

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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June 14, 2011

ADDENDUM**TO:** COMMISSIONERS AND INTERESTED PERSONS**FROM:** SOUTH COAST DISTRICT STAFF**SUBJECT:** ADDENDUM TO ITEM W10a, COASTAL COMMISSION PERMIT APPLICATION NO. 5-09-202-(BURG) FOR THE COMMISSION MEETING OF WEDNESDAY, JUNE 15, 2011.**Changes to Staff Report**

Commission staff recommends modifications and additions to the staff report for clarification purposes. Language to be added is shown in ***bold, underlined italic*** and language to be deleted is in ~~strike-out~~, as shown below

1] Page 1 – Modify the Project Description, as follows:

PROJECT DESCRIPTION: Demolish wood bulkhead/seawall and construct new ***approx. 47*** ft.-long fiberglass bulkhead/seawall, ~~in same~~ ***a few feet landward of the*** ~~as-existing~~ alignment, tied back to new deadman, to protect existing single family home, top elevation of new structure will be raised to 9.25 feet MLLW and remove and replace patio located landward of the bulkhead/seawall.

2] Pages 1-2 – Modify Summary of Staff Recommendations, as follows:

The applicant is proposing to demolish an existing seawall/bulkhead and to construct a new bulkhead/seawall to protect an existing bayfront single-family residence on Newport Harbor. The applicant's engineer has determined that the existing wood seawall is in a state of severe disrepair and must be replaced. Although the wall is proposed to be ***re-aligned a few feet landward of the*** ~~placed in the same as-existing~~ alignment, that alignment is about 14 ***12*** feet seaward of the position of the neighboring bulkheads. Thus, the existing and proposed bulkhead is not consistent with the pattern of existing development in the area. Furthermore, the existing home is roughly in alignment with the adjacent homes, which are protected by bulkheads positioned much further landward than the subject site. Therefore, it is clearly feasible to place the bulkhead on this site in alignment with the adjacent bulkheads and still provide adequate protection for the existing home. Finally, the existing wall, ***most of which is located on the subject site, but part of which occurs partly on the two flanking sites,*** appears to be an unpermitted structure. A wall appears to have been present as of 1/31/1973, which was in alignment with the adjacent walls. However, a wall was subsequently constructed seaward of the other one sometime after 1/31/1973, at which time a permit was required from the Coastal Zone Conservation Commission, and none was obtained for that wall. The work after January 1973 appears to have placed the wall in its present location, which is much further seaward than ***a majority of the wall that protects*** the neighbors. Later repairs/augmentation

of the wall appear to also have been undertaken without benefit of a coastal development permit. **There also appears to be unpermitted patio area, gardens walls, and a privacy/screen wall located between the subject site and 2233 Bayside Drive. Portions of the unpermitted seawall also extend onto the adjacent properties.**

Regardless of the legal status of the existing wall, staff does believe a seawall/bulkhead is necessary to protect the existing structure from tidal induced erosion and flooding. Thus, staff is recommending approval of a bulkhead/seawall, but that bulkhead/seawall should be placed in alignment with the **predominant alignment of the adjacent bulkhead/seawalls.** **Ultimately,** An added benefit of re-alignment of the bulkhead/seawall **on the subject site** landward will **allow for the eventual removal of the** ~~be to remove~~ unpermitted development and return an existing filled area to tidal influence, which will expand available bay habitat. As conditioned, the re-aligned wall will have no new impacts upon shoreline sand supply because the device would be located more landward than the existing wall. **Since the existing unpermitted seawall/bulkhead on the subject site is tied into the unpermitted seawall/bulkhead and other development on the adjacent sites, further coordination with those adjacent property owners (including potential enforcement action) will be needed to address that situation. Installing the staff recommended wall alignment on the subject site could conceivably proceed separately from resolution of the unpermitted development.**

3] Page 4 – Modify Special Condition No. 1, as follows:

1. **REVISED PLANS**

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit revised plans to the Executive Director for review and approval. Prior to submittal of the plans to the Executive Director, the applicant shall obtain, at minimum, preliminary review and approval of those plans from the City of Newport Beach. The revised plans shall show the following changes to the project:

1. The proposed sheetpile bulkhead/seawall shall be located approximately 14 feet landward of the position of the existing wood bulkhead/seawall such that it is in alignment with the predominant line of the existing adjacent bulkhead/seawalls. ~~All~~

2. The existing bulkhead/seawall, patio/decking and/or any other hardscape seaward of the approved and re-aligned bulkhead/seawall, as identified in sub-part 1 above, shall be circled and clearly marked “these elements not permitted by any coastal development permit; these unpermitted structures will temporarily remain in place but are subject to removal through subsequent enforcement action and/or coastal development permit/amendment” on each set of plans; removed and the land restored to natural contours consistent with adjacent areas.

3. The existing 4 foot wide pier may be extended landward to connect to the landward-realigned bulkhead.

B. The permittee shall undertake development... [no intervening changes]

4] Page 10 – Modify A. 2.(Project Description), as follows:

...The proposed project will demolish and remove an existing wood seawall/bulkhead, and construct a new fiberglass composite bulkhead/seawall (SuperLoc 1610 Sheetpile) in **an alignment that is up to about 2 feet landward of the** the same as existing alignment (Exhibit #2). The total length of wall to be replaced is about 51 linear feet, including the return walls. ...

5] Page 12 – Modify first paragraph of Section C.1.(Seawall/Bulkhead Required to Protect Existing Development) starting at fourth sentence, as follows:

...In order to analyze and fully assess the situation, the following investigations have been completed: Letter reports from William Simpson & Associates dated October 7, 2009 and April 1, 2010. The investigations determined that in order to best protect the site the existing seawall/bulkhead must be replaced. The current seawall/bulkhead is proposed to be removed and replaced in the **an alignment that is up to 2 feet inland of the** existing alignment. ...

6] Page 13 - 14 – Modify end of first paragraph and second paragraph of Section C.2.(Wall Alignment), as follows:

...A coastal permit approved by the Commission in 2005 (5-04-449) for replacement of a pier and dock did not include any work on the existing bulkhead. Thus, the existing bulkhead/seawall (plus backfill and portion of concrete patio slab and decking, **as well as garden and screen walls,** between the pre-existing **bulkhead/seawall** and the current one) appears to be unpermitted by the Commission.

Although the **bulkhead/seawall** is proposed to be replaced **a few feet inland of the** in the same as existing alignment, that alignment is about 14 **12** feet seaward of the position of the neighboring bulkheads. Thus, the existing and proposed bulkhead is not consistent with the pattern of existing development in the area. Furthermore, the existing home is roughly in alignment with the adjacent homes, which are protected by bulkheads positioned much further landward than the subject site. The distance between the existing residence and the existing seawall/bulkhead is about 35 feet. If the wall were realigned landward, consistent with the adjacent bulkheads, there would still be at least 20 feet between the home and the realigned wall (Exhibit #4). **The applicant argues that they cannot construct the new wall where Commission staff are recommending because the unpermitted portions of the wall on the adjacent properties (which they don't control) dictate the alignment of the wall on the subject site. In their view, placing a wall where staff is recommending, and removal of the existing wall on the subject site, would expose existing (unpermitted) development on the adjacent sites to erosion and collapse. The Commission acknowledges that a plan must be in place to address the existing unpermitted development on the adjacent sites in conjunction with removal of the existing wall on the subject site. However, that plan need not dictate where the bulkhead/seawall is located on the subject site. A bulkhead/seawall can be placed much further landward to align with the more landward walls in the area, and provide protection for the subject site. If need be, end walls or return walls can be placed to protect the subject site from flanking erosion and to allow for eventual tie in to the adjacent properties. Meanwhile, the existing unpermitted wall on the subject site and adjacent site can be left temporarily in place until a coordinated plan is worked out to address removal of all the unpermitted development in a safe manner.**

Therefore, it is clearly feasible to place the bulkhead on this site in alignment with the adjacent bulkheads and still provide adequate protection for the existing home and provide adequate yard space, consistent with adjacent homes. Therefore, the Commission imposes Special Condition No. 1, which requires the applicant to submit, prior to issuance of the permit, revised project plans indicating that the proposed sheetpile bulkhead/seawall shall be located

approximately 14 feet landward of the position of the existing wood bulkhead/seawall such that it is in alignment with the predominant line of the existing adjacent bulkhead/seawalls. **The existing unpermitted bulkhead/seawall and Aall** existing patio/decking and/or any other hardscape seaward of the re-aligned **permanent** bulkhead/seawall shall be removed and the land restored to natural contours consistent with adjacent areas **when a plan is in place to safely do so (perhaps as part of a coordinated resolution of all the unpermitted structures on the subject site and adjacent sites)**. Since the **permanent bulkhead/seawall** will be moved landward, the existing pier will need to **eventually** be extended landward (**once the old wall is removed**) to reconnect to the bulkhead. Thus, the condition provides that the existing 4 foot wide pier may be extended landward to connect to the landward-realigned bulkhead.

As conditioned, the seawall/bulkhead replacement would not result in new fill of coastal waters or changes to shoreline sand supply/erosion at the site. The proposed development will protect lot stability and reduce risks to life and property with a structurally superior bulkhead system.

In order to ensure that the work does not adversely affect adjacent properties, that they minimize risks to life and property, and to assure stability and structural integrity, the Commission imposes **SPECIAL CONDITION NO. 3**, which requires the applicant to submit, prior to issuance of the permit, evidence of conformance with geotechnical recommendations.

