

**CALIFORNIA COASTAL COMMISSION**

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# F8g

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Staff:	A. Dobson-LB
Staff Report:	4/27/2017
Hearing Date:	5/12/2017

## STAFF REPORT: CONSENT CALENDAR

<b>Application No.:</b>	<b>5-16-1008</b>
<b>Applicant:</b>	<b>7 Harbor, LLC</b>
<b>Agent:</b>	Swift Slip, Jacquelyn Chung
<b>Location:</b>	7 Harbor Island Road, Newport Beach, Orange County
<b>Project Description:</b>	Demolish existing gangway, pier, L-shaped dock float, remove all piles (2 concrete guide piles, and 4 concrete T piles), and construct a new U-shaped dock float, gangway, a 5 ft. wide pier, and install 3 concrete guide piles, and 1 T-pile.
<b>Staff Recommendation:</b>	Approval with conditions

### SUMMARY OF STAFF RECOMMENDATION

Commission staff is recommending **APPROVAL** of the demolition of an existing dock system and construction of a new U-shaped dock system on a bayfront lot in the City of Newport Beach. The major issue raised by this proposed development is the existence of a bulkhead located bayward of the applicant's property line on Public Tidelands. South/Bayward of the property line is an area of partially filled Public Tidelands that is leased by the applicant, which contains a bulkhead and unpermitted hardscape. The existing pier leading to the dock float is attached to the bulkhead. However, no work is currently proposed to the bulkhead and the new proposed development will not rely on the bulkhead. The plans for the proposed project will need to be revised to show the new development does not rely on the bulkhead for support, and therefore the Commission imposes **Special Condition No. 1**, requiring revised final plans.

The proposed project is located in an area where coastal hazards exist and can adversely impact the development. Therefore, the Commission imposes **Special Condition No. 2**, requiring the applicant to assume the risk for the development. The coastal development permit for the primary residence on the site (5-14-1901) was conditioned so that no future shoreline protection would be

permitted. **Special Condition No. 3** of this permit ensures that there will be no maintenance or expansion of the current bulkhead.

During construction and post construction, the proposed project has potential for adverse impacts to water quality and marine resources. Therefore, **Special Condition No. 4** is imposed in order to minimize any impacts to water quality and marine resources the proposed project may result in. **Special Conditions Nos. 5 and 6** ensure that the marine habitat is not negatively impacted by the project and requires pre-construction Eelgrass and Calupera surveys be submitted.

Public Tidelands are located bayward of the project site. A 30 foot long section of the tidelands are leased to the applicant by the County of Orange, and the bulkhead is located on the leased land. The tidelands seaward of the bulkhead are Public Tidelands that are not under lease and are accessible to the public. As long as the new dock system does not rely on the existing bulkhead, and the public is still able to access the tidelands seaward of the bulkhead, the proposed development will not impact public access. To preserve and maintain access to the public tidelands, **Special Condition No. 7** 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.

## 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 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 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. Revised Plans.**

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, two full-size sets of the following revised final plans, modified as required below:

Proposed plans that substantially conform with the plans submitted to the Commission on 4/21/17, except that they shall be modified to include:

1. the location of the property line, the location of the existing bulkhead, and identification of leased public tidelands in relation to the pier and dock on the site plan.
2. the minimum number and size of pier support piles.
3. the exact dimensions and length of the pier, which shall not extend bayward the bulkhead line.
4. elevations which show that the proposed development does not rely on and is not supported by the existing bulkhead.
5. Notations on the plans which clearly indicate that the bulkhead, hardscape, and other development on the leased tidelands are not permitted by this CDP 5-16-1008.

B. The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

**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. No Future Reliance on Shoreline Protective Device.** 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 bulkhead as described in this permit shall be undertaken. 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.

**4. Water Quality.**

A. Construction Responsibilities and Debris Removal

- (1) No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion and dispersion;
- (2) Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project;
- (3) 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;
- (4) Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone;
- (5) If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity;
- (6) Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day;
- (7) Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss;
- (8) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- (9) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- (10) 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;
- (11) 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;
- (12) 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;
- (13) The discharge of any hazardous materials into any receiving waters shall be prohibited;
- (14) 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;
- (15) 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
- (16) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

**B. Best Management Practices Program**

By acceptance of this permit the applicant agrees that the long-term water-borne berthing of boat(s) in the approved dock and/or boat slip will be managed in a manner that protects water quality pursuant to the implementation of the following BMPs.

