

**CALIFORNIA COASTAL COMMISSION**

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**F8e**

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**STAFF REPORT: CONSENT CALENDAR**

**Application No.:** 5-16-0842

**Applicant:** 410 Viacon LLC, Attn: Jeff Miller

**Agent:** Walt Bushman, Architect

**Location:** 410 Via Lido Nord, Lido Isle, Newport Beach, Orange County (APN 423-181-04)

**Project Description:** Demolition of a two-story single family residence and construction of a 3,494 sq. ft., two-story, 24 ft. tall single family residence including attached two-car garage, minor grading, new hardscape and landscaping proposed on a 2,700 sq. ft. bay-front lot on Lido Isle.

**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 demolition of a two-story single family residence and construction of a new 3,494 sq. ft., two-story, 24 ft. tall single family residence including attached two-car garage, minor grading, new hardscape and landscaping improvements on a bay-front lot. 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 recommends **approval** of the proposed project with **six (6)** special conditions. The special conditions are related to: **1) Conformance with the Grading, Drainage, and Erosion Control Plan; 2) Assumption of Risk, Waiver of Liability and Indemnity; 3) No Future Shoreline Protective Device; 4) Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris; 5) Future Development; and 6) Deed Restriction.**

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### **APPENDICES**

[Appendix A - Substantive File Documents](#)

### **EXHIBITS**

[Exhibit 1 – Location/Vicinity Map](#)

[Exhibit 2 – Topographic and Boundary Survey](#)

[Exhibit 3 – Project 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. **Conformance with the Submitted Drainage and Erosion Control Plan.** By acceptance of this permit the applicant agrees to conform to the Drainage and Erosion Control Plan on file showing roof drainage and runoff from all impervious areas directed to gutters, downspouts, and area drains. Erosion control measures consist of sandbags around the perimeter of the property during the construction phase. 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.
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 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. **No Future Shoreline Protective Device.** By acceptance of this permit, the applicant agrees, on behalf of himself and all other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-16-0842 including, but not limited to, the residence, garage, patio, foundations, and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, sea level rise, or any other coastal hazards in the future. The existing brick wall seaward of the patio near the bay shall not be maintained or repaired without a new coastal development permit. By acceptance of this permit, the applicant hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

By acceptance of this permit, the applicant further agrees, on behalf of himself and all successors and assigns, that the landowner(s) shall remove the development authorized by this permit, including, but not limited to, the residence, garage, patio and foundations if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner(s) shall remove all recoverable debris associated with the

development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

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. **Future Development.** This permit is only for development described in Coastal Development Permit No. 5-16-0842. 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. 5-16-0842. Accordingly, any future improvements to the single-family house 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. 5-16-0842 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

6. **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 applicant 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 the 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 proposed project is located at 410 Via Lido Nord on Lido Isle in the City of Newport Beach, Orange County. The subject property is designated as R-1, Single-Unit Residential in the City's Coastal Zoning Map, part of the City's certified Local Coastal Program. The subject property is a 2,700 sq. ft. bay front lot facing lower Newport Bay harbor and is located in an existing residential area ([Exhibit 1](#)). Vertical and lateral access to the public bay front is available immediately seaward of the lot where there is a paved public walkway and an approximately 20-foot wide public beach with access to the water.

The applicant is proposing to demolish a two-story single family residence with attached two-car garage and construct a new 3,494 sq. ft. two-story single family residence including an attached two-car garage. Minor grading and new hardscape including drainage improvements and no landscaping is proposed. The proposed project includes new on-site drainage system to minimize runoff from the site. The drainage system includes surface drains, subsurface drainage pipes, gutters, and downspouts, which will direct runoff towards permeable surfaces or area drains. The height limit, as set forth in the certified LCP, is 24 feet for flat-roofed structures, and 29 ft. for structures with sloped roofs. The proposed structure is designed with a sloped roof that is flat roof that is 24 ft. high above the finished floor of 12.19 feet NAVD88, consistent with the height requirement of the City's certified LCP. Furthermore, the project is consistent with the certified

LCP parking requirement of 2 per unit in a garage for a detached single-unit dwelling less than 4,000 sq. ft. Project plans are provided as [Exhibit 3](#) of this staff report.

The site has a privacy garden wall along the bay-fronting property line adjacent to the public walkway to about elevation +13ft. NAVD88, the proposed project involves the retention of the garden wall and the side property line walls as depicted on the topographic survey included as [Exhibit 2](#). The public concrete walkway along the bay-front property line is at elevation +9 feet NAVD88, and the approximately 20-foot wide beach (above tidal influence) fronts the public walkway.

The applicant submitted a Coastal Hazard and Sea Level Rise Analysis, prepared by GeoSoils, Inc. dated November 12, 2016 for 410 Via Lido Nord which concludes that the proposed structure with a finished floor elevation of +12.2 ft. NAVD88 would not be exposed to flooding even from the highest current water levels (17.2 feet NAVD88). In the future, over the 75-year project design life, sea level rise is projected between 1.25 feet and 4.75 feet range by 2092. This sea level rise range would account for future extreme bay water levels in the range of 8.45 feet NAVD88 (7.2 feet NAVD88 + 1.25 feet sea level rise) and 11.95 feet NAVD88 (7.2 feet NAVD88 + 4.75 feet SLR). The project is safe from flooding beyond the year 2100 using any lower sea level rise estimate. The analysis concludes that the proposed project will be safe from flooding hazards for the next 75 years as the proposed finished floor elevation at +12.2 feet NAVD88 is above the historical high bay water plus maximum sea level rise. However, all of the Newport Bay low lying areas including Lido Isle, the public beach, public walkway, and public streets for access to the site will be impassable due to ocean flooding long before the flood water level approaches the finished floor elevation of the proposed new residence without future adoption of community-wide sea level rise adaptation strategies (i.e., increasing the height of the beach and public walkway from +9 feet NAVD88 to +12 feet NAVD in the future). There currently is no existing bulkhead at the subject bay front location, only a privacy wall that separates the public walkway from the site up to about elevation +13 feet NAVD88. **Special Condition #3** requires the applicants to agree that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to this permit in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, sea level rise, or other natural coastal hazards in the future.

Furthermore, **Special Condition #2** acknowledges that building near the coast is inherently hazardous and that the applicant is aware of the risks. **Special Condition #5** prevents future improvements to the project site without a new permit or permit amendment and **Special Condition #6** requires a deed restriction. **Special Condition #4** requires construction responsibility and **Special Condition #1** requires adherence to proper drainage plans for the protection of the marine environment.

The City of Newport Beach issued an Approval-in-Concept (No. AIC 2016-041) on June 24, 2016 for the proposed development. The proposed project adheres to the R1 Single-Unit Residential designation and as conditioned, is consistent with the policies and requirements of the City's certified Local Coastal Program (LCP).

## **B. HAZARDS**

Development adjacent to the ocean or bay 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 runoff 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 City of Newport Beach LCP 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. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission finds that a Future Development **Special Condition #5** 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. These design features include, but are not limited to, the appropriate management of equipment and construction materials, 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 #6** 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**

*Coastal Hazard and Sea Level Rise Discussion for New Residence, 410 Via Lido Nord, Newport Beach, Orange County, California* prepared by GeoSoils, Inc. dated November 12, 2016

*Preliminary Geotechnical Engineering Investigation, Proposed Single Family Residence, 410 Via Lido Nord, Newport Beach, California* prepared by Norcal Engineering, July 29, 2016

City of Newport Beach LCP

City of Newport Beach Approval in Concept (No. AIC 2016-041) on June 24, 2016