

RESOLUTION NUMBER R-292968

ADOPTED ON APRIL 11, 2000

WHEREAS, Joanne H. Pearson, representing the San Diego Sierra Club, appealed the decision of the Planning Commission in approving Coastal Development/Sensitive Coastal Resource [CDP/SCR] Permit No. 99-0324, submitted by George Fleming, Owner/Permittee, to allow the demolition of an existing 2,474 square foot portion of an existing 2,785 square foot single-family residence and the construction of a new 4,329 square foot two-story single-family residence on a 7,216 square foot lot, located at 5360 Calumet Avenue between Sungold Street and Ricardo Place, legally described as Lot 11, Sun Gold Point, Map No. 3216, in the La Jolla Community Plan area and the City of San Diego Coastal Zone (California State Coastal Commission Appeal Jurisdiction), and Sensitive Coastal Overlay Zone, in the R1-5000 zone; and

WHEREAS, on February 3, 2000, the Planning Commission of the City of San Diego considered Coastal Development/Sensitive Coastal Resource Permit No. 99-0324, and pursuant to Resolution No. 2923-PC voted to recommend City Council approval of the permit.

WHEREAS, the matter was set for public hearing on April 11, 2000, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that this Council adopts the following findings with respect to Coastal Development/Sensitive Coastal Resource Permit No. 99-0324:

## **COASTAL FINDINGS:**

- 1. The proposed development will not encroach upon any existing physical accessway legally utilized by the public or any proposed public accessway identified in an adopted Local Coastal Program [LCP] land use plan; nor will it obstruct views to and along the ocean and other scenic coastal areas from public vantage points.** The project proposes to demolish an existing single-family residence and construct a new 4,329 square foot residence. Although located adjacent to the beach, no public access points or public view corridors within the immediate vicinity have been identified within the La Jolla Community Plan or the adopted Local Coastal Program Element of the 1975 La Jolla Community Plan. Therefore, the improvements proposed on the subject lot will not encroach on the public accessway nor will it obstruct views to and along the ocean and other scenic coastal areas from public vantage points.
- 2. The proposed development will not adversely affect marine resources, environmentally sensitive areas, or archaeological or paleontological resources.** The proposed development is located on a previously developed lot. The project is adjacent to a coastal bluff. All drainage on the project site is required to be directed away from the existing slopes and directed towards Calumet Avenue. There is no sensitive habitat on the site and the project will grade 40 cubic yards within the foot print of the existing residence to be demolished. Conditions have been included that will minimize impacts to the existing bluff. The existing residence is not historically significant. A Negative Declaration was prepared for this project in accordance with the California Environmental Quality Act (CEQA) Guidelines. The Negative Declaration concluded that the proposed project will not have a significant effect on the environment. Therefore, the proposed development will not adversely affect marine resources, environmentally sensitive areas, or archaeological or paleontological resources.
- 3. The proposed development will comply with the requirements related to biologically sensitive lands and significant prehistoric and historic resources as set forth in the Resource Protection Ordinance, San Diego Municipal Code, Chapter X, section 101.0462, unless by the terms of the Resource Protection Ordinance, it is exempted therefrom.** The proposed development is located on a previously disturbed portion of the lot. The site does not contain wetlands, wetland buffer areas, or other sensitive resources which would make this site subject to the Resource Protection Ordinance.
- 4. The proposed development will not adversely affect recreational or visitor-serving facilities or coastal scenic resources.** The proposed development is located adjacent to the coastline, approximately 600 feet to the south of Calumet Park, the closest recreational, visitor serving facility or coastal scenic resource. All development will be contained on the previously disturbed lot. The proposed development will not encroach on any access way nor will it alter any on-street parking currently used by the public in their use of nearby visitor-serving facilities or coastal scenic resources.
- 5. The proposed development will be sited and designed to prevent adverse impacts to environmentally sensitive habitats and scenic resources located in adjacent parks and**

**recreation areas, and will provide adequate buffer areas to protect such resources.** The proposed improvements are designed to prevent any impacts on scenic and recreational areas by limiting the development to be within the previously disturbed lot. There is no identified sensitive habitat on the site and the demolition of the existing single-family residence and the construction of the new single family residence will not have any significant environmental impact. The project will be sited and designed to prevent adverse impacts to environmentally sensitive habitats and scenic resources located in nearby parks and recreation areas, and will provide adequate buffer areas to protect such resources by directing the drainage away from the bluff.

