

**CALIFORNIA COASTAL COMMISSION**

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**F8c**

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Staff: L. Roman-LB  
Staff Report: 4/20/2017  
Hearing Date: 5/12/2017

**STAFF REPORT: CONSENT CALENDAR**

**Application No.:** 5-16-0681

**Applicant:** Janet Curci Family Trust

**Agents:** Tim Johnson, TJ Consulting  
Lisa Miller, Shellmaker Inc.

**Location:** 225 Via Lido Soud, Newport Beach, Orange County  
(APN 423-141-02)

**Project Description:** Demolition of a single-story, single-family residence with attached two-car garage, and construction of a two-story 24-ft. tall, 5,150 sq. ft. single family residence including attached three-car garage, hardscape/drainage improvements, pool landscaping, and bulkhead/seawall repairs consisting of reinforcing the existing concrete panel seawall utilizing new tie-backs, construct a new 4' tall cast-in place wall on top of new 3' coping over seawall panels, new top of seawall railing, and repair of existing seawall panel cracks.

**Staff Recommendation:** Approval with conditions

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**SUMMARY OF STAFF RECOMMENDATION:**

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

The applicant is proposing to demolish an existing single family residence and construct a new single family residence on a bay-front site with an existing bulkhead. Bulkhead repairs are also proposed consisting of reinforcing the existing seawall with new tie-backs, construct a new cast-in place wall on top of seawall coping thereby increasing the height of the seawall by 14 in. and repairing existing cracks

Due to its bay-front location, the project site may be exposed to the hazards of waves, 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 and be consistent with the certified LCP.

Staff is recommending **approval** of the proposed project with seven (7) special conditions regarding: **1) assumption of risk, waiver of liability and indemnity; 2) no future seaward extension of shoreline protective devices; 3) future development; 4) conformance with the drainage and run-off control plans; 5) storage of construction materials, mechanized equipment, and removal of construction debris; 6) landscaping; and 7) a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.**

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### **APPENDICES**

[Appendix A - Substantive File Documents](#)

### **EXHIBITS**

[Exhibit 1 – Vicinity/Area Maps](#)

[Exhibit 2 – Site Survey](#)

[Exhibit 3 – Single Family Residence Plans](#)

[Exhibit 4 – Bulkhead/Seawall Repair Plans](#)

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.*

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

### Resolution:

*The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the Local Coastal Program conforming to the provisions of Chapter 3, and the public access and recreation policies of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

## II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the 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.
2. **No Future Expansion to Existing Shoreline Protective Device.**
  - A. By acceptance of this Permit, the applicant agrees, on behalf of itself (or himself or herself or themselves, as applicable) and all successors and assigns, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device that is the subject of Coastal Development Permit No. 5-16-0681, 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. By acceptance of this Permit, the applicant waives, on behalf of itself (or himself or herself or themselves, 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 that is the subject of Coastal Development Permit No. 5-16-0681, as generally described in this staff report and shown on [Exhibit 3](#) attached to this staff report, showing the footprint and the elevation of the device referenced to NAVD (North American Vertical Datum).
3. **Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-16-0681. 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. 5-16-0681. Accordingly, any future improvements to the residence and garage, foundations, patio, and bulkhead 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. 5-16-0681 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.

M. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

5. **Conformance with Drainage and Run-Off Control Plan.** The applicant shall conform with the preliminary grading and drainage plan by Toal Engineering dated 6/17/16 and received in this office on July 29, 2016 showing roof downspouts and runoff from all impervious areas directed to vegetated swales along the property's side yards. 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 plants or non-native drought tolerant plants, which are non-invasive. 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>).
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 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 LOCATION & DESCRIPTION

The proposed project is located on a 3,500 sq. ft. bay-front lot at 225 Via Lido Soud, Lido Isle in the City of Newport Beach, County of Orange ([Exhibit #1](#)). The site is designated as R-1, Single-Unit Residential in the City of Newport Beach LCP and the proposed use conforms to this

designation. Vertical public access to the bay is available approximately 600 feet south of the project site at the Via Firenze street end with Via Lido Soud. Lateral access along the seaward side of the bulkhead is only available during low tide.

The project site is located in a residential area where the homes fronting Newport Bay are located on lots with bulkheads. Site conditions on the bayward side of the site include an existing bulkhead, pier and dock. The applicant proposes to demolish a single-story, single-family residence with an attached two-car garage and construct a two-story, approximately 5,142 sq. ft. single-family home including an attached 3-car garage. New hardscape, pool and on-site drainage system to minimize runoff from the site is proposed. Plans for the proposed new residence are included as [Exhibit #3](#). The applicant is also proposing to raise the grade on the site; and repair, reinforce and increase the height of an existing bulkhead/seawall protecting the existing residence. Bulkhead repair plans are included as [Exhibit #4](#) of this staff report. No work is proposed to the existing dock or pier.

