

**CALIFORNIA COASTAL COMMISSION**

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**F8f**

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Hearing Date: 5/12/2017

**STAFF REPORT: CONSENT CALENDAR**

**Application No.:** 5-16-0977

**Applicants:** John and Carrie Balfanz

**Agent:** William Guidero

**Location:** 3613 Seashore Drive, Newport Beach, Orange County  
(APN 423-336-02)

**Project Description:** Demolition of a two-story duplex, and construction of a three-story 29-ft. tall, 2,788 sq. ft. single family residence including attached two-car garage, and new hardscape/drainage improvements on a 1,963 sq. ft. oceanfront lot; and demolition of an existing 2.5-ft tall patio perimeter wall and construction of a new 3-ft. tall perimeter wall within the City's oceanfront encroachment area on the beach.

**Staff Recommendation:** Approval with conditions

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**SUMMARY OF STAFF RECOMMENDATION**

*Procedural Note:* The City of Newport Beach Local Coastal Plan (LCP) was recently certified on January 13, 2017. The project site is located within the permit jurisdiction of the certified LCP. However, the CDP application was submitted to the Commission and deemed complete prior to LCP certification, therefore, the Commission is processing the CDP application instead of the local government. The standard of review for development within the City's LCP jurisdiction is the certified City of Newport Beach LCP. In addition, since the proposed project is located between the sea and the first public road, the development must also conform to the public access and recreation policies of the Coastal Act.

The applicants are proposing demolition of a two-story duplex and hardscape improvements including an 10' deep by 25' wide concrete patio and 2.5' tall patio perimeter wall encroaching

beyond the ocean facing property line and construction of a new beach-fronting single-family residence with new 10' deep by 25' wide concrete patio and 3' tall patio perimeter wall within the City's allowed oceanfront encroachment area. The City's LCP allows private patio encroachments up to 10 feet onto the Oceanfront right-of-way in the area of the subject site only if they do not interfere with access to the beach or ocean, when a building permit is not required, and subject to payment of a mitigation fee. The Commission finds that construction of the encroachment at the subject site is consistent with the certified LCP.

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 eight (8) special conditions regarding: **1) assumption of risk; 2) no future shoreline protective device; 3) conformance with the submitted drainage plan; 4) construction best management practices; 5) no deviation from approved encroachments and mitigation compliance; 6) City's right to revoke encroachment permit; 7) future development; and 8) a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.**

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### **APPENDICES**

[Appendix A - Substantive File Documents](#)

### **EXHIBITS**

[Exhibit 1 - Vicinity Map](#)

[Exhibit 2 – Topographic Map/Site Survey \(depicting existing oceanfront encroachment\)](#)

[Exhibit 3 – Project Plans](#)

## 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 Local Coastal Program conforming to the provisions of Chapter 3, and the public access and recreation policies 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 of 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, erosion 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. 5-16-0977 including, but not limited to, the residence, garage, foundations, patio, encroachments, 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 coastal 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. **Conformance with the Submitted Grading, Drainage and Erosion Control Plan.** By acceptance of this permit, the applicants agree to conform to the site drainage details depicted in the precise grading plan dated 11/07/16 and received in the Commission's office on 11/10/16 depicting a perforated trench drain along the oceanfront side of the lot and grate drains with rock sumps along the side yards for on-site percolation of runoff and site drainage and runoff from impervious patio areas toward perforated trench drains. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

4. **Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.** The permittees 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. **Deviation from Approved Encroachments.** The only encroachment into the 10 foot deep encroachment area within the City of Newport Beach Oceanfront public right-of-way allowed by this coastal development permit is a patio wall (no more than 3 feet high) around the perimeter of an at-grade 10' deep by 25' wide concrete patio. Any development in the public right of way, including improvements, repairs, and maintenance, cannot occur without an amendment to this coastal development permit or a new coastal development permit from the Coastal Commission, unless the Executive Director determines through written confirmation that no amendment or new permit is legally required.

The applicants and all other successors and assigns must remain enrolled in the City's public access impact mitigation program (i.e. annual payment to City for encroachment) and make the recurring annual payment so long as the encroachment remains in place.

