

**CALIFORNIA COASTAL COMMISSION**

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# F8a

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## STAFF REPORT: CONSENT CALENDAR

**Application No.:** 5-16-0298

**Applicants:** Enrico & Patricia Arvielo

**Agent:** Geoff Sumich

**Location:** 3100 Breakers Drive, City of Newport Beach (County of Orange)

**Project Description:** Demolition of a three-story duplex and construction of a new four-level, 6,366 square foot, duplex with a subterranean 498 square foot, four-car garage on a bluff face lot.

**Staff Recommendation:** Approval with conditions.

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## SUMMARY OF STAFF RECOMMENDATION

The applicants are proposing the demolition of an existing duplex and construction of a duplex on a bluff face lot that is also located inland of a public beach parking lot for Corona Del Mar State Beach and the beach. The major issues raised by this proposed development concern bluff and beachfront development that could be affected by waves, erosion, storm conditions, sea level rise or other natural hazards in the future. In addition, the proposed development raises water quality and scenic resources issues. 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 the City's certified LCP and the public access and recreation policies of the Coastal Act.

Staff is recommending **approval** of the proposed project with Nine (9) Special Conditions regarding: 1) no future shoreline protective device; 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 runoff control plan; 6)

landscape controls; 7) submittal of a pool protection plan; 8) submittal of a bird strike prevention plan; and 9) a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

An LCP for the City of Newport Beach was effectively certified on January 13, 2017. The landward side of the development is now within the City's LCP jurisdiction; however, since the subject coastal development permit application was submitted to the Commission prior to effective certification of the City's LCP, the Commission continues to act as the permitting authority for the coastal development permit application. The standard of review for the proposed development is the City's certified LCP. In addition, since the proposed project is located between the sea and the first public road, the development must also conform to the public access and recreation policies of the Coastal Act.

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### **EXHIBITS**

[Exhibit No. 1 – Location Map](#)

[Exhibit No. 2 – Site Plan](#)

[Exhibit No. 3 – Floor Plans](#)

[Exhibit No. 4 – Elevation Plans](#)

## I. MOTION AND RESOLUTION

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

Staff recommends a **YES** vote. Passage of this motion will result in approval of all 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 certified Local Coastal Program and the public access and recreation policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

## II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

#### 1. No Future Shoreline Protective Device.

- A. By acceptance of this Permit, the applicants agree, on behalf of themselves and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No.5-16-0298 including, but not limited to, the residence, garage, and driveway including in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, bluff retreat, landslides, or other coastal hazards in the future, and as may be exacerbated by sea level rise. By acceptance of this Permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under applicable law.
- B. By acceptance of this Permit, the applicants further agree, on behalf of themselves and all successors and assigns, that the landowner shall remove the development authorized by this Permit, including the residence, garage, and driveway, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above, or if any public agency requires the structures to be removed. The approved project may be constructed and used consistent with the terms and conditions of this permit for only as long as it remains safe for occupancy and on private property. If any portion of the development at any time encroaches onto public property, the permittee shall remove the encroaching portion of the development. The permittee shall obtain a coastal development permit for removal of approved development unless the Executive Director provides a written determination that no coastal development permit is legally required

#### 2. Assumption of Risk, Waiver of Liability and Indemnity.

By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards, including but not limited to [modify following list as necessary to address specific case] waves, storms, flooding, landslide, bluff retreat, erosion, and earth movement, many of which will worsen with future sea level rise; (ii) to assume the risks to the permittee 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 (CDP) 5-16-0298. Pursuant to Title 14 California Code of Regulations (CCR) Section 13250(b)(6), the exemptions that would otherwise be provided in Public Resources Code (PRC) Section 30610(a) shall not apply to the development governed by CDP 5-16-0298. Accordingly, any future improvements to this structure authorized by this permit shall require an amendment

to CDP 5-16-0298 from the Commission or shall require an additional CDP from the Commission or from the applicable certified local government. In addition thereto, an amendment to CDP 5-16-0298 from the Commission or an additional CDP from the Commission or from the applicable certified local government shall be required for any repair or maintenance identified as requiring a permit pursuant to PRC Section 30610(d) and Title 14 CCR Sections 13252(a)-(b).

**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 applicants 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.
- N. During construction of the project, no runoff, site drainage or dewatering shall be directed from the site into any street, alley or stormdrain, unless specifically authorized by the California Regional Water Quality Control Board.