(1) Boat Cleaning and Maintenance Measures:

- a. In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris;
- b. In-the-water hull scraping or any process that occurs under water that results in the removal of paint from boat hulls shall be prohibited. Only detergents and cleaning components that are designated by the manufacturer as phosphate-free and biodegradable shall be used, and the amounts used minimized; and
- c. The applicant shall minimize the use of detergents and boat cleaning and maintenance products containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye.

(2) Solid and Liquid Waste Management Measures:

- a. All trash, recyclables, and hazardous wastes or potential water contaminants, including old gasoline or gasoline with water, absorbent materials, oily rags, lead acid batteries, anti-freeze, waste diesel, kerosene and mineral spirits will be disposed of in a proper manner and will not at any time be disposed of in the water or gutter.

(3) Petroleum Control Management Measures:

- a. Boaters will practice preventive engine maintenance and will use oil absorbents in the bilge and under the engine to prevent oil and fuel discharges. Oil absorbent materials shall be examined at least once a year and replaced as necessary. Used oil absorbents are hazardous waste in California. Used oil absorbents must therefore be disposed in accordance with hazardous waste disposal regulations. The boaters will regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. The use of soaps that can be discharged by bilge pumps is prohibited;
- b. If the bilge needs more extensive cleaning (e.g., due to spills of engine fuels, lubricants or other liquid materials), the boaters will use a bilge pump-out facility or steam cleaning services that recover and properly dispose or recycle all contaminated liquids; and
- c. Bilge cleaners which contain detergents or emulsifiers will not be used for bilge cleaning since they may be discharged to surface waters by the bilge pumps.

**5. Eelgrass Survey(s).**

A. Pre-Construction Eelgrass Survey. Pre-Construction Eelgrass Survey. A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed within 60 days before the start of construction. The survey shall be prepared in full compliance with the "California Eelgrass Mitigation Policy" dated October 2014 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Wildlife. The applicant shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15)

business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.

- B. Post-Construction Eelgrass Survey. If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within 30 days of completion of construction if completion of construction occurs within the active growth period, or within the first 30 days of the next active growth period following completion of construction that occurs outside of the active growth period, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the “California Eelgrass Mitigation Policy” dated October 2014 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Wildlife. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted by project construction, the applicant shall replace the impacted eelgrass at a minimum 1.38:1 ratio on-site, or at another appropriate location subject to the approval of the Executive Director, in accordance with the California Eelgrass Mitigation Policy. Any exceptions to the required 1.38:1 mitigation ratio found within CEMP shall not apply. Implementation of mitigation shall require an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is legally required.

**6. Pre-construction *Caulerpa Taxifolia* Survey.**

- A. Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit (the “project”), the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate.
- B. The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Wildlife, and the National Marine Fisheries Service.
- C. Within five (5) business days of completion of the survey, the applicant shall submit the survey:
- (1) for the review and approval of the Executive Director; and
  - (2) to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through California Department of Fish & Wildlife (858/467-4218) National Marine Fisheries Service (562/980-4043).
- D. If *Caulerpa taxifolia* is found within the project or buffer areas, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director, subject to concurrence by the Executive Director, that all *C. taxifolia* discovered within the project and buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicant has revised the project to avoid any contact with *C. taxifolia*. No revisions to the project shall occur without a

Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

7. **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 permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

## IV. FINDINGS AND DECLARATIONS

### A. PROJECT LOCATION & DESCRIPTION

The project site is a bayfront lot located at 7 Harbor Island, a private gated island community within Newport Harbor, within the City of Newport Beach, Orange County ([Exhibit No. 1](#)). Currently, a three-story, 7,549 square foot, single-family residence with an attached three-car garage occupies the project site, which was permitted in 2015 (CDP No. 5-14-1901). The City of Newport Beach Coastal Land Use Plan (CLUP) designates the site as Single-Unit Residential Detached (RSD-B). Single-family residences and associated private boat dock systems characterize the subject site and the surrounding area.