6. **City's Right to Revoke Encroachment Permit.** Approval of this coastal development permit shall not restrict the City's right and ability to revoke, without cause, the approved City encroachment permit in order to construct public access and recreation improvements within the public right of way.
7. **Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-16-0977. 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. 5-16-0977. Accordingly, any future improvements to the single-family house authorized by this permit, including but not limited to the foundation, approved encroachments, 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. 5-16-0977 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
8. **Generic Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the 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 & DESCRIPTION

The subject site is located at 3613 Seashore Drive within the City of Newport Beach, Orange County ([Exhibit 1](#)). The lot size is 1,963 square feet. The City of Newport Beach LCP Coastal Zoning Map designates the site as R-2 Two-Unit Residential; the proposed project is a single-family residence, allowable under this designation. The site is a beachfront lot located between the first public road and the sea. There is a wide sandy public beach (approximately 350 feet wide) between the subject property and the Pacific Ocean. The project is located within an existing urban residential area between the Santa Ana River and the Newport Pier. Vertical public access to the beach is available at the end of 36th St., approximately 30 feet upcoast of the site. Lateral public beach access is available immediately seaward of the site along the wide sandy beach. 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 applicant is proposing to demolish a two story duplex and construct a three-story 29-ft. tall, 2,788 sq. ft. single family residence including attached two-car garage, new hardscape/drainage improvements, and to demolish an existing 2.5-ft tall patio perimeter wall and construct a new 10' deep by 30' wide concrete patio and 3-ft. tall perimeter wall within the City's allowable 10' deep oceanfront encroachment area. Proposed hardscape improvements include new concrete side yard walkways. No landscaping is proposed. To address water quality concerns, the applicant is proposing directing site drainage and runoff from impervious patio areas toward perforated trench drains for greater onsite infiltration before reaching the City's storm drain at the alley.

The Commission has found through previous permit actions in this area that the City's setback for residential structures in this area is acceptable for maintaining public access and addressing visual impacts. The proposed residence is consistent with the LCP's 5-foot required setback from the seaward property line. Additionally, the City allows, and the applicants propose, second and third story balconies to encroach 3-feet into the 5-foot front setback. The height limit, as set forth in the certified LCP, is 24 feet for flat-roofed structures, and 29 ft. for structures with sloped roofs. The proposed structure is designed with a sloped roof that is 29 ft. high above NAVD88, consistent with the height requirement of the City's certified LCP. Furthermore, the proposed residence meets the LCP's parking requirement for detached single-unit dwellings of 2 per unit in a garage. Project plans are provided as [Exhibit 3](#) of this staff report.

The applicants submitted a Coastal Hazard and Wave Runup Study, prepared by GeoSoils, Inc. dated November 7, 2016 which concludes that it is very unlikely that any type of wave/wave will reach the site during the 75-year life of the proposed new structure, even after considering a 1.25 - 4.75 ft. sea level rise range during that time period. The highest recorded water elevation on record in the vicinity is 7.49 feet NAVD88 with the sea level rise projections, water levels of 8.75 feet NAVD and 12.25 feet NAVD are determined. The overtopping waters over the next 75 years most likely will not reach the subject site, even under the extreme sea level rise conditions. For a future erosion rate due to SLR of 2 ft/yr, the shoreline will move about 150 feet. The site is over 350 feet from the mean high tide line. The report also concluded that the proposed project is reasonably safe from shoreline erosion due to very low rates of long-term shoreline erosion as the beach has been stabilized by groins and is not experiencing any long-term erosion. Overall, the analysis concludes

that the proposed project will be safe from flooding hazards for the next 75 years. As proposed, the lowest finished floor is at elevation +12.65 feet NAVD88 which is above the maximum future water elevation of +12.25 feet NAVD88. Thus, **Special Condition #2** requires the applicants to agree that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to this permit in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, sea level rise, or other natural coastal hazards in the future.

Furthermore, **Special Condition #1** acknowledges that building near the coast is inherently hazardous and that the applicant is aware of the risks. **Special Condition #7** prevents future improvements to the project site without a new permit or permit amendment and **Special Condition #8** requires a deed restriction. **Special Condition #4** requires construction responsibility and **Special Condition #3** requires adherence to proper drainage plans for the protection of the marine environment.

Additionally, the proposed project includes demolition of an existing 2.5-ft tall patio perimeter wall and patio and construction of a new 10' deep by 30' wide concrete patio and 3-ft. tall perimeter wall within the City's allowable 10' deep oceanfront encroachment area. The existing encroachment is depicted on the site survey included as [Exhibit 2](#) of this staff report. The City holds the public right-of-way for street/walkway/bikeway purposes. The public right-of-way is designated on assessor's parcel maps as Ocean Front Street. This public right-of-way along the central part of the Balboa Peninsula is developed with a public walkway/bikeway. However, there is no paved beachfront public lateral access way (boardwalk) in front of the subject site, only sandy beach. The boardwalk begins approximately 200 feet south of the subject site. The proposed encroachment would contribute to the cumulative adverse impact on beach use resulting from the various existing encroachments on the public right-of-way in the area. In addition, the encroachments could make it difficult in the future for the City to extend the boardwalk/public right-of-way further upcoast for continued paved lateral access.

