

CALIFORNIA COASTAL COMMISSION

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Filed: August 11, 2010
49th Day: September 29, 2010
180th Day: February 7, 2011
Staff: John Del Arroz-LB
Staff Report: September 21, 2010
Hearing Date: October 13-15, 2010
Commission Action:

W18a**STAFF REPORT: PERMIT AMENDMENT****AMENDMENT**

APPLICATION No.: 5-09-245-A1

APPLICANT: Kirk Huffman

PROJECT LOCATION: 316 Via Lido Nord, Newport Beach, Orange County

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Remodel of an existing ocean front 2,707 sq. ft. two-storey single-family residence including the demolition and reconstruction of the entire bayward portion of the structure except for the attached two car garage and addition of a new 875 sq. ft. second storey resulting in a 3,527 sq. ft. two story, 24' tall residence, drainage improvements and no landscaping is proposed.

DESCRIPTION OF AMENDMENT: Amendment of permit 5-09-245 to allow for the demolition and reconstruction of landward portion of existing single family residence on a bay-front lot. Amendment would allow demolition of 840 sq. ft. on first floor and 715 sq. ft. on second floor, and rebuild of 701 sq. ft on the first floor and 673 sq. ft. on the second floor. No landscaping, grading, or additional work on the bayward portion of residence is proposed.

LOCAL APPROVALS RECEIVED: City of Newport Beach Approval in Concept dated July 6, 2010.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit 5-09-245 (Huffman); City of Newport Beach Local Coastal Program Land Use Plan.

EXHIBITS:

1. Vicinity Map
2. Site Plan
3. Elevations

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending approval of the proposed coastal development permit amendment with **five (5)** special conditions. The special conditions would: **1)** clarify that all conditions imposed under the original permit and previous amendments remain in effect unless modified by this amendment or previous Commission approved amendments; **2)** require that the applicant assume the risk of development; **3)** require the applicant to agree to no future shoreline protective device; **4)** require a Coastal Development Permit for future development; and, **5)** require a deed restriction against the property, referencing all of the Special Conditions contained in this staff report. A landscaping condition has not been imposed because the applicant is proposing to connect the new

development into the system of dry wells approved in the original permit in lieu of landscaping as the site is comprised of all concrete slab and does not contain pervious landscaped areas.

PROCEDURAL NOTE

The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) *The Executive Director determines that the proposed amendment is a material change,*
- 2) *Objection is made to the Executive Director's determination of immateriality, or*
- 3) *The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.*

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166. The Executive Director has determined that the proposed amendment is a material change to the development previously approved, therefore, pursuant to Section 13166 of the Commission's regulations, the Executive Director is referring this application to the Commission.

I. STAFF RECOMMENDATION:

Staff recommends that the Commission adopt the following resolution:

MOTION: *I move that the Commission approve the proposed amendment to Coastal Development Permit No. 5-09-245 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment 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 A PERMIT AMENDMENT:

The Commission hereby approves the coastal development permit amendment on the ground that the development as amended and subject to conditions, 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 amendment 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 amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended 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 amendment will expire two years from the date this permit is voted on by 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. Conditions Imposed Under Original

Unless specifically altered by this amendment, all regular and special conditions attached to Coastal Development Permit No. 5-09-245 remain in effect. If the specifications of any plans approved to comply with permit 5-09-245 are inconsistent with either the project description submitted with this amendment or the conditions imposed by this amendment, the applicant shall submit new plans to the Commission, for the review and approval of the Executive Director, that are consistent with the terms and conditions of this permit as modified by this amendment 5-09-245 A1.

2. 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, sea level rise, erosion and wave uprush; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

3. 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. 5-09-245-A1 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, sea level rise, 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(s) shall remove the development authorized by this permit, including the residence, garage, foundations, patio and retaining wall if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner(s) 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.

