

CALIFORNIA COASTAL COMMISSION

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W6b

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STAFF REPORT: CONSENT CALENDAR

Application No.: 5-12-014

Applicant: Mr. and Mrs. Kent Small

Agent: Karen Otis, Architect

Location: 17089 and 17090 South Pacific, Sunset Beach, Orange County (APN #178-545-10)

Project Description: Demolition of an existing duplex and construction of a new 3,014 sq. ft., three-story, 35-foot high single-family residence plus an attached 417 sq. ft. 2-car garage, balconies, side yard hardscape improvements, no landscaping and minimal grading for site preparation on a 1,707 sq. ft. beachfront lot.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The applicant is proposing demolition of an existing duplex and construction of a new beachfronting single-family residence. The major issues of this staff report concerns beachfront development that could be affected by wave up rush and flooding during strong storm events.

Staff is recommending APPROVAL of the proposed project with six (6) special conditions regarding: 1) assumption of risk; 2) no future shoreline protective device; 3) conformance with

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the submitted drainage 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 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 for the relevant area. The Sunset Beach area was recently annexed to the City of Huntington Beach. Although the City has a certified LCP, the newly incorporated area hasn't been certified. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1 – Area Map

Exhibit 2 – Project Plans

Exhibit 3 – Detail of Existing Deck (detailing portion within property line to be demolished)

Exhibit 4 – Photo of Existing Conditions at Project Site (beach front)

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** the Coastal Development Permit Applications included in the consent calendar in accordance with the staff recommendations.*

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

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

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. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from flooding, wave uprush, 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.
2. **No Future Shoreline Protective Device.** By acceptance of this permit, the applicants agree, on behalf of themselves and all other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-12-014 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, sea level rise, or other natural hazards in the future. By acceptance of this permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

By acceptance of this permit, the applicants 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.

3. **Drainage Plan.** The applicants shall conform to the site drainage details depicted in the precise grading plan dated received in the Commission's office on May 14, 2012 indicating use of trench drain at the garage driveway entrance and roof downspouts leading into planters for on-site percolation of runoff from all site impervious areas. 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.

4. **Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.** The permittee shall comply with the following construction-related requirements:
- (a) No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
 - (b) No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers.
 - (c) Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
 - (d) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
 - (e) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
 - (f) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
 - (g) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
 - (h) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
 - (i) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
 - (j) The discharge of any hazardous materials into any receiving waters shall be prohibited.
 - (k) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
 - (l) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity

- (m) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.
5. **Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-12-014. 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. 5-12-014. 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. 5-12-014 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
6. **Generic 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(s) have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS:

A. PROJECT LOCATION AND DESCRIPTION

The subject site is located at 17089 & 17090 South Pacific Avenue in the Sunset Beach community in the City of Huntington Beach, Orange County (Exhibits 1 and 2). Sunset Beach was formerly unincorporated Orange County. In August 2011, Sunset Beach was annexed by the City of Huntington Beach. The Sunset Beach area has not yet been incorporated into the City of Huntington Beach LCP, therefore, Chapter 3 of the Coastal Act is the standard of review. The formerly certified Sunset Beach Local Coastal Program (LCP) designates the site Sunset Beach Residential – High Density and the proposed project lower density single-family residence is allowable under this higher density designation. The project is located within an existing urban residential area, between 5th and 4th Street on a beachfront lot located between the first public road (Pacific Coast Hwy) and the sea. The lot size is 1,707 square feet and is rectangular in shape at roughly 57' x 30' near level and bordered by developed single-family lots. The site

fronts a wide sandy beach (approximately 400 feet wide) between the subject property and the Pacific Ocean.

The applicant is proposing the demolition of an existing duplex and construction of a new 3,014 sq. ft., three-story, 35-foot high single-family residence plus an attached 417 sq. ft. 2-car garage, balconies, side yard hardscape improvements, no landscaping and minimal grading for site preparation. The project meets the previously certified Sunset Beach LCP height restriction for Sunset Beach Residential zoning. To address water quality concerns, the applicant is proposing concrete paver side yard walkways and driveway trench drains and sediment basins along the side yards to allow for onsite infiltration of surface water and water runoff. No landscaping or irrigation system is proposed.

The existing development on the site includes a wood deck encroachment onto the public sandy beach on the ocean facing side of the lot. Orange County administered the previously certified Sunset Beach LCP. The County issued encroachment permits for the existing deck encroachments on the beach under a beach area regulation stating: *“Permanent above-ground structures on the beach and sand areas shall be prohibited, except for: a) Lifeguard Towers, b) Other facilities necessary for public safety, c) Temporary uses and structures accessory to residential development on contiguous Sunset Beach Residential properties subject to a Coastal Development Permit and a Public Property Encroachment Permit.”* 78 sq. feet of the existing deck is located within the private property lot and 187 sq. ft. of the deck encroaches onto the public beach. The applicant proposes to demolish the 78 sq. ft. portion of the deck within their property line and maintain the existing 187 sq. ft. deck encroachment on the public sandy beach as is. No work is proposed on the portion of the deck which encroaches on the beach, therefore, it is not part of this coastal development permit application #5-12-014.