7] Page 14 – Modify Section C.3. (Wave Uprush and Flooding Hazards), as follows:

The project site is a ~~seawall/bulkhead lot~~ adjacent to Newport Bay. Due to its location, the property may be **is** subject to wave and flooding hazards. **A bulkhead/seawall has protected the site since at least 1958.** As evident by the situation that lead to the need for the seawall/bulkhead replacement, the bayfront site is subject to **flooding and erosion now and those hazards are expected to continue (and perhaps increase) into the future flooding and wave attack** because of the fluctuating nature of coastal conditions (i.e. sand supply and sea level rise).

To analyze the suitability of the site for the proposed development relative to potential shoreline hazards and sea level rise, the applicant submitted letter reports by William Simpson & Associates, Inc. These letters indicated that the average top of wall elevation along the existing seawall is +6.0' MLLW (Mean Lower Low Water), that the highest tides in Newport Beach threaten flooding of low lying terrain, and that historically the highest tides have reached approximately 7.8 feet MLLW twice (January 1983 and January 2005). The engineer recommended the new top of wall should be at +9.25' MLLW, which exceeds current City of Newport Beach design recommendations **of +9.0' MLLW. The additional freeboard recommended by the applicant's engineer will provide more protection against future sea level rise than the City's current wall height recommendation.**

~~Commission staff has reviewed the hazards analysis and, based on the information provided and subsequent correspondence concurs with the conclusion that the site is safe from flooding and wave uprush hazards at this time. Therefore, the proposed development can be allowed under Section 30253 of the Coastal Act, which requires new development to "assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices..."~~

Although the applicant's report indicates that the site is safe for **engineer has provided recommendations for a bulkhead/seawall that is expected to continue to provide**

adequate protection of the existing development at this time, beach **waterfront** areas are dynamic environments, which may be subject to unforeseen changes. Such changes may affect beach processes, including sand regimes. The mechanisms of sand replenishment are complex and may change over time, especially as beach process altering structures, such as jetties, are modified, either through damage or deliberate design. The effects of sea level rise also adds some uncertainty. In order to address this situation with respect to Coastal Act policy, **THREE (3) SPECIAL CONDITIONS** are necessary...

8] Page 17 – Modify first paragraph of Section D.1. (Fill of Open Coastal Waters), as follows:

...Section 30233(a) limits the diking, filling and dredging of wetlands and open coastal waters to certain specific allowable uses. In order for fill of wetlands and open coastal waters to be approved, the proposed project must be found to be an allowable use, the project must also be the least environmentally damaging alternative, and the project must have adequate mitigation measures to minimize adverse impacts. The project proposes to install a seawall/bulkhead in the **an** alignment **a few feet landward of the alignment** of the existing wall **and construction of patio improvements**. No new wetlands or open coastal waters would be filled by that action because a wall **and patio** already exists in that location. However, the existing wall location **and patio (portion)** hasn't been permitted by the Commission, even though such approval was required when the wall **and patio** ~~were~~as constructed in the current location. Thus, siting the wall **and patio** in its **their** present location must be analyzed as if the wall **and patio** doesn't yet exist. Approval of the wall **and patio** in its **their** present location would require approval of filling **of bay waters (i.e. open coastal waters)** an intertidal area. Fill **of open coastal waters** for the construction of a shoreline protective device **and patio** is not an allowable use under Section 30233(a). Thus, the alignment proposed could not be approved under Section 30233(a). Were the wall **and patio** placed in its **their** original location **(about 14 feet landward of the existing unpermitted location)**, no new fill would occur. Thus, the wall **and patio** must be placed where it **they** existed prior to the unpermitted development. Therefore, the Commission imposes **SPECIAL CONDITION NO. 1**, which would allow construction of the **a bulkhead/seawall and patio** in **about** its **their** pre-existing alignment (consistent with adjacent bulkheads), such that no new fill would occur. As conditioned, the project does not result in the fill of open coastal waters.

9] Page 21 – Add new Section I. Unpermitted Development at the end of the staff report, as follows:

I. UNPERMITTED DEVELOPMENT

Development has occurred on the subject site without benefit of the required coastal development permit, including construction of a bulkhead/seawall; patio of composite wood, brick and concrete; garden walls, and privacy screen wall. All work occurred on the beach and/or within 20 feet of coastal waters. Consequently, none of the exemptions for improvements normally associated with a single-family residence apply and the work that was undertaken constitutes development that requires a coastal development permit.

According to City records, as of January 31, 1973 (Exhibit #3), the seawall/bulkhead on the subject site was in alignment with the adjacent seawalls/bulkhead, which appear to be in the same position they are in today. However, sometime after 1/31/73, the wall on

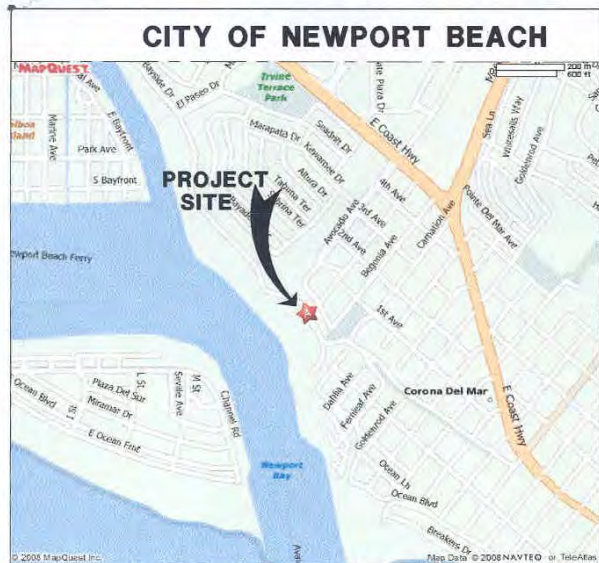
the subject site was moved seaward to its present alignment that is approximately 14 feet seaward of the adjacent walls. The applicant has stated that the realignment occurred in conjunction with other work on the house that was undertaken in 1973/1974. The applicant states the work was approved by the California Coastal Zone Conservation Commission (predecessor to the Coastal Commission) under permit number A-6-25-73-1325 on June 29, 1973. However, that permit describes only "...remodel kitchen, living room and den; add bedroom and bath, breakfast room and patio..."; there is no indication of application for or approval of construction of a bulkhead/seawall either on the permit itself or in the permit file. The City's records reviewed by Commission staff also do not contain any permits by the City for the construction of a bulkhead/seawall during that timeframe (1973-1974). Later, in 1986, the City processed a building permit for the subject site to "...install cutoff wall to protect existing bay structures, i.e. seawall and concrete..."; however, there is no corresponding coastal development permit even though such development would require one. Finally, the applicant has stated that the existing wood wall was sheathed with filter fabric and pressure treated plywood, as a repair, around 2004. Again, there is no corresponding coastal development permit even though such development would have required a permit. A coastal permit approved by the Commission in 2005 (5-04-449) for replacement of a pier and dock did not include any work on the existing bulkhead. Thus, the existing bulkhead/seawall (plus backfill and portion of concrete patio slab and decking between the pre-existing wall and the current one) appears to be unpermitted by the Commission.. As described above, that development is inconsistent with the certified Land use Plan policies and Chapter 3 policies of the Coastal Act.

Special Condition 1 requires revised project plans showing the unpermitted development be circled and clearly marked "this element not permitted by any coastal development permit." The final revised project plans must also be in substantial conformance with the plans submitted for Commission review.

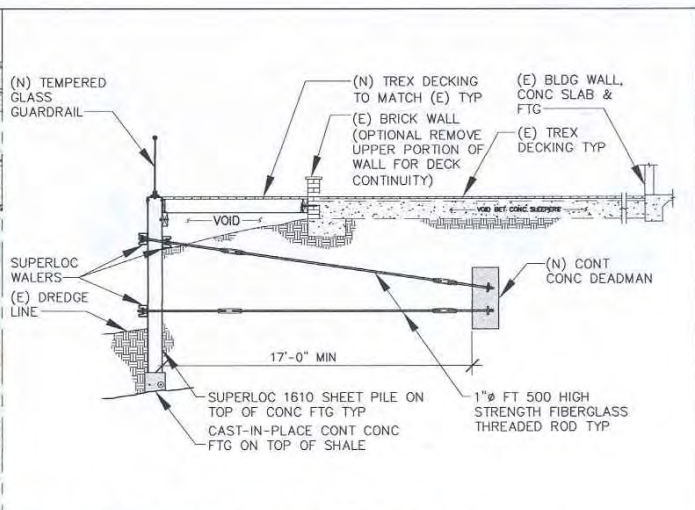
Special Condition 12 is imposed to require the applicant to record a deed restriction against the property so as to notify all prospective future property owners of the terms and conditions of approval to which they will also be required to adhere. It thus ensures that future owners of the property will be informed of the conditions as well as of the risks and the Commission's immunity for liability.

Consideration of the permit application by the Commission has been based solely on the consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. The certified Newport Beach LUP was used as guidance by the Commission in reaching its decision. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit. The Commission's enforcement division will evaluate further actions to address unpermitted development not resolved under this permit.