**6. The proposed development will minimize the alterations of natural landforms and will not result in undue risks from geologic and erosional forces and/or flood and fire hazards.** The demolition and associated site improvements will result in 40 cubic yards of cut located within the foot print of the existing structure to be demolished. A Geologic Reconnaissance was conducted and a report prepared for the site to identify and assess the geologic conditions at the site. The report found that the proposed remodel and addition would not create a significant impact and no mitigation is required. All drainage on the site is directed away from the area of the existing bluff into a private storm drain system which flows back to Calumet Avenue, a public right-of-way. The project site is adjacent to the coastal bluff edge, approximately 35 feet above the beach below, so hazards from flooding would be remote. Therefore, the proposed development will minimize the alterations of natural landforms and will not result in undue risks from geologic and erosional forces and/or flood and fire hazards.

**7. The proposed development will be visually compatible with the character of surrounding areas, and where feasible, will restore and enhance visual quality in visually degraded areas.** The demolition of the existing single family residence and the construction of the new single-family residence would not have a significant impact to the visual quality of the neighborhood. The existing neighborhood consists of a mixture of one- and two-story single-family residences. The proposed development will be visually compatible with the character of surrounding areas.

**8. The proposed development will conform with the General Plan, the Local Coastal Program, and any other applicable adopted plans and programs.** The proposed demolition and site improvements are consistent with the La Jolla Community Plan land use designation of low density residential (5-8 du/acre). The proposal also conforms with other community plan recommendations regarding visual resources and community character. The development is consistent with the development standards of the R1-5,000 zone. No visual or physical access to the coast have been identified in the La Jolla Community Plan. The demolition and improvements will not impact or intrude on any visual and physical access corridors in the vicinity. The proposed development conforms with the general plan, the local coastal program, and any other applicable adopted plans and programs.

**SENSITIVE COASTAL RESOURCE FINDINGS:**

**9. The proposed development will be sited, designed, and constructed to minimize, if not preclude, adverse impacts upon sensitive coastal resources and environmentally**

**sensitive areas.** The western most portion of the site is adjacent to a coastal bluff. The proposed demolition of the single-family residence and associated site improvements will be limited within the subject lot. The proposed development is sited so that it would not encroach into any sensitive slopes or sensitive biological resource areas. All drainage diverted from the face of Coastal bluff is directed into a private storm drain system from which it flows back to the public right-of-way. Therefore, the proposed development will not result in impacts to sensitive coastal resources or environmentally sensitive areas.

**10. The proposed development will not encroach upon any existing physical accessway identified in an adopted community plan; nor will it obstruct views to and along the ocean and other scenic coastal areas from public vantage points.** The project proposes to demolish an existing single-family residence and provide site improvements. No public stairways or access to the beach are located in the immediate vicinity of the project. The demolition of the existing single-family residence and the construction of a new single-family residence are designed so as there will be no significant impacts to any existing physical accessway identified in an adopted Community Plan; nor will the project obstruct views to and along the ocean and other scenic coastal areas from public vantage points. The proposed grading is minimal and restricted within the area of the existing structure to be demolished. The vegetation and sloped area along the bluff will remain.

**11. The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply. Shoreline protective works will be designed to be the minimum necessary to adequately protect existing principal structure, to reduce beach consumption and to minimize shoreline encroachment.** The project site is situated behind the designated top of bluff. The scope of work including the demolition of an existing single-family residence, associated site improvements and minimal grading will be limited within the project site and drainage is required to be directed away from the coastal bluff edge. All drainage is directed into a private storm drain system which flows back to the public right-of-way. Conditions have been included that are intended to maintain the integrity of the existing bluff by limiting improvements adjacent to the top of bluff and by directing drainage flow away from the bluff.

**12. The proposed development will not adversely affect the General Plan, the Local Coastal Program, or any other applicable adopted plans and programs.** The proposed demolition and site improvements are consistent with the La Jolla Community Plan land use designation of low density residential (5-8 du/acre). The proposal also conforms with other community plan recommendations regarding visual resources and community character. The development is consistent with the development standards of the R1-5000 zone. This site is identified by the La Jolla Community Plan as having no visual and physical access to the coast. The demolition and improvements will not impact or intrude on any designated visual or physical access corridors. Therefore, the proposed development will not adversely affect the general plan, the local coastal program, or any other applicable adopted plans and programs.

**13. The proposed development will minimize the alteration of natural landforms and will not result in undue risk from geologic and erosional forces and/or flood and fire hazards.** The proposal to demolish an existing single-family residence and site improvements will result in a minimal grading restricted within the area of the existing structure to be demolished. All drainage on the site is directed into a private storm drain system which flows back to the public right-of-way. A Geologic Reconnaissance was conducted and a report prepared for the site to identify and assess the geologic conditions at the site. The report found that the project would not create a significant impact and no mitigation is required. No hazards from flooding would be expected to occur. Therefore, the proposed development will minimize the alterations of natural landforms and will not result in undue risks from geologic and erosional forces and/or flood and fire hazards.