4. Future Development

This permit amendment is only for the development described in Coastal Development Permit amendment No. 5-09-245-A1. 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 Amendment No. 5-09-245-A1. 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. 5-09-245 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

5. Generic Deed Restriction

PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT (5-09-245-A1), the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit amendment a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit amendment, 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 amendment, 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 amendment. 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

amendment, 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. Previously Approved Project and Description of Proposed Amendment

The subject site is located on a 2,700 square foot lot at 316 Via Lido Nord on Lido Island within the City of Newport Beach, Orange County (Exhibits 1 and 2). The City of Newport Beach Land Use Plan (LUP) designates the site as Multi-Unit Residential (RM-E); the proposed project is allowable under this designation. The site is a non-bulkhead beachfront lot located between the first public road and the sea on Lido Island. There is a narrow sandy beach (approximately 25 feet wide) between the subject property and Newport Bay.

Approval of the original coastal development permit allowed for drainage improvements and the remodel of an existing ocean front 2,707 sq. ft. two-story single family residence including the demolition and re-construction of the entire bayward portion of the structure except for the attached two-car garage, and addition of a new 875 sq. ft second story resulting in a 3,527 sq. ft. two-story 24' tall residence. The project consisted of demolition and reconstruction of more than 50% of the existing structure, and was therefore considered new development.

Approval of original permit was subject to six (6) special conditions: 1) assumption of risk; 2) no future shoreline protective device; 3) conformance with the submitted drainage and run-off control plan; 4) storage of construction materials, mechanized equipment and removal of construction debris; 5) future development; and 6) a deed restriction against the property, referencing all of the Special Conditions contained in the staff report. The special conditions were met and the permit was issued on May 10, 2010. Construction of the development approved by the original permit has begun.

With the subject amendment, the applicant is proposing to allow the demolition and reconstruction of the landward portion of the existing single family residence. The original permit allowed for the demolition and reconstruction of the entire bayward portion of the house. The proposed amendment would therefore result in the demolition and reconstruction of the remainder of the original residence. The proposed amendment would result in a reduction of 109 sq. ft. on the first floor, and a reduction of 42 sq. ft. on the second floor, for a total square footage of 3,345. The proposed amendment would increase the height on the landward portion of the existing single family residence to a total of 23.9 feet, which will match the height of the structure approved under the original permit. Runoff from the landward portion of the residence will be directed towards dry wells which were required under the original permit.

B. Shoreline Protective Device

Section 30253 of the Coastal Act states:

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 on a non-bulkhead lot, fronted by a narrow (approximately 25 feet wide) sandy beach and Newport Bay. A Hazards Analysis, performed by William Simpson & Associates on January 26, 2010, was submitted for the original permit. Although the report found that no shoreline protective device would be required during the economical life of the development, the Commission found that a shoreline protective device condition would be required in order to find that the proposed project was compatible with Coastal Act requirements regarding public access and recreation, shoreline sand supply, and protection of views to and along the shoreline. The staff report for the original permit states:

The finish floor of the house (existing and proposed) is at an approximate elevation of +12.5 feet MLLW. 1989 FEMA Flood Maps show the whole of Lido Island to be within the 100 year flood plane. The current flood elevation in Newport Bay is +9 feet NAVD or +9.2 feet MLLW and the proposed new structure would continue to be at an approximate elevation of +12.5 feet MLLW. However, were there to be a 3 foot rise in sea level as some scientists anticipate over the next 100 years, the bay level during flood conditions could approach the finish floor elevation of +12.5 feet MLLW. Furthermore, the development would be located on a bayfront beach and changed circumstances in the future regarding sea level rise, shoreline sand supply, erosion, seismic activity, and storm intensity could result in threats to the structure.

The applicant agreed under Special Condition 2 of the original permit that “no shoreline protective device shall ever be constructed to protect the development approved pursuant to 5-09-245, including, but not limited to, the residence, garage, foundations, and patio, and any future improvements.” The potential for damage or destruction from waves, erosion, storm conditions, flooding, sea level rise or other natural hazards exists equally for the development proposed on the landward portion of the property by this amendment. For example, there is the potential that flood conditions caused by erosion and/or sea level rise could approach the finish floor elevation of the development proposed by this amendment, just as such hazards would threaten the originally proposed development. Therefore, to ensure that the proposed new development minimizes risks to life and property in areas of high flood/coastal hazards, the Commission imposes **Special Condition 3** requiring the applicant to agree, 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 this amendment, 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, sea level rise, storm conditions or other natural hazards in the future. Therefore, the Commission finds that, as conditioned, 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 of Lido Isle 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 to the Chapter 3 policies of the Coastal Act.