10] Exhibit 2 – replace Exhibit 2 (Project Plans) with the attached revised project plans



VICINITY MAP N.T.S.
 NEWPORT BAY, CALIFORNIA

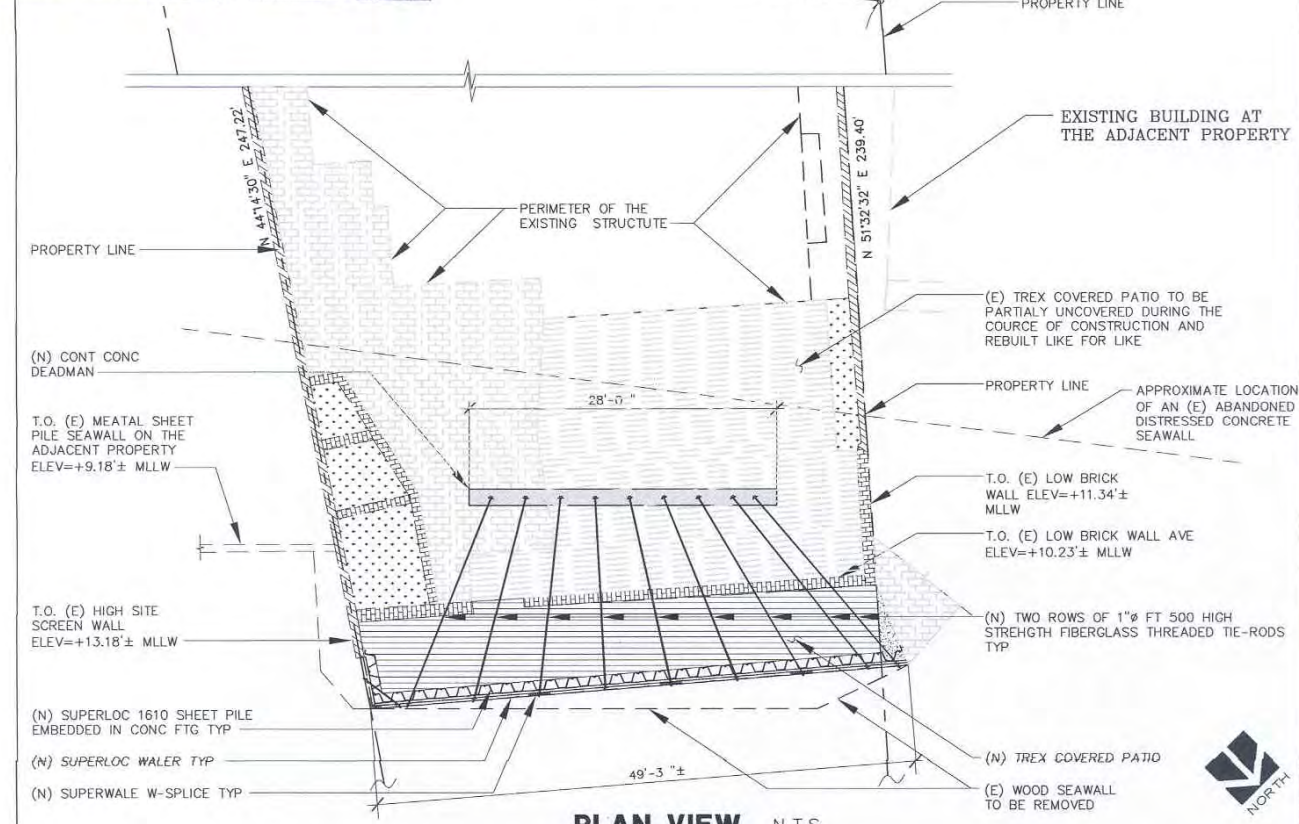


TYPICAL BULKHEAD SECTION N.T.S.

SOUNDINGS ARE EXPECTED IN FEET AND DENOTE ELEVATIONS BASED ON MEAN LOWER LOW WATER.

HARBOR RESOURCES DIV
CITY OF NEWPORT BEACH
BAYSIDE DRIVE

Chris Murphy 6/1/11



PLAN VIEW N.T.S.

OWNER : Mr. Irving Burg	LOT	BLOCK
JOB ADDRESS : 2301 Bayside Drive Corona del Mar, CA 92625	CONTRACTOR: SHELLMAKER, INC. 837 WEST 17th STREET COSTA MESA CA 92627	DATE : 05/27/11

CALIFORNIA COASTAL COMMISSION

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W10a

Filed: January 19, 2011
49th Day: March 9, 2011
180th Day: July 18, 2011
Staff: Karl Schwing-LB
Staff Report: May 26, 2011
Hearing Date: June 15-17, 2011
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NO.: 5-09-202

APPLICANT: Irving & Eleanor Burg, Burg Family Trust

AGENT: Shellmaker Inc., Attn: Lisa Miller

PROJECT LOCATION: 2301 Bayside Drive, City of Newport Beach (Orange County)

PROJECT DESCRIPTION: Demolish wood bulkhead/seawall and construct new 47 ft.-long fiberglass bulkhead/seawall, in same as existing alignment, tied back to new deadman, to protect existing single family home, top elevation of new structure will be raised to 9.25 feet MLLW and remove and replace patio located landward of the bulkhead/seawall.

SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing to demolish an existing seawall/bulkhead and to construct a new bulkhead/seawall to protect an existing bayfront single-family residence on Newport Harbor. The applicant's engineer has determined that the existing wood seawall is in a state of severe disrepair and must be replaced. Although the wall is proposed to be replaced in the same-as-existing alignment, that alignment is about 14 feet seaward of the position of the neighboring bulkheads. Thus, the existing and proposed bulkhead is not consistent with the pattern of existing development in the area. Furthermore, the existing home is roughly in alignment with the adjacent homes, which are protected by bulkheads positioned much further landward than the subject site. Therefore, it is clearly feasible to place the bulkhead on this site in alignment with the adjacent bulkheads and still provide adequate protection for the existing home. Finally, the existing wall appears to be an unpermitted structure. A wall appears to have been present as of 1/31/1973, which was in alignment with the adjacent walls. However, a wall was subsequently constructed seaward of the other one sometime after 1/31/1973, at which time a permit was required from the Coastal Zone Conservation Commission, and none was obtained for that wall. The work after January 1973 appears to have placed the wall in its present location, which is much further seaward than the neighbors. Later repairs/augmentation of the wall appear to also have been undertaken without benefit of a coastal development permit.

Regardless of the legal status of the existing wall, staff does believe a seawall/bulkhead is necessary to protect the existing structure from tidal induced erosion and flooding. Thus, staff is recommending approval of a bulkhead/seawall, but that bulkhead/seawall should be placed in alignment with the adjacent walls. An added benefit of re-alignment of the bulkhead/seawall landward will be to remove unpermitted development and return an existing filled area to tidal influence, which will expand available bay habitat. As conditioned, the re-aligned wall will have no

new impacts upon shoreline sand supply because the device would be located more landward than the existing wall.

Commission staff is recommending **APPROVAL** of a bulkhead/seawall with **TWELVE (12) SPECIAL CONDITIONS** regarding: 1) redesign of the bulkhead/seawall to be in alignment with the adjacent bulkhead/seawalls; 2) obtain all other public agency approvals that may be required; 3) conformance with geotechnical recommendations; 4) assumption of risk; 5) future development; 6) no future seaward extension of shoreline protection device; 7) construction responsibilities and debris removal; 8) submittal of a construction access and staging plan; 9) monitoring to prevent harmful debris; 10) provisions for use of alternative materials if the proposed material is found to be harmful to the environment, 11) bird strike prevention measures, and 12) 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. 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.

LOCAL APPROVALS RECEIVED: Approval in Concept (Harbor Permit No. 105-2301/Plan Check No. 0508-2009) from the City of Newport Beach Harbor Resources Division dated 4/21/2009.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan; Limited Geotechnical Engineering Investigation of Proposed Bulkhead Replacement...by Coast Geotechnical dated November 26, 2008; Letter dated November 24, 2009 by William Simpson & Associates addressing Project Alternatives Analysis; Structural Calculations by William Simpson & Associates dated June 15, 2009; Letter report addressing existing conditions and recommended response by William Simpson & Associates dated October 7, 2009; Letter report addressing urgency of repair by William Simpson & Associates dated April 1, 2010.

LIST OF EXHIBITS

1. Vicinity Maps
 2. Project Plans
 3. Wall alignment as of 1/31/1973
 4. Staff recommended wall alignment
-

I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-09-202 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

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

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 CONDITONS

1. REVISED PLANS

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit revised plans to the Executive Director for review and approval. Prior to submittal of the plans to the Executive Director, the applicant shall obtain, at minimum, preliminary review and approval of those plans from the City of Newport Beach. The revised plans shall show the following changes to the project:

1. The proposed sheetpile bulkhead/seawall shall be located approximately 14 feet landward of the position of the existing wood bulkhead/seawall such that it is in alignment with the predominant line of the existing adjacent bulkhead/seawalls. All existing patio/decking and/or any other hardscape seaward of the re-aligned bulkhead/seawall shall be removed and the land restored to natural contours consistent with adjacent areas. The existing 4 foot wide pier may be extended landward to connect to the landward-realigned bulkhead.

B. The permittee shall undertake development in accordance with the approval final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. REGIONAL WATER QUALITY CONTROL BOARD/ORANGE COUNTY APPROVAL:

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, applicant shall provide to the Executive Director a copy of a permit issued by the Regional Water Quality Control Board, and the appropriate tidelands administrator (e.g. Orange County, Newport Beach, or State Lands Commission), or letter of permission, or lease/license, or evidence that no permit or permission or lease/license is required. The applicant shall inform the Executive Director of any changes to the project required by the Regional Water Quality Control Board and the appropriate tidelands administrator. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

3. CONFORMANCE WITH GEOTECHNICAL RECOMMENDATIONS

A. All final design and construction plans shall be consistent with all recommendations contained in the following documents (as realigned pursuant to Special Condition No. 1): Limited Geotechnical Engineering Investigation of Proposed Bulkhead Replacement...by Coast Geotechnical dated November 26, 2008; Structural Calculations by William Simpson & Associates dated June 15, 2009; Letter report addressing existing conditions and recommended response by William Simpson & Associates dated October 7, 2009. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all the recommendations specified in the above-referenced engineering reports.
- C.** The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment unless the Executive Director determines that no amendment is legally required.

4. ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNITY

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from sea level rise, flooding, wave attack, and erosion; (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.

5. FUTURE DEVELOPMENT

This permit is only for the development described in Coastal Development Permit No. 5-09-202. 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. 5-09-202. Accordingly, any future improvements to the seawall/bulkhead and any other development authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-09-202 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

6. NO FUTURE SEAWARD EXTENSION OF SHORELINE PROTECTIVE DEVICE

- A.** By acceptance of this permit, the applicant agrees, on behalf of itself and all successors and assigns, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device (seawall/bulkhead) approved pursuant to Coastal Development Permit No. 5-09-202, as described and depicted on an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit, shall be undertaken if such activity extends the footprint seaward of the subject shoreline protective device (seawall/bulkhead). By acceptance of this permit, the applicant waives, on behalf of itself (or himself or herself, as applicable) and all successors and assigns, any rights to such activity that may exist under Public Resources Code Section 30235.

- B.** Prior to the issuance by the Executive Director of the NOI FOR THIS PERMIT, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the shoreline protective device approved by this permit, as generally described above and shown on Exhibit # attached to this staff report dated May 26, 2011, showing the footprint of the device and the elevation of the device referenced to NGVD (National Geodetic Vertical Datum).

7. CONSTRUCTION RESPONSIBILITIES AND DEBRIS REMOVAL

The permittee shall comply with the following construction-related requirements:

- A.** No demolition or construction materials, equipment, 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.** Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project.
- C.** 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.
- D.** Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone.
- E.** If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity.
- F.** Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day.
- G.** Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.
- H.** All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- I.** The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- J.** 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.

- K.** 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.
- L.** 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.
- M.** The discharge of any hazardous materials into any receiving waters shall be prohibited.
- N.** 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.
- O.** 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.
- P.** All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

8. CONSTRUCTION ACCESS & STAGING AREA FOR CONSTRUCTION

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT****, the permittee shall submit two (2) full size copies of a construction access and staging plan for the review and approval of the Executive Director which indicates that the construction staging area(s) and construction corridor(s) will avoid impacts to eelgrass and minimize public access impacts to nearby parks and beaches.
 - (1) The plan shall demonstrate that:
 - (a) In order to protect eelgrass beds, construction access shall be from the landside only. No water/barge access.
 - (b) Construction equipment, materials or activity shall be located on the landowners property to the maximum extent feasible and shall not occur outside the staging area and construction corridor identified on the site plan required by this condition.
 - (c) Construction equipment, materials, or activity shall not be placed on the sandy beach outside of the immediate construction zone or in the water.
 - (d) If any staging must occur on any public land, the construction staging area will gradually be reduced as less materials and equipment are necessary.

(2) The plan shall include, at a minimum, the following components:

(a) A site plan that depicts:

1. limits of the staging area(s);
2. construction corridor(s);
3. construction site;
4. location of construction fencing and temporary job trailers with respect to existing public parking areas, public park areas and the sandy beach.

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

9. MONITORING PLAN FOR BULKHEAD/SEAWALL

- A. The permittees shall maintain the bulkhead/seawall in good condition throughout the life of the development. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit a Monitoring Plan, for the review and approval of the Executive Director. The permittees, and their successors in interest shall be responsible for carrying out all provisions of the approved Monitoring Plan for as long as the bulkhead/seawall remains in place. The monitoring plan, at a minimum, shall provide for:
1. Regular inspections by a qualified person familiar with bulkhead/seawall structures who is able to document via photos and provide written descriptions based on personal observation of whether any portion of the sheetpile has become exposed, and if so, whether any cracks, breaks or deterioration have occurred. These inspections shall be performed at least every 2 years.
 2. The inspections shall examine the exposed portions of the bulkhead/seawall (to the mud line) for signs of weakness or possible failure, including, but not limited to cracking, bending, splitting, splintering, or flaking. All weak or potential failure areas should be marked on an as-built plan of the bulkhead/seawall, and there should be photographs and text to explain the nature and extent of each weakness.
- B. If deterioration is observed pursuant to subsections A.1 and A.2 above, then the bulkhead/seawall shall be inspected by a qualified, licensed engineer. Based on a thorough inspection, the engineer shall draw conclusions and make recommendations regarding the continued stability of the bulkhead/seawall and any measures necessary to arrest and/or repair deterioration of the fiberglass or other construction materials. The engineer's conclusions and recommendations shall be forwarded to the Executive Director of the Coastal Commission.
- C. Inspection reports shall be prepared and conveyed to the Executive Director within 30 days of the inspection work. These reports shall provide information on and photographs from the date of the inspection, the name and qualifications of the person

performing the inspection, and an overall assessment of the continued integrity of the bulkhead/seawall. If the inspection identifies any areas where the bulkhead/seawall has been damaged, the report shall identify alternatives to remedy the damage.

- D. In the event that any sections of the bulkhead/seawall are damaged or flaking, the permittees shall notify the Commission within 10 days; and in such event, within 30 days of such notification, submit to the Commission a complete application for any coastal development permit amendment, or new permit, necessary for the repair or replacement of the bulkhead/seawall.

10. ALTERNATIVES TO FIBERGLASS COMPOSITE MATERIAL

By acceptance of this permit, the applicant agrees to submit an application for an amendment to this permit or a new coastal development permit if the Executive Director determines there is new information available that indicates that fiberglass composite material has harmful effects on the marine environment, and that environmentally superior, feasible alternative(s) are available. The amendment or new coastal development shall include measures to eliminate or significantly reduce the adverse impacts of the fiberglass composite material including, if necessary, the replacement of the bulkhead/seawall.

11. BIRD STRIKE PREVENTION

- A. Ocean front guard railings subject to this permit shall use materials designed to minimize bird-strikes with the railing. Such materials may consist, all or in part, of wood; metal; frosted or partially-frosted glass, Plexiglas or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas shall not be installed unless an ultraviolet-light reflective coating and/or appliqué (e.g. stickers/decals) specially designed to reduce bird-strikes by reducing reflectivity and transparency are also used. Any coating or appliqué used shall be installed to provide coverage consistent with manufacturer specifications (e.g. one appliqué for every 3 foot by 3 foot area) and the recommendations of the Executive Director. Use of opaque or partially opaque materials is preferred to clear glass or Plexiglas and appliqué. All materials, coatings and appliqué shall be maintained throughout the life of the development to ensure continued effectiveness at addressing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications and as recommended by the Executive Director. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the permittee shall submit final revised plans showing the location, design, height and materials of the railings for the review and approval of the Executive Director. Said plans shall reflect the requirements of this special condition.
- B. The permittee shall undertake development in accordance with the approval final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

12. 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 has executed and recorded against the parcel(s) owned by the applicant that are 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

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

1. Project Location

The project site is a bayfront lot developed with a single family home at 2301 Bayside Drive, in the community of Corona Del Mar, City of Newport Beach (County of Orange) (Exhibit #1). The project site is flanked by single family residences on each side, by Bayside Drive on the inland side, and by Newport Bay on the seaward side. The property is occupied by an existing single-family residence, which is protected from bay tides by a wood bulkhead. The distance between the existing residence and the seawall/bulkhead is about 35 feet. There is also a pier and dock extending seaward from the bulkhead, which is shared with the adjacent home at 2233 Bayside Drive. The lot size is 11,891 square feet and the City of Newport Beach Land Use Plan (LUP) designates use of the site for Single Unit Residential Detached (RSD). The subject property's bayward boundary is located in the water, about 96 feet bayward of the existing bulkhead. That line was deemed to be the mean high tide line by Superior Court Case No. 23688, recorded August 14, 1928.

2. Project Description

The proposed project will demolish and remove an existing wood seawall/bulkhead, and construct a new fiberglass composite bulkhead/seawall (SuperLoc 1610 Sheetpile) in the same as existing alignment (Exhibit #2). The total length of wall to be replaced is about 51 linear feet, including the return walls. The applicant is also proposing to construct a 28 foot long concrete deadman landward of the wall and to use fiberglass tie-rods to tieback the proposed bulkhead/seawall. Construction of these structures will require removal of existing brick and trex patio areas and replacement upon completion of the work. The portion of the existing five foot wide pier that connects to the existing bulkhead will also need to be removed during construction and replaced in the same configuration upon completion of construction.

The current seawall/bulkhead will be removed in its entirety. The new 'SuperLoc' sheetpile wall will be composed of a series of interlocking composite fiberglass panels, that are approximately 11 feet deep, that will rest on a new cast-in-place concrete footing to be installed on top of the shale bedrock located at about -2.5 ft. MLLW (Exhibit #). The top of the wall will be capped with a composite fiberglass cap. The elevation at the top of fiberglass cap will be approximately +9.25' Mean Lower Low Water (MLLW), which will meet current City of Newport Beach height requirements for bulkheads (+9 MLLW). The wall will be anchored back by a series of threaded fiberglass tie rods embedded into a new concrete deadman to be constructed landward of the wall. The new wall will be about 41 feet long on the bay side with a 5'-3" long return wall along the property to the northwest (2233 Bayside) and another return wall 6' long along the property line with the neighbor to the southeast at 2307 Bayside. .