The applicant is proposing water quality improvements as part of the proposed project, including directing roof downspouts and surface runoff to vegetated swales along the side yards. All plants used in landscaping will be non-invasive and drought tolerant. The placement of vegetation that is considered to be invasive which could supplant native vegetation is not permitted. Invasive plants have the potential to overcome native plants and spread quickly. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.caleppc.org/>) and the California Native Plant Society ([www.CNPS.org](http://www.CNPS.org)) in their publications. Furthermore, any plants in the landscaping plan should be drought tolerant to minimize the use of water. The term drought tolerant is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>

The Commission has found through previous permit actions in this area that the City's setback for residential structures in this area is acceptable for addressing visual impacts. The proposed residence is consistent with the LCP's 10-foot required setback from the bulkhead. In this case, the bulkhead is also constructed at the seaward property line. The height limit, as set forth in the certified LCP, is 24 feet for flat-roofed structures, and 29 feet for structures with sloped roofs. The proposed structure is designed with a combination flat/sloped roof that is 24 feet high above finished grade (finished grade is proposed at +13.6 feet NAVD88) consistent with the height requirement of the City's certified LCP. Furthermore, the parking requirement for detached single-unit dwellings 4,000 sq. ft. or greater is 3 per unit in a garage. The proposed new residence totals 5,150 sq. ft. gross floor area including a 3-car garage, thus consistent with the parking requirement per the certified LCP.

Presently, there is a 50' long seawall/bulkhead on the bayfront side of the subject property. The elevation/top of seawall is currently +10.84 feet NAVD88, the seawall is 17' tall (6' of which is imbedded below the mudline). The proposed new section of seawall would raise the height to 19'-6" feet, with a new elevation of +13.5 feet NAVD88. The applicant also proposes to increase the existing grade behind the seawall by 2' 6" so that the grade behind the seawall matches the height of the seawall. The increase in height of the seawall/bulkhead is consistent with the heights of seawalls/bulkheads on adjacent lots. The City of Newport Beach Harbor Resources has reviewed and approved the applicant's seawall/bulkhead plans. No seaward encroachment of the reinforced

seawall/bulkhead will occur as a result of the proposed development. As proposed, the section of existing seawall below the mudline and the first approximately 6'-6'' above the mudline will remain in place and simply undergo epoxy injections to repair cracks in the concrete. New concrete coping, concrete stem wall, tie-backs and deadmen are proposed to be constructed from the land side of the seawall. The face of the new stem wall and new coping will align with the face of the existing coping.

The applicant submitted a Coastal Hazard and Wave Runup Study, prepared by William Simpson & Associates, Inc. dated July 18, 2016 which concludes that flooding, waver runup and erosion will not significantly impact the site/overtop the seawall during the 75 year life of the proposed new structure, even after considering the highest estimated sea level rise of 5.5 feet by the year 2100, the highest high water level would be +13.3 feet NAVD88. As previously noted, the applicant proposes to raise the seawall and increase the existing grade behind the seawall to +13.5 feet NAVD88. The lowest habitable finished floor is at or above +13.6 feet NAVD88. The report also concluded that the proposed project is reasonably safe from shoreline erosion due to very low rates of long-term shoreline erosion. Overall, the analysis concludes that the proposed project will be safe from flooding hazards for the next 75 years. **Special Condition #1** acknowledges that building near the coast is inherently hazardous and that the applicant is aware of the risks and **Special Condition #2** requires the applicant to agree that no repair or maintenance, enhancement, reinforcement of the existing shoreline protective device shall be undertaken if such activity extends the footprint seaward of the existing shoreline protective device and requires the applicant provide an exhibit depicting the formal legal property description and graphic depiction of the location of the shoreline protective device.

Additionally, **Special Condition #4** requires construction responsibility and **Special Condition #5** requires adherence to proper drainage plans for the protection of the marine environment. **Special Condition #3** prevents future improvements to the project site without a new permit or permit amendment and **Special Condition #7** requires a deed restriction.

## **B. HAZARDS**

Development adjacent to the ocean is inherently hazardous. Development which may require the seaward extension of a protective device in the future cannot be allowed due to the adverse impacts such devices have upon, among other things, public access, visual resources and shoreline processes. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned to: require an appropriate set-back from the water; require a drainage and runoff control plan to direct, treat, and minimize the flow of water offsite; prohibit the seaward extension 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 City's Certified LCP and 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 the future development of the project site potentially may result in a development which is not consistent with

the Chapter 3 policies of the Coastal Act and the certified LCP. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act and the certified LCP, the Commission finds that a Future Development **Special Condition #3** must be imposed. As conditioned the development conforms to the City of Newport Beach LCP and the public access and recreation policies of the Coastal Act.

#### **D. PUBLIC ACCESS**

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, the proposed development, as conditioned, conforms to the City of Newport Beach certified LCP polices and requirements regarding public access and the public access and recreation policies of the Coastal Act.

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

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment. To reduce the potential for construction related impacts on water quality, the Commission imposes special conditions requiring, but not limited to, the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. To reduce the potential for post-construction impacts to water quality the Commission requires the continued use and maintenance of post construction BMPs. These design features include, but are not limited to, reducing runoff through the use of permeable surfaces, the use of non-invasive drought tolerant vegetation to reduce and treat the runoff 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 to the water quality control policies and requirements of the City of Newport Beach certified LCP regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

#### **F. DEED RESTRICTION**

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition #7** 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, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the land use and enjoyment of the land in connection with the authorized development, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

#### **G. LOCAL COASTAL PROGRAM (LCP)**

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

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

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

## **APPENDIX A - SUBSTANTIVE FILE DOCUMENTS**

City of Newport Beach Certified LCP

City of Newport Beach Approval In Concept dated 7/27/16

City of Newport Beach Harbor Resources Division Harbor Permit # 172-225/Approval in Concept #1634-2016

Coastal Hazards Analysis for Janet Curci Family Trust, 225 Via Lido Soud, Newport Beach, County of Orange, prepared by William Simpson & Associates, Inc. Consulting Structural Engineers dated July 18, 2016