CALIFORNIA COASTAL COMMISSION

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 Staff:
 M. Revell-LB

 Staff Report:
 9/15/16

 Hearing Date:
 10/06/16

STAFF REPORT: CONSENT CALENDAR

Application No.: 5-16-0321

Applicant: Barry Aronoff

Agent: Brandon Architects, Inc.

Location: 1212 E. Balboa Boulevard, City of Newport Beach (County of

Orange)

APN: 048-161-40

Project Description: Demolition of an existing single-family residence and

construction of a new 3,343 square foot, three-story, single-family residence with an attached 545 square foot three-car

garage on a bay-fronting lot.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The applicant is proposing the demolition of an existing single-family residence and construction of a new single-family residence on a bay-fronting lot. The major issues raised by this proposed development concern bay-front development that could be affected by waves, erosion, storm conditions, sea level rise or other natural hazards in the future and potential adverse impacts from beach encroachments.

Due to its bay-front location, the project site may be potentially exposed to the hazard of waves, erosion, storm conditions, sea level rise or other natural hazards. However, the project is consistent with previous Commission approvals in the area and conditions have been imposed in order to minimize potential adverse impacts from the development consistent with Coastal Act.

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Staff is recommending <u>approval</u> of the proposed project with Seven Special Conditions regarding: 1) final revised plans; 2) assumption of risk, waiver of liability and indemnity; 3) future development; 4) storage of construction materials, mechanized equipment, and removal of construction debris; 5) conformance with the drainage and run-off control plans; and 6) public rights; and 7) a deed restriction against the property, referencing all of the Special Conditions contained in this staff report;

I. MOTION AND RESOLUTION

Motion: I move that the Commission approve the Coastal Development Permit applications included on the consent calendar in accordance with the staff recommendations.

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

Resolution:

The Commission hereby approves a Coastal Development Permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

- 1. **Notice of Receipt and Acknowledgment**. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. **Expiration**. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. **Interpretation**. Any questions of intent or interpretation of any condition will be resolved by

the Executive Director or the Commission.

- 4. **Assignment**. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. **Terms and Conditions Run with the Land**. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Final Plans and Sea Level Rise Adaptation Measures. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, two (2) sets of final plans. The final project plans shall incorporate the following: 1) the perimeter of the foundation and hardscape shall be at a minimum elevation of 9.5 feet NAVD88 to accommodate a rise in sea level; and 2) plans and accompanying analysis of potential adaptation measures to minimize hazards to life and property from potential flooding from sea level rise (up to 5.5 feet) including but not limited to, flood proofing the first floor, elevating the structure, sand bags and, if the site is flooded regularly during routine high tides, possibly converting the lowest building level to non-habitable uses. The final project plans shall be in substantial conformance with the plans received by our office on April 7, 2016. The revised plans submitted to the Executive Director shall bear evidence of Approval-in-Concept of the revised design from the City of Newport Beach Community Development Department.

The applicant 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 legally required.

- 2. 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 waves, erosion, storm conditions, liquefaction, flooding, and sea level rise; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- **3. Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-16-0321. Pursuant to Title 14 California Code of Regulations

Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-16-0321. Accordingly, any future improvements to the residence and garage, foundations and patio 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. 5-16-0321 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

4. Storage of Construction Materials, Mechanized Equipment and Removal of Construction **Debris.** The permittee shall comply with the following construction-related requirements:

A. No demolition or construction materials, debris, or waste shall be placed or stored where

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

- contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and
- M. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.
- **5.** Conformance with the Grading/Drainage and Runoff Control Plan. The applicant shall conform with the *Grading/Drainage and Run-Off Control Plan* received April 7, 2016 showing roof top and surface drainage directed to an infiltration trench. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
- **6. Public Rights.** The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The applicant shall not use this permit as evidence of a waiver of any public rights that may exist on the property.
- 7. 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) 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

The project site is a 5,190 square-foot bay-front lot located at 1212 East Balboa Blvd., within the City of Newport Beach, Orange County (**Exhibit 1**). The applicant is proposing to demolish an existing single-family residence and construct a 29' high, three-story, approximately 3,343 square-foot single-family residence with an attached 545 square-foot, two-car garage (**Exhibit 2**). The City of Newport Beach Land Use Plan (LUP) designates the site as Single-Unit Residential (R-1) and the proposed project adheres to this designation. The project is located in an existing developed residential neighborhood. To the north of the subject site is Newport Harbor, to the east and west of the subject site are similar single-family residences, to the south of the subject site is East Balboa Blvd. The project is located within an existing urban residential area, located generally east of the Newport Pier. The harborside boundary line separates private property from Public Trust Tidelands

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created through an adjudicated line, established through a 1928 judgment rendered in action No. 23678 in the Superior Court of the State of California in and for the County of Orange. Currently, there is an existing wooden bulkhead/seawall bayward of the proposed residence, but within the applicant's private property. The property also includes an existing dock and deck, which will remain protected in place, and no work is proposed to the seawall.