On top of the proposed composite fiberglass cap, tempered glass panels are proposed to be installed as a railing. No bird strike prevention measures have been proposed.

The existing brick and trex decking that will need to be removed to place the tie rods and deadman, and a portion of the existing pier leading out to the dock, will also be replaced like for like.

B. PAST COMMISSION ACTIONS

On June 29, 1973, the South Coast Regional Conservation Commission (predecessor to the Coastal Commission) granted an administrative coastal development permit (No. A-6-25-73-1325) to Irving Burg for development, as follows: "remodel kitchen, living room and den; add bedroom and bath, breakfast room and patio." No conditions were imposed.

On May 11, 2005, the California Coastal Commission granted to Tim Byrne and Irving Burg Coastal Development Permit 5-04-449, subject to five special conditions, for development consisting of removal of two (2) individual dock systems and replacement with a new single joint dock system. The conditions required mitigation for impacts to eelgrass, and imposed other standard conditions addressing water quality. The project was located along the boundary between 2233 & 2301 Bayside Drive.

C. PROTECTIVE STRUCTURES AND HAZARDS

Section 30235 of the Coastal Act states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

Section 30253 of the Coastal Act states in relevant part:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area...*

City of Newport Beach, Coastal Land Use Plan Policies:

- 2.8.6-6. Design and site protective devices to minimize impacts to coastal resources, minimize alteration of natural shoreline processes, provide for coastal access, minimize visual impacts, and eliminate or mitigate adverse impacts on local shoreline sand supply.
- 2.8.6-7. Discourage shoreline protective devices on public land to protect private property/development. Site and design any such protective devices as far landward as possible. Such protective devices may be considered only after hazard avoidance, restoration of the sand supply, beach nourishment and planned retreat are exhausted as possible alternatives.
- 2.8.6-8. Limit the use of protective devices to the minimum required to protect existing development and prohibit their use to enlarge or expand areas for new development or for new development. "Existing development" for purposes of this policy shall consist only of a principle structure, e.g. residential dwelling, required garage, or second residential unit, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping etc.
- 3.1.4-7. Design and site bulkheads to protect the character of the existing shoreline profiles and avoid encroachment onto public tidelands.
- 3.1.4-8. Limit bulkhead expansion or encroachment into coastal waters to the minimum extent necessary to repair, maintain, or replace an existing bulkhead and do not allow the backfill to create new usable residential land areas.

1. Seawall/Bulkhead Required to Protect Existing Development

Site conditions include an existing seawall/bulkhead. According to the applicant's engineer, the existing wood seawall/bulkhead has rotted and is failing, causing soil from behind the wall to flow into the bay. The loss of soil is undermining exterior flatwork and will eventually undermine the home. In order to analyze and fully assess the situation, the following investigations have been completed: Letter reports from William Simpson & Associates dated October 7, 2009 and April 1, 2010. The investigations determined that in order to best protect the site the existing seawall/bulkhead must be replaced. The current seawall/bulkhead is proposed to be removed and replaced in the existing alignment.

A seawall/bulkhead is required at the subject site to protect the structural integrity of the site from tidal activity. A seawall/bulkhead protects the existing residence, public street and adjacent residences. If the seawall/bulkhead were removed and not replaced, tidal activity would erode and

destabilize the lot and the development landward of the bulkhead (i.e. existing home, public street, adjacent residences). Therefore, a seawall/bulkhead replacement is necessary to protect existing structures.

2. Wall Alignment

However, the alignment of that seawall/bulkhead needs to be re-evaluated. Information available from the City of Newport Beach's record of issued permits indicates that the subject site, and adjacent sites, has been protected by a seawall/bulkhead since at least June 1958. According to City records, as of January 31, 1973 (Exhibit #3), the seawall/bulkhead on the subject site was in alignment with the adjacent seawalls/bulkhead, which appear to be in the same position they are in today. However, sometime after 1/31/73, the wall on the subject site was moved seaward to its present alignment that is approximately 14 feet seaward of the adjacent walls. The applicant has stated that the realignment occurred in conjunction with other work on the house that was undertaken in 1973/1974. The applicant states the work was approved by the California Coastal Zone Conservation Commission (predecessor to the Coastal Commission) under permit number A-6-25-73-1325 on June 29, 1973. However, that permit describes only "...remodel kitchen, living room and den; add bedroom and bath, breakfast room and patio..."; there is no indication of application for or approval of construction of a bulkhead/seawall either on the permit itself or in the permit file. The City's records reviewed by Commission staff also do not contain any permits by the City for the construction of a bulkhead/seawall during that timeframe (1973-1974). Later, in 1986, the City processed a building permit to "...install cutoff wall to protect existing bay structures, i.e. seawall and concrete..."; however, there is no corresponding coastal development permit even though such development would require one. Finally, the applicant has stated that the existing wood wall was sheathed with filter fabric and pressure treated plywood, as a repair, around 2004. Again, there is no corresponding coastal development permit even though such development would have required a permit. A coastal permit approved by the Commission in 2005 (5-04-449) for replacement of a pier and dock did not include any work on the existing bulkhead. Thus, the existing bulkhead/seawall (plus backfill and portion of concrete patio slab and decking between the pre-existing wall and the current one) appears to be unpermitted by the Commission.

Although the wall is proposed to be replaced in the same-as-existing alignment, that alignment is about 14 feet seaward of the position of the neighboring bulkheads. Thus, the existing and proposed bulkhead is not consistent with the pattern of existing development in the area. Furthermore, the existing home is roughly in alignment with the adjacent homes, which are protected by bulkheads positioned much further landward than the subject site. The distance between the existing residence and the existing seawall/bulkhead is about 35 feet. If the wall were realigned landward, consistent with the adjacent bulkheads, there would still be at least 20 feet between the home and the realigned wall (Exhibit #4). Therefore, it is clearly feasible to place the bulkhead on this site in alignment with the adjacent bulkheads and still provide adequate protection for the existing home and provide adequate yard space, consistent with adjacent homes. Therefore, the Commission imposes Special Condition No. 1, which requires the applicant to submit, prior to issuance of the permit, revised project plans indicating that the proposed sheetpile bulkhead/seawall shall be located approximately 14 feet landward of the position of the existing wood bulkhead/seawall such that it is in alignment with the predominant line of the existing adjacent bulkhead/seawalls. All existing patio/decking and/or any other hardscape seaward of the re-aligned bulkhead/seawall shall be removed and the land restored to natural contours consistent with adjacent areas. Since the wall will be moved landward, the existing pier will need to be extended landward to reconnect to the bulkhead. Thus, the condition provides that the existing 4 foot wide pier may be extended landward to connect to the landward-realigned bulkhead.

As conditioned, the seawall/bulkhead replacement would not result in new fill of coastal waters or changes to shoreline sand supply/erosion at the site. The proposed development will protect lot stability and reduce risks to life and property with a structurally superior bulkhead system.

In order to ensure that the work does not adversely affect adjacent properties, that they minimize risks to life and property, and to assure stability and structural integrity, the Commission imposes **SPECIAL CONDITION NO. 3**, which requires the applicant to submit, prior to issuance of the permit, evidence of conformance with geotechnical recommendations.

3. Wave Uprush and Flooding Hazards

The project site is a seawall/bulkhead lot adjacent to Newport Bay. Due to its location, the property may be subject to wave and flooding hazards. As evident by the situation that lead to the need for the seawall/bulkhead replacement, the bayfront site is subject to future flooding and wave attack because of the fluctuating nature of coastal conditions (i.e. sand supply and sea level rise).

To analyze the suitability of the site for the proposed development relative to potential shoreline hazards and sea level rise, the applicant submitted letter reports by William Simpson & Associates, Inc. These letters indicated that the average top of wall elevation along the existing seawall is +6.0' MLLW (Mean Lower Low Water), that the highest tides in Newport Beach threaten flooding of low lying terrain, and that historically the highest tides have reached approximately 7.8 feet MLLW twice (January 1983 and January 2005). The engineer recommended the new top of wall should be at +9.25' MLLW, which exceeds current City of Newport Beach design recommendations.

Commission staff has reviewed the hazards analysis and, based on the information provided and subsequent correspondence concurs with the conclusion that the site is safe from flooding and wave uprush hazards at this time. Therefore, the proposed development can be allowed under Section 30253 of the Coastal Act, which requires new development to "*assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices...*"

Although the applicant's report indicates that the site is safe for development at this time, beach areas are dynamic environments, which may be subject to unforeseen changes. Such changes may affect beach processes, including sand regimes. The mechanisms of sand replenishment are complex and may change over time, especially as beach process altering structures, such as jetties, are modified, either through damage or deliberate design. The effects of sea level rise also adds some uncertainty. In order to address this situation with respect to Coastal Act policy, **THREE (3) SPECIAL CONDITIONS** are necessary.

a. Assumption of Risk

Given that the applicant has chosen to implement the project despite potential risks from sea level rise, wave attack, erosion, or flooding, the applicant must assume the risks. Therefore, the Commission imposes **SPECIAL CONDITION NO. 4** for an assumption-of-risk agreement. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand the

hazards. In addition, the condition ensures that future owners of the property will be informed of the risks and the Commission's immunity from liability. As conditioned, the Commission finds the proposed project is consistent with Section 30253 of the Coastal Act.