The above findings are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference.

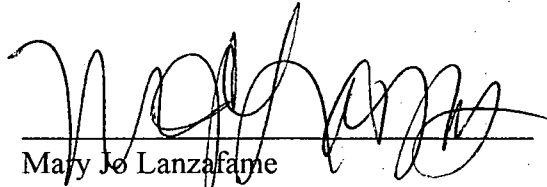
BE IT FURTHER RESOLVED, that the appeal of Joanne H. Pearson, representing the San Diego Sierra Club, is denied; the decision of the Planning Commission is sustained, and Coastal Development/Sensitive Coastal Resource Permit No. 99-0324 is hereby granted to George Fleming, Owner/Permittee, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

BE IT FURTHER RESOLVED, that this resolution shall take effect and be in force on the date the California Coastal Commission certifies this resolution as a Local Coastal Program amendment and not until the thirtieth day from and after its passage, whichever is later. No building permits for development inconsistent with the provisions of this resolution shall be issued unless application therefore was deemed complete prior to the date of adoption of this resolution

by the City Council. If this resolution is not certified or is certified with suggested modifications by the California Coastal Commission, the provisions of this resolution shall be null and void.

APPROVED: CASEY GWINN, City Attorney

By

  
Mary Jo Lanzafame  
Deputy City Attorney

MJL:pev  
4/28/00  
Or.Dept:Clerk  
R-2000-1245  
Form=permitr.frm

**RECORDING REQUESTED BY**  
CITY OF SAN DIEGO  
PLANNING AND DEVELOPMENT REVIEW  
PERMIT INTAKE, MAIL STATION 501

**AND WHEN RECORDED MAIL TO**  
CITY CLERK  
MAIL STATION 2A

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**COASTAL DEVELOPMENT/SENSITIVE COASTAL RESOURCE PERMIT 99-0324  
FLEMING RESIDENCE**

**CITY COUNCIL**

This coastal development/sensitive coastal resource permit, is granted by the Council of The City of San Diego to George Fleming, Owner/Permittee pursuant to the San Diego Municipal Code. The 7,216 square foot site is located at 5360 Calumet Avenue between Sungold Street and Ricardo Place, in the R1-5000 zone of the La Jolla Community Planning area. The project site is legally described as Lot 11, Sun Gold Point, Map 3216.

Subject to the terms and conditions set forth in this permit, permission is granted to Owner/Permittee to demolish 2,474 square feet of an existing single-family residence and reconstruct a two-story 4,329 square foot single-family residence. The improvements are described as, and identified by size, dimension, quantity, type and location on the approved Exhibits "A," dated April 11, 2000, on file in the Office of Planning and Development Review. The facility shall include:

- a. Demolition of 2,474 square-feet of an existing single-family residence; and
  - b. Construction of a two-story 4,329 square foot single family residence with two-car garage and swimming pool and spa, reslope existing deck away from bluff; and
  - c. Landscaping (planting, irrigation and landscape related improvements);
  - d. Off-street parking; and
  - e. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted Community Plan, California Environmental Quality Act guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this permit, and any other applicable regulations of the Municipal Code in effect for this site.
1. Construction, grading or demolition must commence and be pursued in a diligent manner within 36 months after the effective date of final approval by the City, following

all appeals. Failure to utilize the permit within 36 months will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all the Municipal Code requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.

2. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this permit be conducted on the premises until:

- a. The Permittee signs and returns the permit to Planning and Development Review; and
- b. The permit is recorded in the office of the San Diego County Recorder.

3. Unless this permit has been revoked by the City of San Diego, the property included by reference within this permit shall be used only for the purposes and under the terms and conditions set forth in this permit unless otherwise authorized by the City Manager.

4. This permit is a covenant running with the subject property and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this permit and all referenced documents.

5. The utilization and continued use of this permit shall be subject to the regulations of this and any other applicable governmental agencies.

6. Issuance of this permit by the City of San Diego does not authorize the applicant for said permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 U.S.C. Section 1531 et seq.)

