

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



W6a

Filed:	3/7/12
180th Day:	9/3/12
Staff:	J. Del Arroz-LB
Staff Report:	5/24/12
Hearing Date:	6/13/12

STAFF REPORT: CONSENT CALENDAR

Application No.: 5-12-024

Applicant: Scott & Shawn Cunningham

Agent: Cynthia Childs, Architect

Location: 1 Beacon Bay, Newport Beach, Orange County (APN 050-221-05)

Project Description: Construction of a 4375 sq. ft., 28 foot high single family residence on a vacant bayfront lot.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION:

The applicants are proposing construction of a new bay fronting single-family residence. The major issue of this staff report concerns waterfront development that could be affected by flooding during strong storm events.

Staff is recommending APPROVAL of the proposed project with SEVEN (7) SPECIAL CONDITIONS regarding: 1) public access signage; 2) assumption of risk; 3) no future shoreline protective device; 4) future development; 5) conformance with the submitted drainage and run-off control plan; 6) drought tolerant landscaping; and 7) a lease 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.

TABLE OF CONTENTS

I.	Motion and Resolution.....	3
II.	Standard Conditions.....	3
III.	SPECIAL CONDITIONS.....	4
IV.	FINDINGS AND DECLARATIONS:.....	6
A.	PROJECT LOCATION & DESCRIPTION	6
B.	HAZARDS	7
C.	DEVELOPMENT	7
D.	PUBLIC ACCESS.....	7
E.	WATER QUALITY	7
F.	LEASE RESTRICTION.....	8
G.	LOCAL COASTAL PROGRAM	8
H.	CALIFORNIA ENVIRONMENTAL QUALITY ACT.....	8

APPENDICES

Appendix A - Substantive File Documents

EXHIBITS

Exhibit 1 – Vicinity Map

Exhibit 2 – Site Plan

Exhibit 3 – Elevations

Exhibit 4 – Sample Signage

I. MOTION AND RESOLUTION

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 of the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

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 of the Coastal Act. 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

This permit is granted subject to the following 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 on which the Commission voted on the application. 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

This permit is granted subject to the following special conditions:

1. **Public Access Signage .** As proposed by the applicant, signage indicating the availability of public access within the Beacon Bay area of Newport Beach shall be installed by the applicant. The public access signage shall be a minimum size of 8.5”x11”, shall state “Public Beach Access”, and shall be of similar format to Exhibit 3 of the staff report but shall be altered to indicate the appropriate direction of beach access. The public access signage shall be erected either: a) on the applicants lease area in a location visible from the intersection of Harbor Island Road and Beacon Bay Drive, or b) upon approval and agreement of the City of Newport Beach, in the City Right of Way in a location visible from the intersection of Harbor Island Road and Beacon Bay Drive.
2. **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 erosion, liquefaction, waves, flooding, and sea level rise; (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.
3. **No Future Shoreline Protective Device**
 - A. By acceptance of this permit, the applicants and landowner agrees, 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. 5-12-024 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, liquefaction, sea level rise, or any other coastal hazards in the future. By acceptance of this permit, the applicants and landowner hereby waives, 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 and landowner further agree, on behalf of themselves and all successors and assigns, that the landowner(s) 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 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 is only for the development described in Coastal Development Permit No. 5-12-024. 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. 5-12-024. 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. 5-12-024 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
5. **Drainage Plan.** The applicants shall conform with the Drainage Plan received on March 7, 2012 showing roof drainage and runoff from all impervious areas directed to trench drains and permeable pavement wherever possible. 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 legally required.
6. **Landscaping - Drought Tolerant, Non Invasive Plants.** 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 (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), 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. All plants shall be low water use plants as identified by California Department of Water Resources (See: www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf).
7. **Generic Lease 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(s) and lessor have executed and recorded against the parcel(s) governed by this permit a lease 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 lease restriction shall include a legal description of the entire parcel or

parcels governed by this permit. The lease restriction shall also indicate that, in the event of an extinguishment or termination of the lease 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:

A. PROJECT LOCATION & DESCRIPTION

The subject site is located at 1 Beacon Bay in the City of Newport Beach, Orange County (Exhibits #1). The lot size is 4078 square feet and is designated as Residential Two Family in the City's certified Land Use Plan (LUP). The applicant is proposing to construct a new 4,375 square foot, 28-feet above existing grade, single-family residence on a vacant bayfront lot (Exhibits #2-3). Although the site fronts on Newport Bay, no bulkhead currently exists at the site and none is expected to be necessary over the life of the proposed project.

