, from constructing a shoreline protective device for the purpose of protecting any of the development authorized as part of this application. This condition is necessary because it is impossible to completely predict what conditions the proposed structure may be subject to in the future.

By imposing the “No Future Shoreline Protective Device” special condition, the Commission requires that no shoreline protective devices shall ever be constructed to protect the development approved by this permit in the event that the development is threatened with damage or destruction from flooding, erosion, storm conditions or other natural hazards in the future.

3. Future Development

The project site is located on a waterfront lot that may be subject to future flooding and erosion as coastal conditions change. Since coastal processes are dynamic and structural development may alter the natural environment, future development adjacent to the water could adversely affect future shoreline conditions if not properly evaluated. For this reason, the Commission is imposing **Special Condition No. 3** which states that any future development or additions on the property, including but not limited to hardscape improvements, grading, landscaping, vegetation removal and structural improvements, requires a coastal development permit from the Commission or its successor agency.

Section 13250 (b) of Title 14 of the California Code of Regulations specifically authorizes the Commission to require a permit for improvements that could involve a risk of adverse environmental effect. This condition ensures that any future development on this site that may affect shoreline processes receives review by the Commission.

The Commission finds that, based on the analysis submitted by the applicant, all significant risks of hazards from flooding and erosion at the site have been resolved, therefore, the Commission finds that the proposed development is consistent with Section 30253 of the Coastal Act. However, hazards potentially exist from flooding and erosion at the subject site if existing flood control devices deteriorate or are damaged. Therefore, to ensure that the proposed project does not result in future adverse effects to coastal processes, **Special Conditions No. 1, 2 and 3** have been imposed which require an assumption of risk agreement, no future shoreline protective devices agreement and future development agreement. As conditioned, the Commission finds that the proposed project is consistent with Coastal Act Section 30253.

D. BIOLOGICAL RESOURCES AND WATER QUALITY

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30240(b) of the Coastal Act states:

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The proposed development is occurring adjacent to Semeniuk Slough, which is a wetland as defined under the Coastal Act. One of the main reasons for preserving, expanding, and enhancing Southern California's remaining wetlands is because of their important ecological function. First and foremost, wetlands provide critical habitat, nesting sites, and foraging areas for threatened or endangered species. Wetlands also serve as migratory resting spots on the Pacific Flyway a north-south flight corridor extending from Canada to Mexico used by migratory bird species. In addition, wetlands serve as natural filtering mechanisms to help remove pollutants from storm run-off before the run-off enters into streams and rivers leading to the ocean. Further, wetlands serve as natural flood retention areas.

Moreover, preserving, expanding, and enhancing Southern California's remaining wetlands is particularly critical because of their scarcity. As much as 75% of coastal wetlands in southern California have been lost, and, statewide up to 91% of coastal wetlands have been lost.

Development, including grading and the construction of residential structures, could cause impacts upon adjacent wetlands by discharging silt to the wetlands. In addition, occupation and use of residential structures adjacent to wetlands can cause disturbances to the biological resources in the wetlands.

Section 30240(b) of the Coastal Act requires that development in areas adjacent to environmentally sensitive habitat areas, such as wetlands, must be sited and designed to prevent impacts, which would significantly degrade those areas. In addition, Section 30231 of the Coastal Act requires that the biological productivity and quality of coastal waters and wetlands be maintained. One way the Commission has sought to protect wetlands is to establish a buffer between wetlands and proposed development. Buffer areas are undeveloped lands surrounding wetlands. Buffer areas serve to protect wetlands from the direct effects of nearby disturbance. In addition, buffer areas can provide necessary habitat for organisms that spend only a portion of their life in the wetland such as amphibians, reptiles, birds, and mammals. Buffer areas provide obstructions, which help minimize the entry of domestic animals and humans to wetlands. Buffers also provide visual screening between wetland species that are sensitive to human impacts, such as lighting. Buffers can also reduce noise disturbances to wetland species from human development.

The proposed habitable area will encroach approximately a minimum 12-feet and a maximum 19-feet towards the slough. However, the proposed remodeled single-family residence is located approximately 25-feet from the Semeniuk Slough (the proposed habitable area is setback approximately 4-feet from the existing 18-foot long wooden deck and the deck is setback 3-feet from the slough). This buffer is much smaller than the 100-foot buffer normally required by the Commission for development adjacent to wetlands. However, since the subject lot is only approximately 80-feet deep, a 100-foot buffer would preclude the construction of any development on the lot.

The lot upon which the proposed development is being constructed pre-dates the Coastal Act. This lot was part of a larger residential subdivision, which, like this lot, were developed with residential structures, which are similar to the proposed development in square footage, dimension, and setback. The proposed development is in-fill development. Any significant impacts upon Semeniuk slough related to light, noise and other disturbance related impacts have already been caused by the presence of the existing pre-Coastal Act development on this site and flanking the proposed project site. The presence of the proposed development would not cause any significant encroachment upon the wetlands. Also, with appropriate controls (discussed further below) the additional light, noise and related impacts caused by the proposed development would not be significant compared with the pre-existing development.