b. Future Development

As discussed previously, the project site is located on a bayfront lot that may be subject to future flooding and wave attack as coastal conditions change. Since coastal processes are dynamic and structural development may alter the natural environment, future development adjacent to the bay shoreline could adversely affect future shoreline conditions if not properly evaluated. For this reason, the Commission is imposing **SPECIAL CONDITION NO. 5**, which states that any future development or additions on the property, including but not limited to any future improvements to the seawall/bulkhead, requires a coastal development permit from the Commission or its successor agency. Section 13250 (b) of Title 14 of the California Code of Regulations specifically authorizes the Commission to require a permit for improvements that could involve a risk of adverse environmental effect. This condition ensures that any future development on this site that may affect shoreline processes receives review by the Commission.

c. No seaward placement of bulkhead/seawall

The bulkhead design will conform to the current minimum elevation requirements set by the City of Newport Beach, that the bulkhead elevation be at least +9 foot MLLW. This elevation has been established as a minimum standard and, according to the City of Newport Beach's Harbor Committee Report on Global Warming and Sea Level Rise Effects on Newport Harbor, many of the existing bulkheads are lower than the +9 foot MLLW standard. Bulkhead standards for Dana Point and Huntington harbor require new bulkheads be built to +10 foot MLLW elevation. The City of Newport Beach recommended minimum elevation does not take into account a significant rise in sea level. The proposed bulkhead replacement results in a wall height that is higher than the City's minimum and will provide protection against flooding from some forecasted sea level rise. However, if the water level or waves exceed the design condition, the current wall will then have to be raised. **SPECIAL CONDITION NO. 6** requires that any future maintenance or work to address changing sea level, increased flooding or other coastal hazards be undertaken on or inland of the proposed development and that there not be any seaward encroachment beyond the identified and recorded line of development.

CONCLUSION

To assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area and to make sure the proposed project does not result in future adverse effects to coastal processes, **FIVE (5) SPECIAL CONDITIONS** have been imposed. **SPECIAL CONDITION NO. 1** requires realignment of the bulkhead consistent with adjacent ones. **SPECIAL CONDITION NO. 3** requires incorporation of the recommendations in the bulkhead evaluation. **SPECIAL CONDITION NO. 4** require an assumption-of-risk agreement. **SPECIAL CONDITION NO. 5** states that any future development or additions on the property, including but not limited to hardscape improvements, grading, landscaping, vegetation removal and structural improvements requires a coastal development permit from the Commission or its successor agency. **SPECIAL CONDITION NO. 6** requires that any future maintenance or work to address changing sea level, increased flooding or other coastal

hazards be undertaken on or inland of the proposed development and that there not be any seaward encroachment beyond the identified and recorded line of development. Only as conditioned does the Commission finds that the proposed project is consistent with Section 30235 and 30253 of the Coastal Act.

D. WATER QUALITY AND THE MARINE ENVIRONMENT

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30233 of the Coastal Act states in part:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(6) Restoration purposes.

(7) Nature study, aquaculture, or similar resource dependent activities.

1. Fill of Open Coastal Waters

Section 30233(a) limits the diking, filling and dredging of wetlands and open coastal waters to certain specific allowable uses. In order for fill of wetlands and open coastal waters to be approved, the proposed project must be found to be an allowable use, the project must also be the least environmentally damaging alternative, and the project must have adequate mitigation measures to minimize adverse impacts. The project proposes to install a seawall/bulkhead in the alignment of the existing wall. No new wetlands or open coastal waters would be filled by that action because a wall already exists in that location. However, the existing wall location hasn't been permitted by the Commission, even though such approval was required when the wall was constructed in the current location. Thus, siting the wall in its present location must be analyzed as if the wall doesn't yet exist. Approval of the wall in its present location would require approval of filling an intertidal area. Fill for the construction of a shoreline protective device is not an allowable use under Section 30233(a). Thus, the alignment proposed could not be approved under Section 30233(a). Were the wall placed in its original location, no new fill would occur. Thus, the wall must be placed where it existed prior to the unpermitted development. Therefore, the Commission imposes **SPECIAL CONDITION NO. 1**, which would allow construction of the wall in its pre-existing alignment (consistent with adjacent bulkheads), such that no new fill would occur. As conditioned, the project does not result in the fill of open coastal waters.

Also, there is concern regarding future response to erosion and sea level rise. If the wall needs to be raised to address erosion and/or sea level rise, the wall should be replaced in the currently approved alignment or further landward in order to avoid fill of coastal waters and wetlands. Therefore the Commission imposes, **SPECIAL CONDITION NO. 6**, which requires no future seaward extension of the bulkhead/seawall into coastal waters to avoid future fill of coastal waters.

2. Construction Impacts to Water Quality

The proposed development will occur adjacent to a sandy beach and Newport Bay. Construction of any kind adjacent to or in coastal waters has the potential to impact marine resources. The bay provides an opportunity for water oriented recreational activities and also serves as a home for marine habitat. Because of the coastal recreational activities and the sensitivity of the harbor habitat, potential water quality issues must be examined as part of the review of this project. In order to avoid adverse construction-related impacts upon marine resources, **SPECIAL CONDITION NO. 7** outlines construction-related requirements to provide for appropriate construction methods as well as the safe storage of construction materials and the safe disposal of construction debris.

The applicant submitted evidence they had applied to the Regional Water Quality Control Board for approval. However, no evidence of final approval has yet been submitted. In order to assure there are no changes to the project which require subsequent Commission review, the Commission imposes **SPECIAL CONDITION NO. 2** which requires the submittal of final approval from the water board.

3. **Plastics in the Environment**

The Commission is also concerned about the use of materials like plastic and similar materials in the marine environment due to the possible deterioration of those materials and subsequent increase in marine debris. The proposed project involves the installation of a new fiberglass composite bulkhead/seawall (SuperLoc 1610 Sheetpile). In a leach test of material composites containing polyethylene, polypropylene, polystyrene, polyvinyl chloride, and other plastics, only minor amounts of copper, iron, and zinc leached from the plastic. None of the contaminants had a concentration significant enough to have any adverse effects on the marine environment. However, the Commission is concerned about the potential to add debris to the marine environment due to cracking, peeling, and sloughing. Since these materials are inorganic, they do not biodegrade, but rather continually breaks down into ever-smaller pieces which can adversely effect the marine environment.

The potential exists that the materials would degrade over time. A bulkhead is constantly subject to abrasive forces. If the materials were to become brittle, they may splinter or chip upon impact and would introduce debris into coastal waters, and thus would adversely affect water quality resources.

Because of the potential for pieces of material to enter into the marine environment due to damage or degradation, the structure shall be routinely inspected to ensure that it is being maintained in an environmentally safe operating condition and so that any damaged or degraded structures are replaced in a timely manner. Thus, **SPECIAL CONDITION NO. 9** requires that the structures be inspected on an annual basis. If the inspections confirm that the materials are harming marine resources, the use of such materials shall be stopped, and less harmful materials shall be used. Thus, **SPECIAL CONDITION NO. 10** is imposed. Therefore, only as conditioned does the Commission find that the proposed project conforms with the marine resource provisions of the Coastal Act.

4. **Bird Strike Hazard**

Due to the waterfront location, there is a substantial risk of bird strikes to any glass walls. Glass walls are known to have adverse impacts upon a variety of bird species. Birds are known to strike glass walls causing their death or stunning them which exposes them to predation. Some authors report that such birds strikes cause between 100 million to 1 billion bird deaths per year in North America alone. Birds strike the glass because they either don't see the glass, or there is some type of reflection in the glass which attracts them (such as the reflection of bushes or trees that the bird might use for habitat). Some type of boundary treatment is typically required where the backyards of residences abut coastal bluffs. To provide further protection to coastal avian species, **SPECIAL CONDITION NO. 11** requires the applicant submit final revised plans showing a treatment to any deck railings, walls, fences, gates, etc. to address bird strike issues, necessary to enhance marine resources and protect the biological productivity and the quality of coastal waters.

There are a variety of methods available to address bird strikes against glass. For instance, glass can be frosted or etched in a manner that renders the glass more visible and less reflective. Where clear glass is used, appliqués (e.g.) stickers can be affixed to the glass that have a pattern that is visible to birds. Some appliqués incorporate features that allow humans to see through the glass, but which are visible birds. Usually appliqués must be replaced with some frequency in order to retain their effectiveness. In the case of fences or walls, alternative materials can be used, such as wood, stone, or metal (although this approach isn't usually palatable when there is a desire to see

through the wall). Use of frosted or etched glass, wood, stone or metal material is preferable to appliques because of the lower maintenance and less frequent replacement that is required.

The special conditions of this staff report are designed to protect and enhance the marine environment of Newport Bay. Therefore, as conditioned, the Commission finds that the proposed development is consistent with Section 30230 and 30231 of the Coastal Act and the policies of the certified LUP.

5. Eelgrass Bed Protection

Extensive eelgrass beds exist in bay waters seaward of the subject site. Eelgrass (*Zostera marina*) is an aquatic plant consisting of tough cellulose leaves, which grows in dense beds in shallow, subtidal or intertidal unconsolidated sediments. Eelgrass is considered worthy of protection because it functions as important habitat for a variety of fish and other wildlife, according to the Southern California Eelgrass Mitigation Policy (SCEMP) adopted by the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (CDFG). For instance, eelgrass beds provide areas for fish egg laying, juvenile fish rearing, and waterfowl foraging. Sensitive species, such as the California least tern, a federally listed endangered species, utilize eelgrass beds as foraging grounds.

Construction access via the water (e.g. via barge) could be detrimental to eelgrass beds because barge placement, anchor placement, and propeller wash, could adversely impact the eelgrass beds. Therefore, construction access should be taken from the landside. No evidence has been submitted indicating such access is not feasible. Therefore, the Commission imposes **SPECIAL CONDITION NO. 8**, which requires the applicant to avoid using the waterside for construction access.