The project site is located in Beacon Bay, which refers to an area located between Promontory Bay and the Balboa Island Channel. This area was tidelands that were filled and reclaimed in the 1920s as the result of an improvement plan, which included the development of a harbor facility that would become the Balboa Yacht Basin. Chapter 200 of the Statutes of 1931 allowed the area west of the Balboa Yacht Basin (designated as Beacon Bay) to be leased for residential purposes. A 72-unit residential subdivision was developed in the 1930s, which included 35-homes located on approximately 4 acres of State tidelands. These leases are limited to terms not to exceed 50 years and lease revenues have to be deposited into tidelands trust funds. Senate Bill 573 (Chapter 317, Statutes of 1997) revised the Beacon Bay Bill to require the residential lease revenue be deposited into specific tidelands trust funds. The current lease runs to June 27, 2043.

Public access to the bay is available across the channel from the subject site along the public walkway that is located around Balboa Island and approximately one mile south of the project site at the sandy public beach along the Balboa Peninsula. Lateral public access is available along the sandy beach seaward of the subject site (In addition, vertical public access to the beach is available at the adjacent street end and other street ends located within the community. Exhibits #1). However, the availability of such access is not easily discernible from outside of the Beacon bay Community. The applicant has proposed to install signage on or directly adjacent to the site, visible from the intersection of Beacon Bay Drive and Harbor Island Road, that will notify the public traveling on Harbor Island Road that public beach access is available within the Beacon Bay community.

The subject site is a waterfront lot. No bulkhead or other type of shoreline protection device currently exists at the site. Neighboring properties do not have bulkheads/shoreline protection either. The subject site is not located near the harbor entrance, rather it is located well within the more protected (from wave action), "upstream" parts of the harbor. A relatively narrow, but stable sandy beach lies seaward of the subject lot. "Slow" erosion would be expected to occur on site; however, the slow erosion trend is expected to be offset by the periodic dredging and nourishment

activities that occur within the harbor to provide adequate depths for vessels moored to the Beacon Bay community docks located in this area. Based on these factors, no shoreline protection is proposed at the site. No protection is expected to be needed in the future.

To address water quality concerns, the applicant is proposing to direct roof runoff to percolation areas, permeable pavement, and trench drains, for on-site infiltration of runoff. The Commission imposes Special Condition 5 to ensure that the applicant complies with the submitted drainage plan to minimize the effects of the development on biological productivity and water quality.

B. HAZARDS

Development adjacent to the bay 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 a drainage and run-off 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 run-off 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 run-off through the use of permeable surfaces, the use of non-invasive drought tolerant vegetation to reduce and treat the run-off 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. LEASE 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 landowner(s) and lessor record a lease 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

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 permit may only be issued if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program, which conforms with the Chapter 3 policies of the Coastal Act.

The Land Use Plan 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. Since the City only has an LUP, the policies of the LUP are used only as guidance. The proposed development is consistent with the Chapter Three policies of the Coastal Act. Therefore, the Commission finds that the proposed development would not prejudice the ability of the City to prepare a certified coastal program consistent with the Chapter 3 policies of the Coastal Act.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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

APPENDIX A SUBSTANTIVE FILE DOCUMENTS

City of Newport Beach Approval In Concept No. AIC 2011-069 dated December 13, 2011
Modification Permit No. MD2008-049 dated December 8, 2008
Memorandum of Lease dated September 21, 2011
Geotechnical Investigation by EGA Consultants dated October 25, 2011
City of Newport Beach Certified Land Use Plan