The lot is composed of 2 parcels legally owned by the applicant. The existing house is located on parcel 1, the backyard is located on parcel 2. The bayward edge of parcel 2 is delineated by the adjudicated mean high tide line. South of these two parcels is a parcel of filled Public Tidelands that is leased by the applicant from the County of Orange, which contains the existing bulkhead and unpermitted hardscape ([Exhibit No. 3](#)). The existing pier to the dock float ties into the bulkhead ([Exhibit No. 4](#)). Beyond the bulkhead are Public Tidelands accessible to the public that are not under a lease agreement.

The separation of private property from Public Tidelands was created through an adjudicated mean high tide line, established through a judgement rendered in action No. 23690 in the Superior Court of the State of California in and for the County of Orange, which was recorded 7/12/28 in book 181 page 162 of official records. Bayward/South of the adjudicated mean high tide line, are Public Tidelands and submerged lands in Newport Bay that are managed by the County of Orange as identified in a “Tidelands Survey for Newport Harbor for the City of Newport Beach.”

The bulkhead located on the leased tidelands was not permitted by the Coastal Commission, and it may be considered pre-coastal. Neither Commission staff nor the applicant is able to identify when the bulkhead was built. In 2015, the applicant submitted a status report of the bulkhead, which indicated that it is not in need of repairs. The Commission adopted findings (5-14-1901) which state:

*Since the proposed residence is not reliant upon the existing seawall, the existing seawall should be removed. However, no work is currently proposed on the seawall. If in the future, work is anticipated on the existing seawall, the seawall should be removed. The seawall is also currently located outside of the applicant’s property on Public Tidelands and is pre-coastal/unpermitted. To ensure that the proposed new development minimizes risks to life and property in areas of high flood/coastal hazards and is consistent with Section 30253 of the Coastal Act, the Commission impose[d] Special Condition No. 1 requiring the applicants to agree that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to this CDP, including but not limited to, the residence and garage, foundations, patio and any 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 hazards in the future.*

The applicant is not proposing to remove or otherwise improve the existing bulkhead. Because the bulkhead is not permitted, the proposed development must not rely on, and cannot be supported by the bulkhead.

The applicant is proposing to demolish the existing gangway, pier, L-shaped dock float, 2 concrete guide piles, and 4 concrete T piles, totaling 689 sq. ft. and construct a new U-shaped dock float, gangway, a 5 ft. wide pier, and 3 concrete guide piles, and 1 new T-pile totaling 707 sq. ft. in overwater coverage ([Exhibit No. 2](#)). Increased overwater coverage is 18 sq. ft. and has been minimized with the minimum dock finger width necessary. The new dock system will be comprised of wood and composite material, foam and concrete. The dock float will not extend past the pierhead line. The new dock system will be built seaward of the bulkhead and therefore, will not rely on the bulkhead. The plans for the proposed dock system will need to be revised to show the new development does not rely on the bulkhead, therefore the Commission imposes **Special Condition No. 1**, requiring revised final plans. The proposed project is located in an area where coastal hazards exist and can adversely impact the development. Therefore, the Commission imposes **Special Condition No. 2**, requiring the applicant to assume the risk for the development. **Special Condition No. 3** of this permit ensures that there will be no maintenance or expansion of the current bulkhead.

The proposed dock system is being constructed on and over public tidelands and/or within an area subject to public trust doctrine. There is no direct public pedestrian access to public tidelands through the private residential lot at the subject site. Harbor Island is a private island, and therefore the only public access to these tidelands is from the bay. Therefore, the proposed project will not result in adverse impacts to public access. In order to preserve and maintain access to the public tidelands, **Special Condition No. 7** 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.