CONCLUSION

To minimize the adverse impacts upon the marine environment, **SIX (6) SPECIAL CONDITIONS** have been imposed. **SPECIAL CONDITION NO. 6** requires no future seaward extension of the bulkhead into coastal waters to avoid future fill of coastal waters. **SPECIAL CONDITION NO. 7** outlines construction-related requirements to provide for appropriate construction methods as well as the safe storage of construction materials and the safe disposal of construction debris. **SPECIAL CONDITION NO. 8** outlines construction access and staging requirements, including avoidance of waterside access to protect eelgrass beds. **SPECIAL CONDITION NO. 9 AND 10** outline requirements related to the control of marine debris. **SPECIAL CONDITION NO. 11** outlines measures to address bird strike hazards. Only as conditioned does the Commission find that the proposed project is consistent with Section 30230, 30231 and 30233 of the Coastal Act.

E. PUBLIC ACCESS

Section 30213 of the Coastal Act states, in pertinent part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

The protection of public access is an important aspect of the Coastal Act. A pocket park which can accommodate passive opportunities (e.g. picnicking) for the public exists a few lots southeast of the site. Also, further northwest of the site is a U.S. Coast Guard and County Harbor Patrol

facility, which also has a beach area that can accommodate both passive opportunities and active opportunities (e.g. volleyball, kayak launching) for the public.

The applicant has stated that the installation of the proposed 'Truline' pile wall will not require construction equipment on any nearby public recreational areas and that the entire installation process will be conducted within the limits of the property. However, while the applicant states that construction equipment will not be located on the pocket park or beach, no construction staging plans have been submitted. Therefore, the Commission has imposed **SPECIAL CONDITION NO. 8**, which requires the applicant to submit construction staging plans.

CONCLUSION

To minimize the adverse impacts upon public access, **ONE (1) SPECIAL CONDITION** has been imposed. **SPECIAL CONDITION NO. 8** requires the applicant to submit a construction staging plan. Therefore, the Commission finds that the proposed development would be consistent with Sections 30210 and 30212 of the Coastal Act regarding public access.

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 NO. 12**, which requires that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the property. Thus, as conditioned, any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

G. LOCAL COASTAL PROGRAM

The LUP for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on October 8, 2009. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

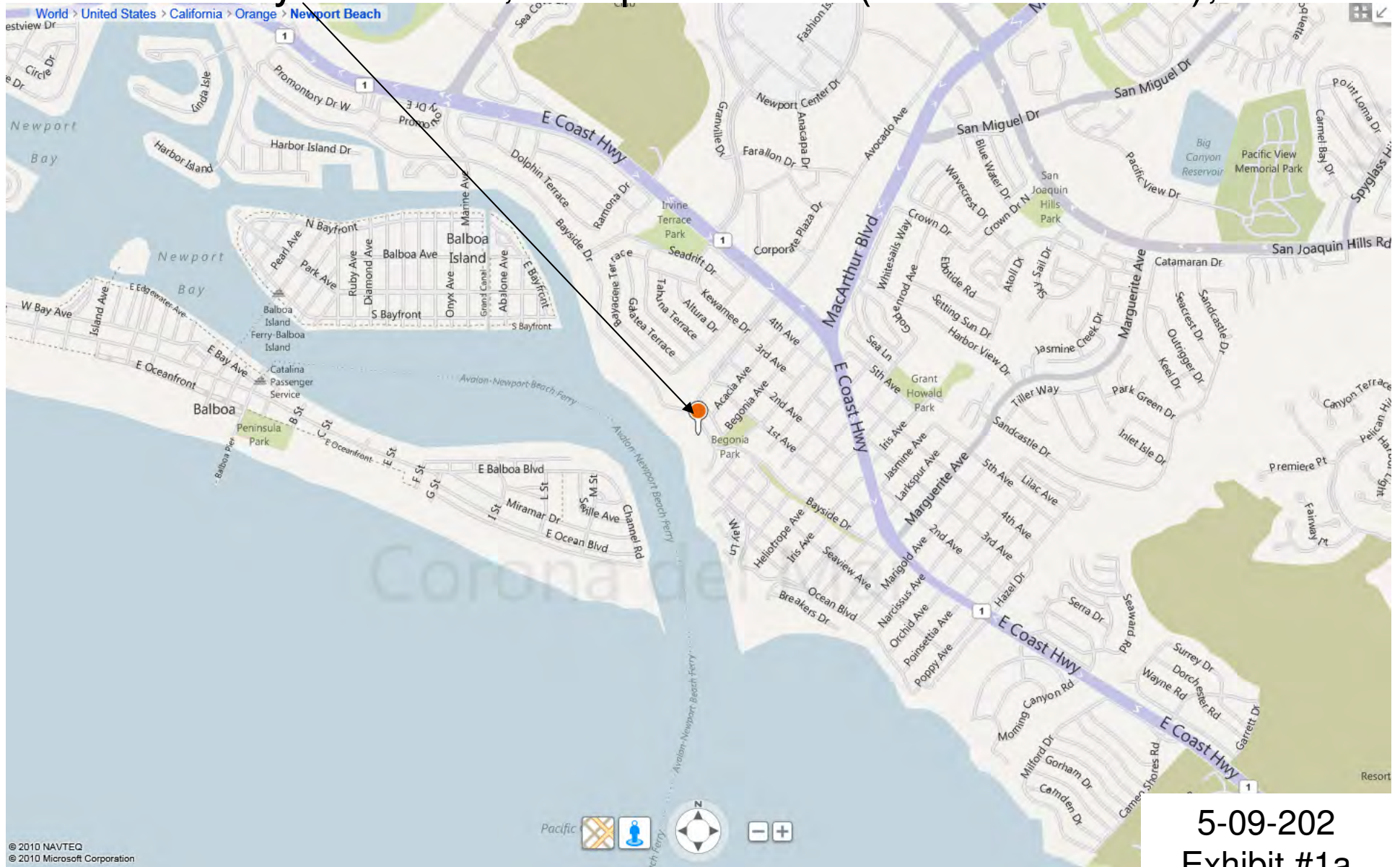
The City of Newport Beach Harbor Resources Division is the lead agency responsible for certifying that the proposed project is in conformance with the California Environmentally Quality Act (CEQA). The City determined that in accordance with CEQA, the project is Categorically Exempt from Provisions of CEQA for the construction. Section 13096(a) of the Commission's administrative 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).

Although the proposed development is categorically exempt from CEQA, the Commission has imposed conditions to ensure conformity with Coastal Act requirements, as follows: 1) redesign of the bulkhead/seawall to be in alignment with the adjacent bulkhead/seawalls; 2) obtain all other

public agency approvals that may be required; 3) conformance with geotechnical recommendations; 4) assumption of risk; 5) future development; 6) no future seaward extension of shoreline protection device; 7) construction responsibilities and debris removal; 8) submittal of a construction access and staging plan; 9) monitoring to prevent harmful debris; 10) provisions for use of alternative materials if the proposed material is found to be harmful to the environment, 11) bird strike prevention measures, and 12) a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

Therefore, as conditioned, the Commission finds that 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 consistent with the requirements of the Coastal Act and CEQA.