7. In accordance with authorization granted to The City of San Diego from the United States Fish and Wildlife Service (USFWS) pursuant to Section 10(a) of the ESA and by the California Department of Fish and Game (CDFG) pursuant to Fish and Game Code section 2835 as part of the Multiple Species Conservation Program (MSCP), The City of San Diego through the issuance of this permit hereby confers upon Permittee the status of Third Party Beneficiary as provided for in Section 17 of The City of San Diego Implementing Agreement (IA), executed on July 16, 1997, and on file in the Office of the City Clerk as Document No. OO-18394. Third Party Beneficiary status is conferred upon Permittee by the City: (1) to grant Permittee the legal standing and legal right to utilize the take authorizations granted to the City pursuant to the MSCP within the context of those limitations imposed under this permit and the IA, and (2) to assure Permittee that no existing mitigation obligation imposed by The City of San Diego pursuant to this permit shall be altered in the future by The City of San Diego, USFWS or CDFG, except in the limited circumstances described in Sections 9.6 and 9.7 of the IA. If mitigation lands are identified but not yet dedicated or preserved in perpetuity, maintenance and continued recognition of Third Party Beneficiary status by the City is contingent upon Permittee maintaining the biological values of any and all lands committed for mitigation pursuant to this permit and of full satisfaction by Permittee of



mitigation obligations required by this permit, as described in accordance with Section 17.1D of the IA.

8. The Owner/Permittee shall secure all necessary building permits. The applicant is informed that to secure these permits, substantial modifications to the building and/or site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.

9. All improvements and development plans for this project shall be fully implemented by the Permittee in accordance with the approved Exhibits "A" for this project, as determined by the City Manager. No change, modifications or alterations of the approved plans for this project shall be made by the Permittee unless appropriate application(s) for either a Substantial Conformance Review (SCR) to the approved Exhibits "A," dated April 11, 2000, on file in the Office of Planning and Development Review, for this project or an amendment(s) of this permit shall have been granted by the appropriate decision maker.

10. All of the conditions contained in this permit have been considered and have been determined to be necessary in order to make the findings required for this discretionary permit. It is the intent of the City that the holder of this permit be required to comply with each and every condition in order to be afforded special rights which the holder of the permit is obtaining as a result of this permit. It is the intent of the City that the Owner of the property which is the subject of this permit either utilize the property for any use allowed under the zoning and other restrictions which apply to the property or, in the alternative, that the Owner of the property be allowed the special and extraordinary rights conveyed by this permit, but only if the Owner complies with all the conditions of the permit.

In the event that any condition of this permit, on a legal challenge by the Owner/Permittee of this permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable or unreasonable, this permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the permit for a determination by that body as to whether all of the findings necessary for the issuance of the Permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove or modify the proposed new permit and the condition(s) contained therein.

11. This Coastal Development/Sensitive Coastal Resource Permit shall become effective on the eleventh working day following receipt by the Coastal Commission of the Notice of Final Action, following all appeals.

12. Title Restrictions. Prior to the commencement of any work or activity authorized by this permit, the Owner/Permittee shall execute a Notice of Hazardous Condition-Indemnification and Hold Harmless Agreement, in a form and content acceptable to Planning and Development Review, or designated representative which shall provide:

- a. The applicant understands that the site may be subject to extraordinary hazard from coastal bluff erosion and the applicant assumes the liability from such hazards; and
- b. The applicant unconditionally waives any claim of liability against the City of San Diego and agrees to defend, indemnify and hold harmless the City of San Diego and its advisors relative to the City of San Diego's approval of the project and for any damage due to natural hazards.

This Notice of Hazardous Conditions-Indemnification and Hold Harmless Agreement shall be recorded against title to the property and shall run with the land, binding upon all successor and assigns.

**ENGINEERING REQUIREMENTS:**

13. The drainage system proposed for this development, as shown on the approved plans, is subject to approval by the City Engineer.
14. Prior to the issuance of any building permits, the applicant shall obtain an encroachment removal agreement from the City Engineer for landscaping and irrigation on Calumet Ave.
15. Prior to the issuance of any building permits, the applicant shall submit an elevation certificate signed by a registered Civil Engineer or a licensed Land Surveyor, certifying the pad elevation based on the USGS datum, satisfactory to the City Engineer.
16. Prior to building occupancy, the applicant shall conform to Municipal Code section 62.0203, Public Improvement Subject to Desuetude or Damage. If repair or replacement of such public improvements is required, the owner shall obtain the required permits for work in the public right-of-way, satisfactory to the permit-issuing authority.
17. Prior to the issuance of any building permits, the applicant shall assure by permit and bond the closure of the non-utilized driveway with full height curb, gutter and sidewalk, satisfactory to the City Engineer.
18. Prior to the issuance of any building permits, the applicant shall assure by permit and bond, the installation of sidewalk under-drains on Calumet Ave, satisfactory to the City Engineer.
19. Prior to the issuance of any building permits, the applicant shall assure by permit and bond the installation of a standard driveway, satisfactory to the City Engineer.