- 5. Conformance with Drainage and Run-Off Control Plan.** The applicants shall conform with the drainage and run-off control plan dated November 10, 2016 showing roof drainage and runoff from all impervious areas directed to bioretention planters and trench drain. 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. Landscaping-Drought Tolerant, Non-Invasive Plants.** Vegetated landscaped areas shall only consist of native drought tolerant non-invasive plant species native to coastal Orange County and appropriate to the habitat type. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>). Use of reclaimed water for irrigation is encouraged. If potable water is used for irrigation only drip or micro spray irrigation systems may be used. Other water conservation measures shall also be considered, such as use of weather based irrigation controllers.
- 7. Pool Protection Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for the Executive Director's review and approval, two (2) full size sets of a pool protection plan prepared by an appropriately licensed professional that incorporates mitigation of the potential for geologic instability caused by leakage from the proposed pool. The pool protection plans shall incorporate and identify on the plans the follow measures, at a minimum: 1) installation of a pool leak detection system such as, but not limited to, leak detection system/moisture sensor with alarm and/or a separate water meter for the pool which is separate from the water meter for the house to allow for the monitoring of water usage for the pool, and 2) use of materials and pool design features, such as but not limited to, double linings, plastic linings or specially treated cement, to be used to waterproof the undersides of the pool to prevent leakage, along with information regarding the past and/or anticipated success of these materials in preventing leakage; and where feasible 3) installation of a sub drain or other equivalent drainage system under the spa that conveys any water leakage to an appropriate drainage outlet. The applicants shall comply with the pool protection plans approved by the Executive Director.

The permittees 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.

- 8. Bird Strike Prevention.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for the review and approval of the Executive Director, two (2) sets of revised project plans showing the location, design, height and materials of glass railings, fences, screen walls and gates. Said plans shall reflect the requirements of this special condition. Beachfront glass railings, screen walls, fences and gates subject to this permit shall use materials designed to minimize bird-strikes with the railing, screen wall, fence, or gate. 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 specially designed to reduce bird-strikes by reducing reflectivity and transparency is also used. Any coating or shall be installed to provide coverage consistent with manufacturer specifications and the recommendations of the Executive Director. All materials and coatings 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.
- 9. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the landowners have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

## IV. FINDINGS AND DECLARATIONS

### A. PROJECT DESCRIPTION

The applicants propose to demolish a three-story duplex and construct a new four-level, 6,366 square foot, duplex with a partial basement and a subterranean 498 square foot, four-car garage on a bluff face lot ([Exhibits No. 2-4](#)). The project includes retaining walls, hardscape, a front yard water feature and a roof top deck with a pool. Grading will consist of 2,766 cubic yards of cut and export to a location outside of the Coastal Zone. The new residence will be located at the base of the bluff and then extends up the bluff face. The new residence will not exceed 29-feet high, as measured from the street. The foundation will consist of footings and a mat slab and will also include a shoring system consisting of a permanent soldier pile/tie back shotcrete wall system.

The subject site 3100 Breakers Drive is located in a gated community within the Corona del Mar area of the City of Newport Beach, Orange County ([Exhibit No. 1](#)). Currently, an existing duplex occupies the project site. The lot size is 5,954 square feet and the City of Newport Beach's certified LCP designates the site as Two Unit Residential (RT) and the proposed project adheres to this designation. The subject site is located at the base of the coastal bluff and extends up the coastal bluff to the 52-foot contour. As required by the City's certified LCP, no development is allowed above the 52-foot contour.

To the north of the project site at the top of the coastal bluff is Ocean Boulevard; while to the south of the project site at the base of the bluff are Breakers Drive and a 230-foot wide, 572 space public parking lot for Corona del Mar State Beach, and then a 270-foot wide sandy public beach. To the east and west of the project site are existing residences built into and along the coastal bluff. The nearest public roadway is the Corona del Mar State Beach public access roadway (also referred to as Iris Avenue) that leads to the public parking lot seaward of the project site. Corona del Mar State Beach provides public access and recreational opportunities. There is no public vehicular or pedestrian access within the gated community. The proposed development would not interfere with public access to or use of the public beach. Upon completion of the project, the development will remain as a duplex. Four parking spaces are provided in the garage, accessed from Breakers Drive. Thus, the proposed development would provide adequate parking consistent with the City's certified LCP.