Due to its bay-front location, the project site may be potentially exposed to the hazard of waves, erosion, storm conditions, sea level rise or other natural hazards. The plans for the proposed project show that the finished floor elevation of the residence will be at 9.0 feet. The project has been designed to be above the maximum highest high tide elevation of 7.2 feet NAVD88 and above the City of Newport Beach design flood height of +9.0 feet NAVD88. While the finished floor will be at 9.00 feet, 1.8 feet above the maximum highest high tide elevation, the proposed development has not been designed for a 3 foot rise in sea level which is the National Research Council's projection for Los Angeles for the year 2100. A 3 foot rise in sea level would result in still water level of 10.2 feet NAVD88 (7.2 feet NAVD88 + 3 feet = 10.2 feet NAVD88). Additionally, the proposed finished floor would also be below the upper range (maximum) of sea level rise projections by 2100, which based on the 2012 National Research Council Report, is 5.5 feet. If there were to be 5.5 feet of sea level rise, an extreme high tide water level of 12.70 feet (7.2 feet + 5.5 feet + 12.70 feet MLLW) would flood the entire site and even an average high tide could exceed the elevation of the proposed finished floor elevation.

In an attempt to minimize risks to life and property from sea level rise-related flood hazards, the applicant has proposed to construct a 6 inch curb or stem wall around the outside perimeter of the foundation, thereby raising the perimeter of the foundation to 9.5 ft. This design measure should be sufficient to minimize flood risks from a low to moderate amount of sea level rise. To ensure final plans incorporate the 6 inch curb or stem wall, **Special Condition 1** requires the applicant to submit revised final plans that incorporate the perimeter of the foundation and hardscape to be at a minimum elevation of 9.5 feet NAVD88 to accommodate a rise in sea level, and that show that the development is waterproofed up to a 9.5-foot elevation. Waterproofing the development up to 9.5 feet will provide additional protection against flooding should actual flood elevation exceed the anticipated 9 feet. **Special Condition 1** also requires the applicant identify adaptation measures to deal with potential flooding in the event that the foundation is overtopped. Such adaptation may not result in the installation of or reliance upon shoreline armoring. Acceptable adaptation options could include implementing measures such as flood proofing the first floor, elevating the structure, temporary barriers such as sand bagging, converting the lower floor to non-habitable uses, etc. In the future, other flood-reduction options may have been developed; however it is important to demonstrate now that there are options other than shoreline armoring for future adaptation. Also, **Special Condition 2** requires the applicant to accept responsibility for all hazards associated with coastal development. Special Condition 3 requires the applicant to apply for an additional Coastal Development Permit for any future improvements to the residence.

The proposed site drainage system is designed to treat and partially retain runoff via an infiltration trench prior to discharge, and all impervious roof and hardscape areas will also be directed into deck drains and gravity flow to the infiltration trench. Adequate water quality measures have been addressed through **Special Conditions 4 & 5**, which require the applicant to observe water quality

BMPs during construction and to conform to the drainage plans submitted April 7, 2015. The proposed development also incorporates water and energy conservation measures consistent with the 2013 California Green Building Code Standards.

Public Trust Tidelands are located bayward of the subject site. The proposed project does not involve any development on Public Trust Tidelands. As conditioned, the proposed development will not impact public access to or along the Public Tidelands. To preserve and maintain access to the Public Trust Tidelands, **Special Condition 6** is imposed stating that the approval of a coastal development permit for the project does not waive any public rights or interest that exist or may exist on the property.

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 7**, which requires 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.

As conditioned, the proposed development will not result in adverse impacts on coastal resources, public recreation or coastal views. The proposed development will not prejudice the City's ability to prepare a certified Local Coastal Program and is consistent with the designation in the City's certified LUP, past Commission action in the area and Chapter 3 policies of the Coastal Act.

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 Coastal 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 Coastal Land Use Plan may be used for guidance.

B. HAZARDS

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

C. DEVELOPMENT

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future

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development of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission finds that a future improvements special condition be imposed. As conditioned the development conforms with the Chapter 3 policies of the Coastal Act.

D. PUBLIC ACCESS

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, as proposed the development, as conditioned, conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

E. WATER QUALITY

The proposed development has a potential for a discharge of polluted run-off from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, reducing run-off through the use of permeable surfaces, the use of non-invasive drought tolerant vegetation to reduce and treat the run-off discharged from the site, and for the use of post-construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

F. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes one additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, 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.

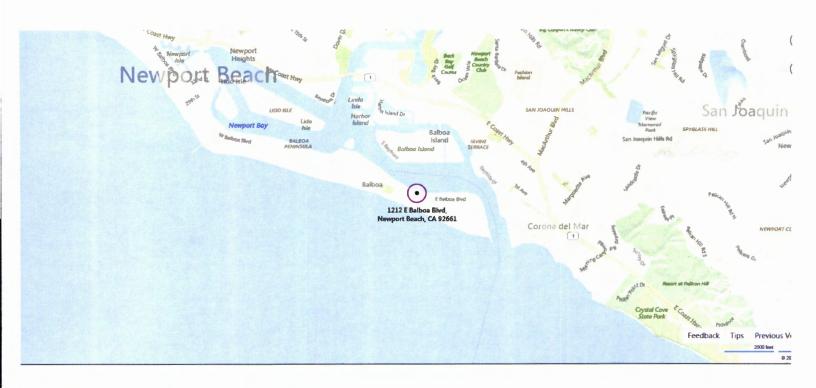
G. LOCAL COASTAL PROGRAM (LCP)

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





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