D. 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.

The proposed development has a potential for a discharge of polluted runoff from the project site into Newport Bay. The applicant proposes to use the drywell system included in the original permit to serve the new development, to allow for the on-site percolation of water run-off from all impervious areas. Furthermore, the proposed development only includes work on the landward portion of the residence, and no work is proposed directly adjacent to the public walkway or beach. Therefore, the Commission finds that the proposed development, as conditioned, conforms to 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.

E. Visual Resources

Section 30251 of the Coastal Act requires that scenic and visual qualities of coastal areas be considered and protected as a resource of public importance. The subject site is on a beach front lot on Lido Isle within a developed residential community. The proposed development is located on the landward side of the lot, and is not visible from the adjacent public beach and walkway. Thus, visual impacts would primarily be as viewed from the public road Via Lido Nord. The proposed project is similar in size and scale to the original structure. The project will increase the height of the landward portion of the structure to 23.9 feet; however, this is consistent with the City's certified Land Use Plan, the development approved under permit 5-09-245, and existing structures in the vicinity. Therefore, the Commission finds that the proposed amendment is consistent with Section 30251 of the Coastal Act with regard to protection of public views.

F. PUBLIC ACCESS

Section 30604(c) of the Coastal Act requires that every coastal development permit issued for any development between the nearest public road and the sea include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3.

The proposed project, as amended, will not have an adverse effect on public access. The project site is located along a portion of Lido Island bordered on the seaward side by a paved public access walkway along a section of public beach parcel, and on the landward side by the public street Via Lido Nord. Vertical public access to this beach is available at the end of Via Genoa at a public beach, 300 feet east of the site. Lateral public access is available along the paved walkway and sandy public beach seaward of the subject site. The proposed development does not include construction on the bayward portion of the residence, and will not impact the City's 4-foot required setback from the seaward property line, or the paved public access walkway. There are no existing or proposed encroachments onto City public property and the proposed project does not block physical or visual access to or along the coast. Therefore, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Thus, the proposed development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

G. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this amended 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.

H. 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 October 2005. 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.

I. 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.



SEE MAP 33

SEE MAP 27

SEE MAP 32

DETAIL

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RECEIVED
 South Coast Region