**PLANNING/DESIGN REQUIREMENTS:**

20. There shall be compliance with the regulations of the underlying zone(s) unless a deviation or variance to a specific regulation(s) is approved or granted as condition of approval of this permit. Where there is a conflict between a condition (including exhibits) of this permit and a regulation of the underlying zone, the regulation shall prevail unless the condition provides for a deviation or variance from the regulations.

more restrictive than the corresponding regulation of the underlying zone, then the condition shall prevail.

21. The height(s) of the building(s) or structure(s) shall not exceed those heights set forth in the conditions and the exhibits (including, but not limited to, elevations and cross sections) or the maximum permitted building height of the underlying zone, whichever is lower, unless a deviation or variance to the height limit has been granted as a specific condition of this permit.

22. A topographical survey conforming to the provisions of the Municipal Code may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this permit or a regulations of the underlying zone. The cost of any such survey shall be borne by the permittee.

23. Any future requested amendment to this permit shall be reviewed for compliance with the regulations of the underlying zone(s) which are in effect on the date of the submittal of the requested amendment.

24. All drainage from the improvement of the site shall be directed away from the bluff, in conformance with the Sensitive Coastal Resource Overlay zone and the San Diego Municipal Code requirements.

25. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located.

26. The use of any textured or enhanced paving shall meet applicable City standards as to location, noise and friction values.

27. The subject property and associated common areas on site shall be maintained in a neat and orderly fashion at all times.

28. The Owner/Permittee acknowledges that the existing (19' x 2'-6") deck and railing located on the bluff edge does not conform to current Municipal Code regulations. The City will not require removal of the deck and railing, due to potential adverse effects to the coastal bluff edge. It is Owner/Permittee's responsibility to remove the deck and railing as it deteriorates over time. It is also understood by the Owner/Permittee that the non-conforming deck and railing is not to be repaired or maintained to extend the period of use, but simply to let the deck and railing deteriorate naturally to the point at which it needs to be removed.

#### **LANDSCAPE REQUIREMENTS:**

29. Prior to issuance of any grading or building permits, complete landscape construction documents, including plans, details and specifications (including a permanent automatic irrigation system unless otherwise approved), shall be submitted to the City Manager for approval. The construction documents shall be in substantial conformance with Exhibit "A," Landscape Concept Plan, dated April 11, 2000, on file in the Office of Planning and Development Review. No change, modification or alteration shall be made unless appropriate application or amendment of this permit shall have been granted.

30. Prior to issuance of any grading permits, interim landscape and erosion control measures, including hydroseeding of all disturbed land (all slopes and pads), shall be submitted to the satisfaction of the City Manager (including the Environmental Section) and City Engineer. All plans shall be in substantial conformance to Exhibit "A," dated April 11, 2000, on file in the Office of Development Services and all other applicable conditions of related permits.

31. All required landscape shall be maintained in a disease, weed and litter free condition at all times and shall not be modified or altered unless this permit has been amended. Modifications such as severe pruning or "topping" of trees is not permitted unless specifically noted in this permit. The Permittee, or subsequent Owner shall be responsible to maintain all street trees and landscape improvements consistent with the standards of the Landscape Technical Manual.

32. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved plans is damaged or removed during demolition, it shall be repaired and/or replaced in kind and equivalent size per the approved plans within 30 days of completion of construction by the Permittee. The replacement size of plant material after three years shall be the equivalent size of that plant at the time of removal (the largest size commercially available and/or an increased number) to the satisfaction of the City Manager.

33. The timely erosion control including planting and seeding of all slopes and pads consistent with the approved plans is considered to be in the public interest and the Permittee shall initiate such measures within 45 days from the date that the grading of the site is deemed to be complete. Such erosion control and the associated irrigation systems (temporary and/or permanent) and appurtenances shall be installed in accordance with the approved plans and the Landscape Technical Manual.

34. Prior to final inspection it shall be the responsibility of the Permittee to install all required landscape.

AUTHENTICATED BY THE CITY MANAGER

By \_\_\_\_\_

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**The undersigned Permittee**, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Permittee hereunder.

George Fleming  
Owner/Permittee

By \_\_\_\_\_

By \_\_\_\_\_

**NOTE: Notary acknowledgments  
must be attached per Civil Code  
section 1180 et seq.**

4/27/00

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