2301 Bayside Drive, Newport Beach (Corona del Mar), CA

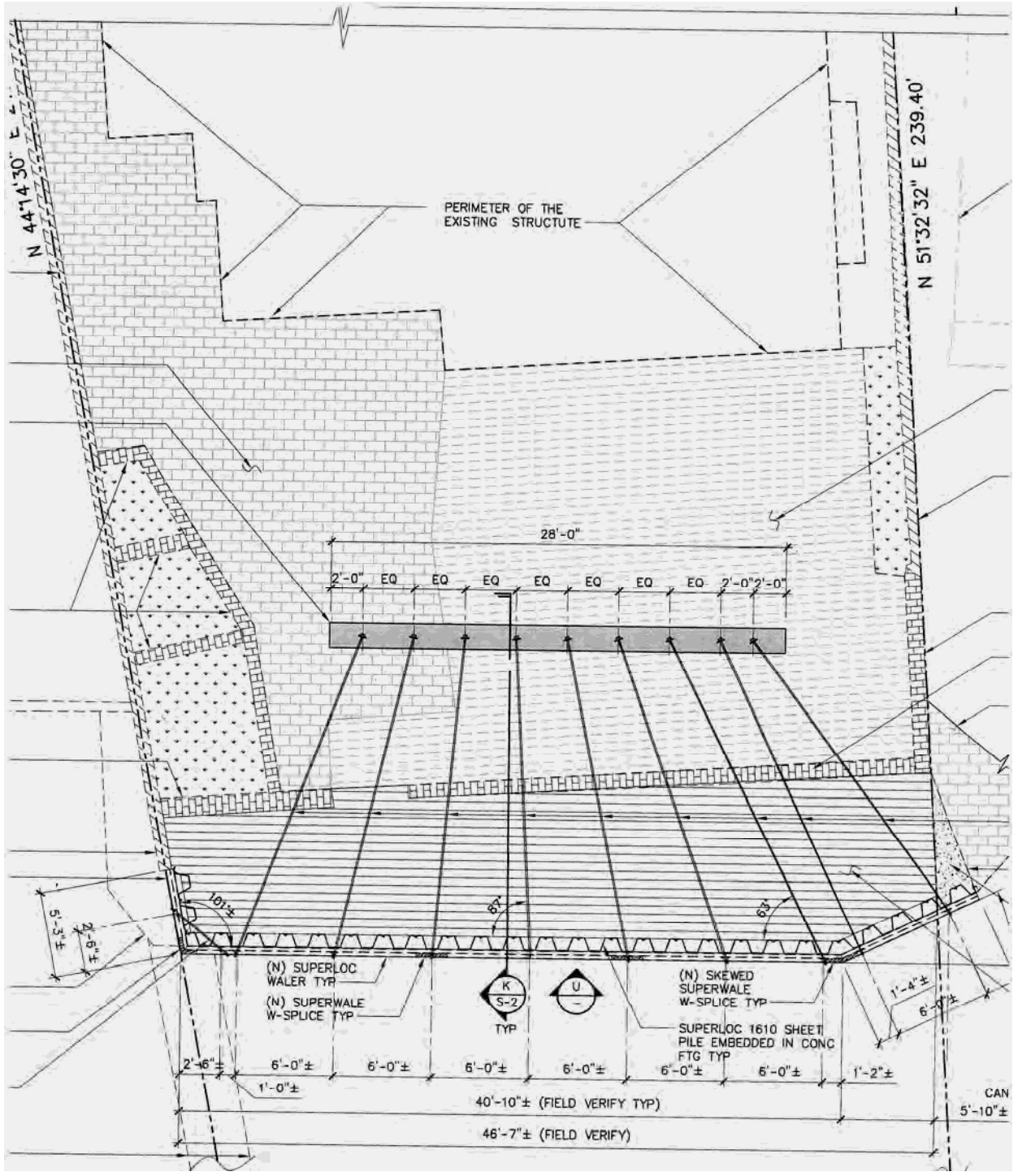


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Exhibit #1a

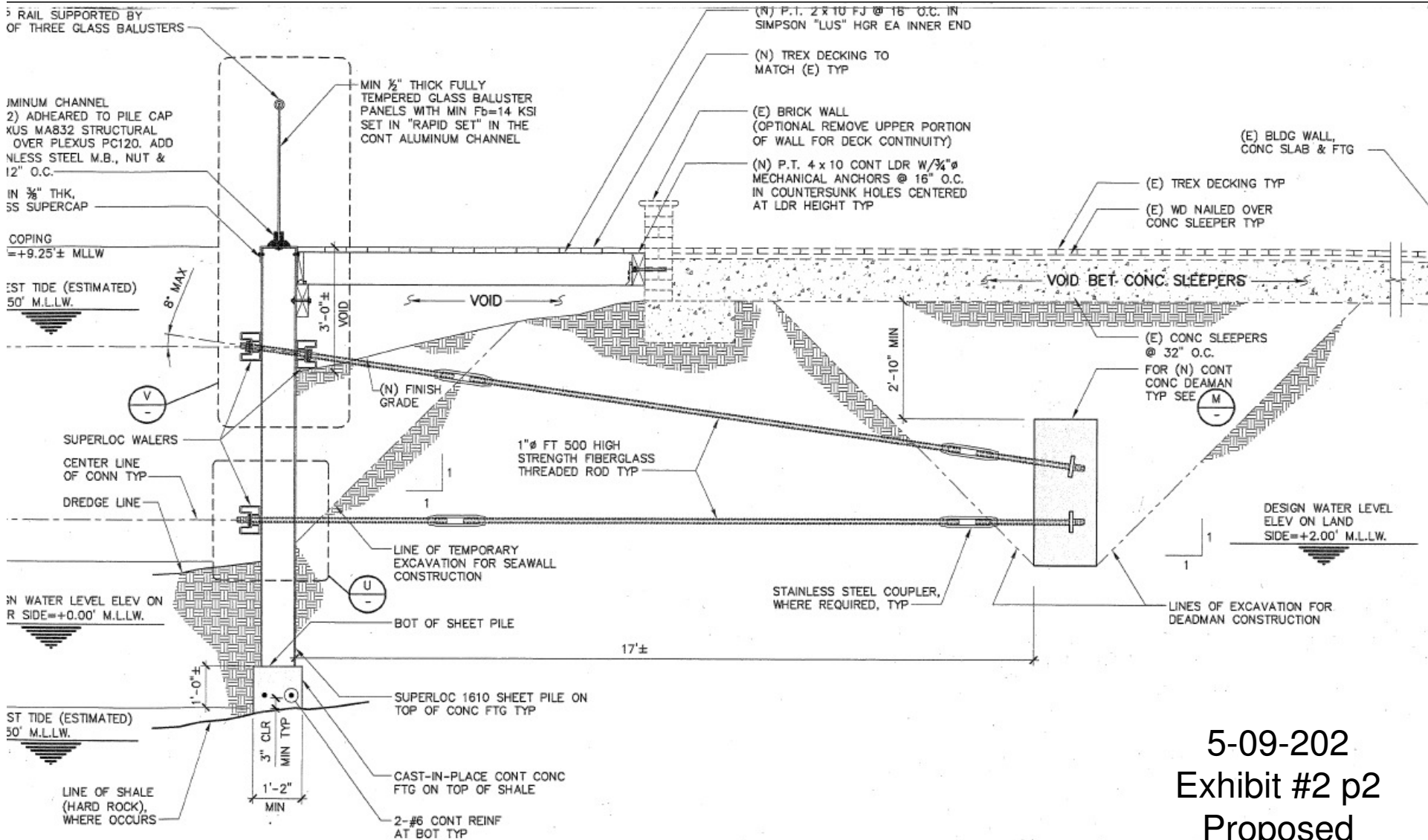
2301 Bayside Drive, Newport Beach (Corona del Mar), CA



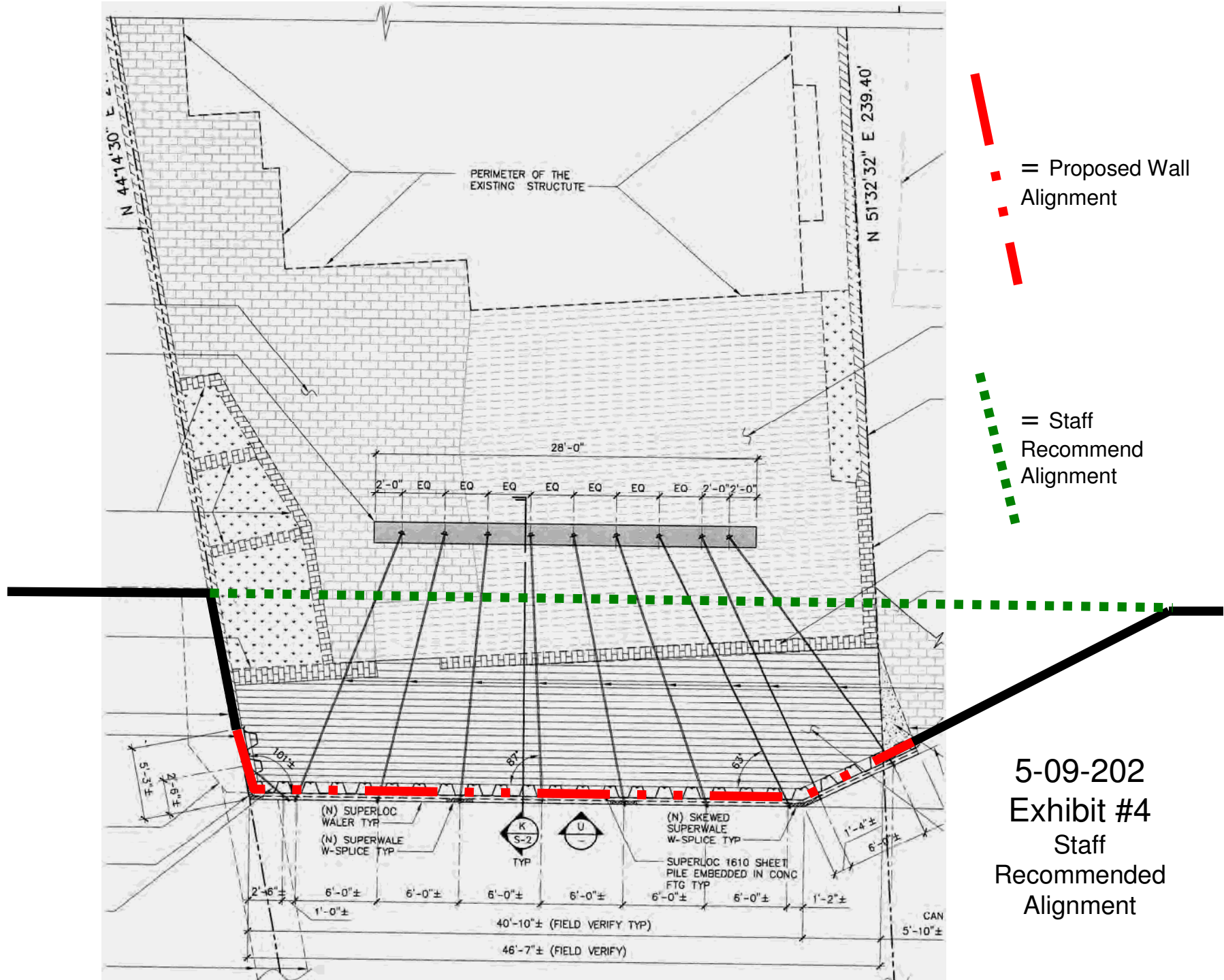
5-09-202
Exhibit #1b



5-09-202
 Exhibit #2 p1
 Proposed
 Project



5-09-202
Exhibit #2 p2
Proposed
Project



5-09-202
Exhibit #4
Staff
Recommended
Alignment