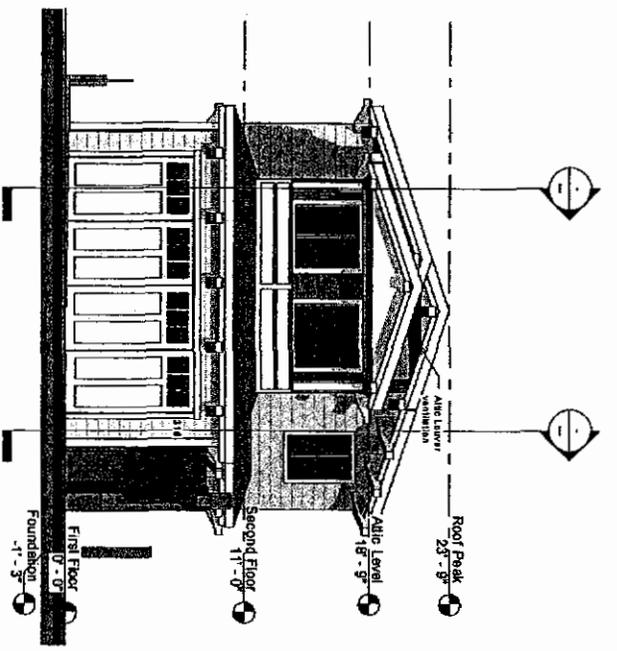
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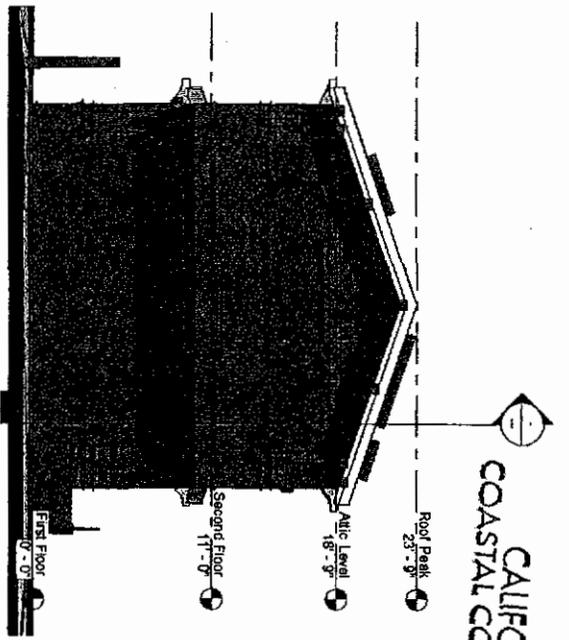
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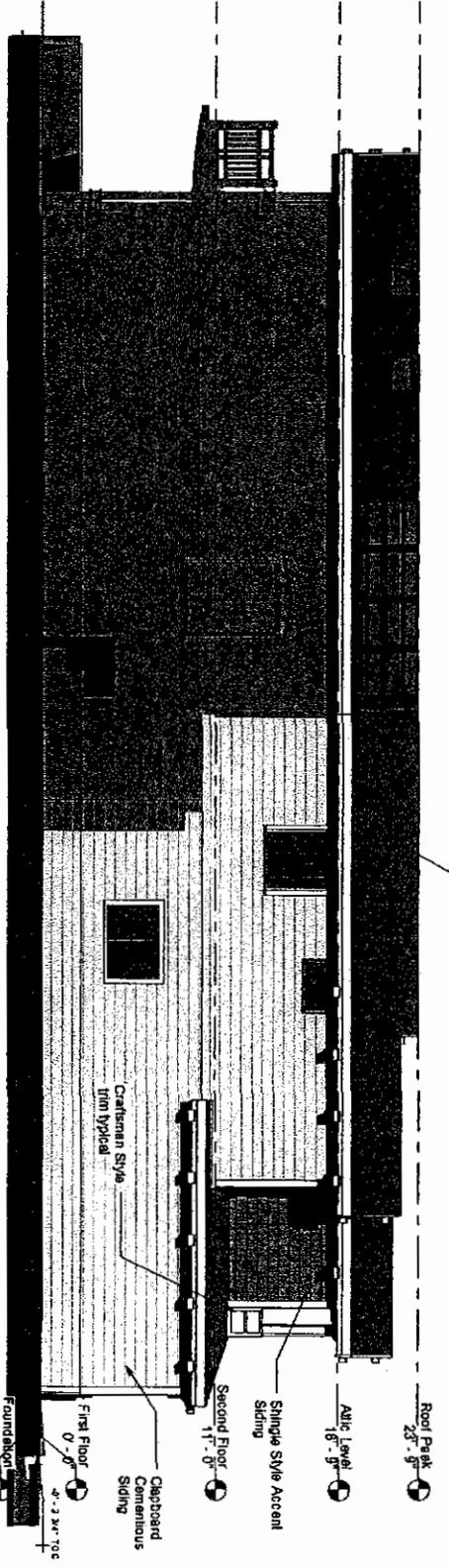
EXHIBIT # 3
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① South Elevation
 3/16" = 1'-0"



③ North Elevation
 3/16" = 1'-0"



② West Elevation
 3/16" = 1'-0"

Kirk & Teri Huffman
 316 Via Lido Nord,
 Newport Beach, CA 92663
 ph. 714-493-5764

Elevations

Project Number	VIA LIDO NORD
Date	May 16, 2010
Drawn by	Paul Moyer
Checked by	Kirk

Scale: 3/16" = 1'-0"