Due to its oceanfront location, the project site may be potentially exposed to the hazard of waves, erosion, storm conditions, sea level rise or other natural hazards. To analyze the suitability of the site for the proposed development relative to potential hazards from sea level rise, erosion, wave attack, flooding and other coastal hazards, Commission staff requested the preparation of a hazards analysis, prepared by an appropriately licensed professional (e.g. coastal engineer). The purpose of this analysis is to determine the potential for future storm damage and any possible mitigation measures, which could be incorporated into the project design.

The applicants have submitted the following coastal hazard investigation: *Coastal Hazard and Wave Runup Study, 3100 Breakers Drive, Corona Del Mar, California* prepared by *Geosoils, Inc.* dated May 27, 2016. The study states that there is a relatively wide beach, 270-foot wide, in front of

the property. The beach is held in place by the east jetty at the entrance to Newport Bay and the rocky headland to the east. Furthermore, landward of the beach is a 230-foot wide parking lot and then Breakers Drive which fronts the project site, resulting in the project site being approximately 600 feet from the most landward mean high tide line.

Based on sea level rise projections from the National Research Council (NRC) 2012 report, sea levels may rise between 1.25-feet to 4.75-feet by the year 2092 (75 years). If there were to be a 4.75 foot rise (the upper range of the NRC projections for southern California), an extreme high tide still water level of +12.25 feet NAVD88 (+7.50 feet MLLW + 4.75 feet = +12.25 feet NAVD88) could result. Such a rise would not exceed the finished first floor elevation, but it would exceed the garage finished floor elevation by +.25-feet and the basement finished floor elevation by only minimally by +3.5-feet during peak tide or tide and wave events. Therefore, the proposed development may be impacted by future flooding hazards if sea level rise approaches the upper range of the NRC projections.

While the analyses provide these scenarios that would result in flooding of the site from sea level rise, the analysis also investigated wave overtopping in conjunction with these sea level rise scenarios. The analysis determined that over the project design life (75 years) that the estimated sea level rise for the year 2092 would be 1.25 feet (minimum) and 4.75 feet (maximum). Taking into consideration the maximum sea level rise of 4.75 feet into the calculated overtopping rate, the analysis determined that the 270-foot wide beach and the presence of the 230-foot wide parking lot at the back of the beach will prevent wave runoff from reaching the site.

The analysis also evaluated the impact of sea level rise on groundwater that may impact the basement and foundation. To mitigate groundwater issues, the analysis recommends that any development below grade be properly waterproofed. The applicants have proposed that the basement and garage floor and walls be designed as watertight to elevation +18.00NAVD88.

The proposed project was analyzed to determine if it will be impacted by sea level rise and based upon the analysis above it has been determined that no future shoreline protective device for the proposed residence is necessary. Additionally, the impact of sea level rise on groundwater levels in Newport Beach has recently been the subject of some concern due to the high groundwater levels in the coastal areas of the City. The applicants' study concludes that the raised groundwater level will not adversely impact the structure, because the development will be waterproofed.

Although the applicants' reports indicate that the site is safe for development at this time, beach areas are dynamic environments and may be subject to unforeseen changes. Such changes may affect beach processes. To minimize the project's potential future impact on shoreline processes, the Commission imposes [\*\*Special Condition No. 1\*\*](#), which prohibits construction of any future shoreline protective device(s) to protect the development approved pursuant to Coastal Development Permit No. 5-16-0298 including, but not limited to the residence, garage and driveway and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, flooding, sea level rise or other natural coastal hazards in the future. Although no shoreline protection is necessary, the proposed development is located in an area where coastal hazards exist and can adversely impact the development.

Therefore, the Commission imposes [Special Condition No. 2](#), which require the applicants to assume the risk of development.

Since coastal processes are dynamic and structural development may alter the natural environment, future development adjacent to the beach could adversely affect future shoreline conditions if not properly evaluated and potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. In order to ensure that development on the site does not occur which could potentially result in adverse impacts to coastal processes, the Commission imposes [Special Condition No. 3](#), which informs the applicants that future development at the site requires an amendment to Coastal Development Permit No. 5-16-0298 or a new coastal development permit.

The proposed project is considered development and there is an opportunity to improve water quality. To minimize erosion and prevent debris from being dispersed down the storm drain system leading to the ocean during construction, the Commission imposes [Special Condition No. 4](#), which provides construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris.