In 1991, the Commission certified an amendment to the City of Newport Beach Land Use Plan (LUP). The LUP acknowledges the adverse public access impacts that will result from the development on the sandy beach area which is owned by the City for street purposes. This cumulative impact is addressed in the certified LUP by imposition of a mitigation plan. The mitigation plan requires an annual payment to be made to the City by encroaching homeowners which is applied to improving public access in Newport Beach. The City has constructed a number of public access improvements (including street end improvements which provide additional public parking spaces) using the encroachment funds. When it certified the LUP amendment allowing these encroachments, the Commission found that, if developed consistent with the mitigation plan, encroachments onto the City's Oceanfront public right-of-way would be consistent with the public access and recreation policies of Chapter 3 of the Coastal Act. The Commission certified the City of Newport Beach Implementation Plan in January 2017 which included the Oceanfront Encroachment Policy Guidelines as Appendix C of the certified LCP.

The LCP allows encroachment onto the Oceanfront right-of-way in the area of the subject site, which is between 52<sup>nd</sup> and 36<sup>th</sup> Streets. Encroachments in this area may encroach up to 10 feet into the right-of-way. The proposed encroachment is 10 feet from the oceanfront property line. The LCP policies allow encroachments only if they do not interfere with access to the beach or ocean, when a building permit is not required, and subject to payment of a mitigation fee. The applicant

has provided proof of annual payment to the encroachment mitigation fund. The Commission finds that the proposed encroachments at the subject site are consistent with the certified LCP oceanfront encroachment policies and the Chapter 3 public access policies of the Coastal Act. The findings for which are found in the Newport Beach LUP Amendment 90-1 approved by the Commission on June 11, 1991 and which are incorporated here by reference. In addition, the City is continuing to carry out the public access improvements required by the LUP mitigation plan to offset any adverse impacts of the encroachments. The mitigation payment made to the City is an annual recurring payment. The applicants and any successors in interest must remain enrolled in the annual fee system and pay the recurring fee so long as the encroachment remains in place.

Section 13250 of the California Code of Regulations provides that development such as the proposed encroachments are not exempt from obtaining a coastal development permit pursuant to Coastal Act Section 30610(a). However, to ensure that no further encroachments occur without an approved amendment to this coastal development permit or approval of a new coastal development permit, the Commission imposes **Special Condition #5** which requires that an amendment to this permit or a new coastal development permit be obtained for any deviations to the encroachments described in this permit. This would allow the Commission to evaluate future encroachment deviations for adverse public access and recreation impacts.

Additionally, the permittees signed an encroachment agreement with the City in which they waived their right to contest the ability of the City to remove the encroachments in order to build public access improvements within the public right-of-way. Thus the proposed project is also conditioned to provide that issuance of the coastal development permit does not restrict nor interfere with the City's right to revoke its encroachment permit, without cause, in order to construct public access and recreation improvements in the public right-of-way. This would ensure future opportunities for public access and recreation.

## **B. HAZARDS**

Development adjacent to the ocean or 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 an appropriate set-back from the water; require a drainage and runoff control plan to direct, treat, and minimize the flow of water offsite; prohibit construction of protective devices (such as a seawall) in the future; and to require that the landowner and any successor-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development conforms to the requirements of the City of Newport Beach LCP 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 the 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 and the certified LCP. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act and the certified LCP, the Commission finds that a Future Development **Special Condition #7** must be imposed. As conditioned the

development conforms to the City of Newport Beach LCP and the public access and recreation 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, the proposed development, as conditioned, conforms to the City of Newport Beach certified LCP polices and requirements regarding public access and the public access and recreation policies of the Coastal Act.

#### **E. WATER QUALITY**

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, reducing runoff through the use of permeable surfaces, and for the use of post-construction best management practices to minimize the project's adverse impact on coastal waters. As conditioned, the Commission finds that the development conforms to the water quality control policies and requirements of the City of Newport Beach certified LCP 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 **Special Condition #8** requiring that the property owners 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, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the land use and enjoyment of the land in connection with the authorized development, 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 (LCP)**

On January 13, 2017, the City of Newport Beach LCP was effectively certified. The proposed development is located within the City's jurisdiction and consequently, the standard of review is the City's certified Local Coastal Plan (LCP) and the public access and recreation policies of the Coastal Act. As conditioned, the proposed development is consistent with the City's certified LCP and the public access and recreation policies of the Coastal Act.

#### **H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

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 Certified LCP

City of Newport Beach Approval In Concept dated 11/7/16

City of Newport Beach Public Works Department Annual Oceanfront Encroachment Agreement/Permit No. EN1344 issued July 29, 2007

*Coastal Hazard and Wave Runup Study for 3613 Seashore Drive, Newport Beach, California*  
prepared by GeoSoils, Inc. dated November 7, 2016