If construction equipment and staging is not appropriately managed, adverse impacts upon the Semeniuk Slough could occur. For instance, soil stockpiles could erode causing sedimentation of wetlands. In addition, if not sited appropriately, construction equipment and activity could cause trampling of the wetlands. Thus, a construction staging plan is necessary in order to demonstrate that construction equipment or activity shall not occur outside the staging area and identified construction corridor and that construction equipment and activity shall not be placed in any location, which would result in impacts to wetlands. The plan should include, at a minimum, the following components: a site plan that depicts the limits of the staging area(s); construction corridor(s); construction site; the location of construction fencing and temporary job trailers with respect to existing wetlands. The applicants have submitted a construction staging plan, which shows that construction equipment, materials or activity will not take place seaward of the existing

wooden deck and thus will avoid impacts to wetlands (Exhibit #3). The measures proposed by the applicants are acceptable. However, in order to make sure that the proposed construction staging plan is adhered to, the Commission imposes **Special Condition No. 4**, which requires the applicants to conform with the submitted construction staging plan.

In addition, in order to ensure that construction and materials are managed in a manner which avoids impacts to adjacent wetlands, the Commission imposes **Special Condition No. 5**, which requires that construction materials, debris, or waste be placed or stored where it will not enter storm drains or be subject to tidal erosion and dispersion; removal of debris within 24 hours of completion of construction; implementation of Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed such that construction debris and sediment are properly contained and secured on site and to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking.

During storm events, the pollutants which have collected upon the roof and upon other impervious surfaces created by the proposed project may be discharged from the site into the storm water system and eventually into coastal waters which can become polluted from those discharges. Water pollution can result in decreases in the biological productivity of coastal waters. In addition, impervious surfaces magnify peak flows dramatically which can lead to erosion. In order to mitigate these impacts, the applicant has submitted a drainage run-off and control plan that shows drainage on site will be directed to permeable areas (Exhibit #3). The measures proposed by the applicant are acceptable. However, in order to make sure that the proposed water quality measures are implemented, the Commission imposes **Special Condition No. 6**, which requires the applicant to conform with the submitted drainage and run-off control plans.

Landscaping is proposed; however, no landscaping plans have been submitted. The placement of any vegetation in this revised drainage and run-off control plan 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 drainage and run-off control plan should be drought tolerant to minimize the use of water (and preferably native to coastal Orange County). 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>. Thus, the Commission has imposed **Special Condition No. 7**, which requires the applicant to submit a landscape plan with only landscaping consisting of native drought tolerant non-invasive plant species appropriate to habitat type.

An additional concern is the impact lighting may have upon the wetland. Thus, **Special Condition No. 8** has been imposed, which requires that all replaced or new lighting within the development shall be directed and shielded so that light is directed toward the ground and away from the wetlands.

In order to assure that no impacts to wetlands or water quality occur with the proposed project, **Special Conditions No. 4, 5, 6, 7 and 8** have been imposed which require submittal of and conformance with a construction staging plan; conformance with certain requirements related to the storage and management of construction debris and equipment, conformance with the

submitted drainage and run-off control plan and direction of new or replaced exterior lighting on site. As conditioned, the Commission finds that the proposed project is consistent with Coastal Act Sections 30231 and 30240(b) of the Coastal Act.

E. PUBLIC ACCESS

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

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...

The subject site is a waterfront lot located between the nearest public roadway and the shoreline in the City of Newport Beach. There is wetland adjacent to the subject site. Public access is available adjacent to the project site along the Federal land adjacent to the Slough and at the Lancaster Street, street end approximately 210-feet South of the project site and at the Cedar Street, street end approximately 210-feet North of the project site. The City's certified Land Use Plan indicates that lateral public access along the Slough is present on the far (north) side of the slough.

When a private development does not provide adequate on-site parking, users of that development who arrive by automobile 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.

The Commission has consistently found that two parking spaces are adequate to satisfy the parking demand generated by one individual residential unit. The proposed single-family residence will continue to provide a two-car garage; hence, the development is consistent with the parking required. Therefore, as proposed, the Commission finds adequate access is available nearby, sufficient parking is provided on site and thus, the proposed development is consistent with Sections 30210, 30211 and 30212 of the Coastal Act.

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 **Special Condition No. 9** requiring that the

property owner record a deed restriction against the residential 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

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program, which conforms with the Chapter 3 policies of the Coastal Act.

The LUP for the City of Newport Beach was effectively certified on May 19, 1982. At the October 2005 Coastal Commission Hearing, the certified LUP was updated. 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 a Local Coastal Program that is in conformity with the provisions of Chapter 3.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096(a) of Title 14 of the California Code of 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 further feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project is located in an urban area. All infrastructure necessary to serve the site exists in the area. As conditioned, the proposed project has been found consistent with the hazard, biological resource and water quality protection, visual resource and public access policies of Chapter 3 of the Coastal Act. Mitigation measures include: **1)** an assumption-of-risk agreement; **2)** no future shoreline protective device agreement; **3)** future development agreement; **4)** conformance with the submitted construction staging plan; **5)** conformance with certain requirements related to the storage and management of construction debris and equipment; **6)** conformance with the submitted drainage and run-off control plan; **7)** submittal of a landscaping plan; **8)** adherence to requirements for exterior lighting adjacent to the wetland; and **9)** a deed restriction against the residential property, referencing all of the special conditions contained in this staff report.

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect, which 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.

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