The applicants have submitted a drainage and runoff control plan that minimizes impacts to water quality the proposed project may have after construction. On-site drainage will be collected by a system of roof gutters, downspouts and drain inlets and directed to a bioretention planters located along the side yard property lines near the front and rear of the property and a trench drain in the garage. In order to ensure that the drainage and runoff control plan is adhered to, the Commission imposes [Special Condition No. 5](#), which require the applicants to conform with the drainage and runoff control plan and to adequately maintain it throughout the life of the proposed development.

Currently, no landscaping is being proposed. If it were proposed in the future, the placement of any vegetation that is considered to be invasive which could supplant native vegetation should not be allowed and water-efficient practices should be followed. Therefore in order to minimize the use of water and the spread of invasive vegetation, the Commission imposes [Special Condition No. 6](#), which imposes landscape controls that require that all vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive.

The applicants have stated that they shall also comply with the applicable water efficiency and conservation measures of the City's adopted CALGreen standards concerning irrigation systems, and efficient fixtures and appliances.

The applicants are proposing a roof top pool and in order to prevent possible bluff instability caused by water saturated slopes from any potential leaking of the pool, the applicants have stated that the pool will be made of steel material instead of concrete and will have a separate water meter, and permanent leak detection system. While the applicants have proposed these measures, plans have not yet been submitted. Therefore, the Commission imposes [Special Condition No. 7](#), which requires the submittal of a pool protection plan.

In the Corona del Mar community, there has been a significant concern about development taking place that results in adverse impacts to public visual resources and the landform. Impacts to the

public coastal views from Ocean Boulevard, the public street located above the subject site, and significant adverse visual impacts to those public coastal views resulting from bluff top and bluff face development for the residential sites that are located along Breakers Drive and from the public beach have necessitated policies and action by the Commission to preserve public visual resources and the landform. As a result, LCP policies have been developed and the Commission has taken actions on projects that would protect and enhance public visual resources along the coastal bluff and beach area. One such policy has been the establishment of a development limit line for bluff face development, which in this area is demarcated by the 52-foot contour line. As proposed the project is consistent with this LCP policy.

Due to the beachfront location of the proposed development and frequent bird activity in the area, there is a substantial risk of bird strikes. Clear 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. 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.). The proposed project contains a beachfront 2<sup>nd</sup> floor deck glass railing that may have adverse impacts upon birds. Therefore in order to minimize adverse impacts to birds, the Commission imposes [Special Condition No. 8](#), which requires the applicants to submit revised project plans that identify the location, design, height and materials of glass railings, fences, screen walls and gates and what materials will be used in conjunction with them to minimize bird-strikes.

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. 9](#), which requires the property owner to 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.

## **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 the certified City of Newport Beach LCP and Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

### **C. DEVELOPMENT**

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. 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 Commission finds that the development conforms to the requirements of the certified City of Newport Beach LCP and 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. As conditioned, the Commission finds that the development conforms with the requirements of the certified City of Newport Beach LCP and 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. As conditioned, the Commission finds that the development conforms with the requirements of the certified City of Newport Beach LCP and 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)**

An LCP for the City of Newport Beach was effectively certified on January 13, 2017. As conditioned, the proposed development is consistent with the City of Newport Beach's certified

Local Coastal Program, and the public access and recreation policies of Chapter 3 of the Coastal Act.

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

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

## **APPENDIX A: SUBSTANTIVE FILE DOCUMENTS**

Approval-In-Concept from the City of Newport Beach Planning Department dated January 28, 2016; *Geotechnical and Geologic Investigation of Proposed New Residence at 3100 Breakers Drive Newport Beach, California (W.O. 498415-01)* prepared by Coast Geotechnical, Inc. dated March 28, 2016; Letter from Commission staff to agent dated May 29, 2016; Letter from agent to Commission staff received August 24, 2016; *Coastal Hazard and Wave Runup Study, 3100 Breakers Drive, Corona Del Mar, California* prepared by Geosoils, Inc. dated May 27, 2016; Letter from Foothill Engineering and Dewatering Inc. dated June 27, 2016; Letter from Commission staff to agent dated September 19, 2016; Letter from agent to Commission staff received August 24, 2016; and Letters from Toal Engineering, Inc. to Commission staff dated November 7, 2016 and November 14, 2016.