The setback standards in the previously certified Sunset Beach LCP are as follows:

Setback Description	Requirement	Project Proposal
Minimum Front (street) Setback @ 1 st Floor	5' – 0"	5' – 0"
Minimum Front Setback @ Other Floors	0' – 6"	0' – 6"
Minimum Rear (beach sand/ocean front) Setback	None required	varies from 7" to 1'
Side Setback	3' – 0"	3' – 0"

The proposed new residence would be constructed with a close to zero beachfront setback and would be built up to the existing beachfront deck encroachment. The proposed new residence would be at the structural stringline with the adjacent residences. This is the existing pattern of development along this block (between 4th and 5th Streets) of beachfront homes in Sunset Beach.

Vertical public access to this beach is available approximately 30 feet downcoast of the site at the end of 4th Street. Lateral public access along the wide sandy beach is available approximately 40 feet seaward of the oceanfront property line at the subject site and along the entire beach due to existing patio/deck encroachments and a man-made vegetated sand berm/dune-like mound in front of all the oceanfront homes along Pacific Avenue.

Due to its oceanfront location, the project site may be potentially exposed to the hazard of wave up-rush during a severe storm event. The northwest portion of the beach in the Sunset Beach area and the beach fronting Surfside Colony to the north has been subject to severe erosion as a result of the wave reflection off of the Anaheim Bay Harbor east jetty (USACOE; 1995, 2002). Properties within this reflection zone have been subject to wave runup and minor flooding. The reflection effect is strongest next to the jetty. The project site is located on the far southwest end of the beach well outside the limit of the influence of the jetty. This overall area, Sunset Beach and Surfside Colony is part of a federally mandated Orange County Beach Erosion Control Project (USACOE, 1995). The US Army Corps of Engineers has maintained the beach in this area through beach sand nourishment projects since the early 1960s. The ACOE continues to monitor the shoreline. The wide sandy beach in front of the subject site has not experienced significant long term erosion since the sand nourishment activity and has been maintained at an approximately 400 feet width. Furthermore, in past winter months, Orange County created a temporary man made sand berm for additional winter storm protection. It is not yet known whether the City of Huntington Beach will continue this practice in future years. Regardless, because a wide beach is maintained by the federal government it is unlikely that the beach will become narrow enough for wave runup and associated flooding to reach the site.

B. HAZARDS

Development adjacent to the ocean is inherently hazardous. Development which may require a protective device in the future cannot be allowed due to the adverse impacts such devices have upon, among other things, public access, visual resources and shoreline processes. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned for one or more of the following: require an appropriate setback from the water; require a drainage and runoff control plan to direct, treat, and minimize the flow of water offsite; prohibit construction of protective devices (such as a seawall) in the future; and to require that the landowner and any successor-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

C. DEVELOPMENT

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. Section 30610 of the Coastal Act provides that certain improvements to existing single-family homes do not require a coastal development permit. Section 13250 of the Commission's regulations lists certain improvements to single-family structures that require a coastal development permit, including those improvements to a structure that is located on a beach. The Commission finds that section 30610 does not apply to the proposed single-family structure because it is located on a beach. Thus, to assure that future improvements are consistent with the Chapter 3 policies of the Coastal Act, the Commission finds that it is necessary to impose a special condition prohibiting the construction of future improvements to the proposed single-family structure without first obtaining a coastal development permit. Therefore, as conditioned, the development conforms to 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 to Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

E. WATER QUALITY

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, one or more of the following: the appropriate management of equipment and construction materials, reducing runoff through the use of permeable surfaces, the use of non-invasive drought tolerant vegetation to reduce and treat the runoff discharged from the site, and for the use of post-construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms 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.

F. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes one additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus 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. Therefore, the Commission finds that the proposed development, as conditioned, conforms to the Coastal Act by ensuring that any successors-in-interest have proper actual notice, recorded against the subject parcel, of the proposed development's required mitigation measures that mitigate the development's impacts on coastal resources.

G. LOCAL COASTAL PROGRAM

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The Land Use Plan for the Sunset Beach was effectively certified on in 1982 and updated in 1992, however, Sunset Beach was annexed into the City of Huntington Beach effective August 2011. The City of Huntington Beach has since submitted an LCP Amendment to incorporate the Sunset Beach area into the City of Huntington Beach LCP. In the interim, Chapter 3 of the Coastal Act is the standard of review and the previously certified Sunset Beach LCP may be used as guidance. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal

Act. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of the Commission's 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 feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The County of Orange is the lead agency responsible for CEQA review. As determined by the City, this project is categorically exempt from CEQA as a Class 3-A (construction of single-family residence) exemption. As conditioned, there are no additional feasible alternatives or additional feasible mitigation measures available which will substantially lessen any significant adverse impact the activity would have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified possible impacts, is consistent with CEQA and the policies of the Coastal Act.

APPENDIX A

SUBSTANTIVE FILE DOCUMENTS

- 1) Previously Certified Sunset Beach Local Coastal Program
- 2) GeoLogic Associates, 18 February 2011, "Geotechnical Design Report, Proposed Residence 17090 South Pacific Avenue, Sunset Beach, County of Orange, California"
- 3) Jones, Cahl and Associates, 4 October 2011, "County of Orange/Santa Ana Region Non-Priority Project Water Quality Plan for 17090 South Pacific Avenue"
- 4) US Army Corps of Engineers (USACOE), 1995, "Orange County Beach Erosion Control Project, San Gabriel River to Newport Bay Orange County, CA," April 1995
- 5) US Army Corps of Engineers (USACOE), 2002, "Coast of California Storm and Tidal Waves Study South Coast Region, Orange County"