The dock will be used for recreational boating related purposes to serve a single-family residential development. The site has been surveyed by the City of Newport Beach Harbor Resources Division for eelgrass and no eelgrass was discovered in the project area. The eelgrass survey took place on October 6, 2016 as required by the City of Newport Beach Harbor Resources Division and eelgrass surveys completed during the active growth phase of eelgrass (typically March through October) are valid for 60-days with the exception of surveys completed in August-October. A survey completed in August - October shall be valid until the resumption of active growth (i.e., March 1). The project is agendaized for the May 2017 Coastal Commission Hearing so the eelgrass survey no longer continues to be valid. Therefore, a subsequent eelgrass survey will be required prior to beginning any construction. A pre-construction *Caulerpa taxifolia* survey was completed on October 6, 2016 as required by the City of Newport Beach Harbor Resources Division and no *Caulerpa taxifolia* was discovered in the project area. *Caulerpa taxifolia* surveys are valid for 90 days. The project is agendaized for the May 2017 Coastal Commission Hearing and by this time the *Caulerpa taxifolia* survey would not continue to be valid since 90-days have passed since the survey was completed. Thus, an up-to-date *Caulerpa taxifolia* survey must be conducted prior to commencement of the project. Therefore, the Commission imposes **Special Conditions No. 5** and **No. 6**, which identifies the procedures necessary to be completed prior to beginning any construction. Also, if any

*Caulerpa taxifolia* is found on the project site, **Special Conditions No. 6** also identifies the procedures necessary to be completed prior to beginning any construction.

The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect on the marine environment. The proposed project includes measures to help ensure protection of coastal waters and marine resources during construction. Measures proposed include: floating debris shall be removed from the water and disposed of properly, all construction activities shall occur within the designated project footprint, and silt curtains shall be used during pile replacement. The Regional Water Quality Control Board (RWQCB) has determined that the proposed project will not adversely impact water quality if standard construction methods and materials are used. The applicant has received approval from the U.S. Army Corps of Engineers and the permit is pending coastal development permit approval. To ensure that all impacts (pre- and post- construction) to water quality are minimized, however, and to reduce the potential for construction related impacts on water quality, the Commission imposes **Special Condition No. 4**, which requires, but is not limited to, appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters; and the continued use and maintenance of post construction BMPs.

The applicant has received a letter of permission from the U.S. Army Corps of Engineers (SPL-2017-00024-MRR) for the proposed project. 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 portion of the project (the pier) within the City's LCP jurisdiction is consistent with the LCP. The majority of the proposed development is located seaward of the mean high tide and is within the Commission's original permit jurisdiction. The standard of review for development within the Commission's original permit jurisdiction is Chapter 3 of the Coastal Act.

## **B. WATER QUALITY**

The proposed work will be occurring on, within, or adjacent to coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect 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. As conditioned, the Commission finds that the development conforms with the City's Certified LCP and Sections 30230 and 30231 of the Coastal Act.

## **C. PUBLIC ACCESS**

As conditioned, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Thus, as conditioned, the Commission finds that the development conforms with the City's Certified LCP and conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

#### **D. MARINE RESOURCES**

The proposed recreational boat dock development and its associated structures are an allowable and encouraged marine related use. The project design includes the minimum sized pilings and the minimum number of pilings necessary for structural stability. There are no feasible less environmentally damaging alternatives available. As conditioned, the project will not significantly adversely impact eelgrass beds and will not contribute to the dispersal of the invasive aquatic algae, *Caulerpa taxifolia*. Further, as proposed and conditioned, the project, which is to be used solely for recreational boating purposes, conforms to Sections 30224 and 30233 of the Coastal Act.

#### **E. HAZARDS**

Development adjacent to the ocean is inherently hazardous. Development which may require the seaward extension or maintenance of the existing seawall/bulkhead in the future cannot be allowed due to the adverse impacts such devices have upon, among other things, public tidelands, 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: prohibit the seaward extension and maintenance of existing protective devices 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 with the City's certified LCP and to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

#### **F. UNPERMITTED DEVELOPMENT**

Unpermitted development may have occurred at the project in the form of a bulkhead and hardscape on leased Public Tidelands constructed without the benefit of a coastal development permit. Any development activity that is not otherwise exempt conducted in the coastal zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act.

Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit application does not constitute a waiver of any legal action with regard to the unpermitted development that has occurred on the site, nor does it constitute an admission as to the legality of any development undertaken on the site without a coastal permit.

#### **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 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.