

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-16-0054

Applicant: SoCal Land Co. LLC

Agents: Ron Ritner
Shawna L. Schaffner, CAA Consulting

Location: 24 Harbor Island, Newport Beach, Orange County
(APN 050-230-40)

Project Description: Construction of a two-story plus basement, 29-ft. high above finished grade, 12,427 sq. ft. single family residence including a three-car garage and golf cart garage, grading, hardscape, and landscaping on a vacant 18,111 sq. ft. bayfront lot; and after-the-fact approval of reinforcements to an existing bulkhead/seawall on leased public trust lands.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

The proposed project is the construction of a 12,427 sq. ft., two-story plus basement level single-family residence including an attached 3-car garage and a golf cart garage on a bay front lot with an existing seawall located bayward of the private property line on public tidelands on Harbor Island in the City of Newport Beach. The applicant is also requesting after-the-fact approval for seawall reinforcement/repair work undertaken circa 2010 without the benefit of a coastal development permit and new construction of a wood railing on top of the seawall.

The major issues raised by this proposed development concern a shoreline protective device on State public tidelands and bay front development that could be affected by waves, erosion, storm conditions, and sea level rise or other natural hazards in the future.

The first floor finish elevation of the proposed new development is at +12.46 ft. NAVD88. The highest high tides in Newport Beach threaten flooding of low-lying terrain, such as at the project site. The project has been designed to be above the historic highest high tide of +7.8 feet and above the City of Newport Beach design flood height of +9.0 feet MLLW. A coastal hazards analysis provided by the applicant concludes that, given the project's location inside a bay, that the subject site is not exposed to typical ocean waves or wave run-up and that the existing shoreline is not subject to significant long term erosion. Regarding future sea level rise, the analysis concludes that the proposed new single-family residence is sufficiently set back and designed with a finished floor elevation such that it will be safe from current flood risks and not be subject to flooding caused by future sea level rise projections based on mid-range projections of a possible 3-foot rise in sea level. Therefore, the information provided by the applicant concludes that proposed new residence will not rely on the existing seawall and after-the-fact seawall improvements/reinforcements, and that no new shoreline protective device will be needed over the life of the proposed development (75 years). However, in an addendum to the hazards analysis, the seawall was deemed necessary to protect adjacent development (i.e., single-family homes on the adjacent lots).

The groundwater table will also be influenced by tidal action and future sea level rise. The groundwater table could reach the basement level, therefore, the applicant proposes to waterproof the basement and crawl space and provide backup measures to deal with basement flooding issues if the primary waterproofing fails.

The applicant's Hazards Analysis notes that the top of the seawall can be further raised at a future date if necessary to protect existing development from future sea level rise. However, the seawall is currently located seaward of the applicant's property, on public trust tidelands, which is not a preferred alignment. Also seawalls contribute to the destruction of sites through impacts to marine habitats and regional sediment dynamics. Further, seawalls adversely impact public access and recreation. In the near-term, the State Lands Commission, through its tidelands grantee the County of Orange, which thereby acts as the trustee of the granted tidelands, has entered into a 49-year lease (1988-2037) giving the applicant exclusive use of an approximate 30-foot wide area of filled and reclaimed former tidelands seaward of their property for landscaping and non-permanent recreational improvements, such as patios, walks, dock access walks, and garden walls not exceeding 36 inches in height above natural grade. Seawalls are not a permitted use per the County lease of public tidelands, nor are seawalls currently permitted on public tidelands per the 2017 certified City of Newport Beach LCP. In order to comply with the Public Trust Doctrine, the 1988 lease of filled public tidelands to the homeowners contained certain restrictions. For instance, the uses on the land were specifically restricted only to landscaping and non-permanent recreational improvements including any and all landscaping and non-permanent improvements existing as of August 1, 1990. However, prior to any lease of filled public tidelands, in 1976, the County issued a permit for a 'non-commercial structure' at 24 Harbor Island and in 1977, the Commission issued CDP A-9-12-77-1847 for 'construction of 112' seawall to replace existing failed seawall' that is the subject of this staff report on public

tidelands in front of 24 Harbor Island. Therefore, the subject seawall was an existing, County-permitted 'non-commercial structure' on State tidelands prior to the Lease agreement. Over the long-term, these tidelands must be protected for public trust allowed uses, such as public recreational piers, visitor-serving facilities and boating facilities.

To ensure that the proposed new development does not contribute to the destruction of the site or the surrounding area and is consistent with Section 30253 and the public access and recreation and marine resource protection policies of the Coastal Act, the Commission imposes **Special Condition 1** requiring the applicant to agree that no future expansion of the seawall extending the footprint seaward shall be undertaken 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 and requiring an exhibit depicting the exact location of the seawall to be recorded onto the property deed. And **Special Condition 2** is imposed limiting authorization of the after-the-fact improvements to the existing shoreline protective device (i.e., new coping and tiebacks/deadmen) on public tidelands to the 49-year term until March 22, 2037 of the existing Lease for the private use of filled public tidelands by this and all other Harbor Island property owners. At that time, the County may terminate the lease or re-negotiate the term and uses allowed under a new lease.

Furthermore, 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. 10**, which requires the property owner record a deed restriction against the property, referencing all of the above special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property.

Staff is recommending **approval** of the proposed coastal development permit with **eleven (11)** special conditions regarding: **1) No Future Expansion of Existing Shoreline Protective Device and Future Removal of Development; 2) Future Removal of Appurtenances and Improvements to Shoreline Protective Device; 3) Revised Plans; 4) Revised Landscaping Plans; 5) Conformance with Drainage and Runoff Control Plan; 6) Construction Phase BMPs; 7) Assumption of Risk, Waiver of Liability; 8) Future Development; 9) Public Rights; 10) Application Fee; and 11) Deed Restriction.**

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EXHIBITS

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Exhibit 3 – Floor Plans

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Exhibit 9 – Seawall/Bulkhead Plan

Exhibit 10 – Water Quality BMPs

Exhibit 11 – Dewatering Plan

Exhibit 12 – Landscaping

Exhibit 13 – Topographic Survey

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit No. 5-16-0054 pursuant to the staff recommendation.*

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. 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 1) the Local Coastal Program conforming to the provisions of Chapter 3, and the public access and recreation policies of the Coastal Act for the portion of the proposed development in the jurisdiction of the Local Coastal Program and 2) the provisions of Chapter 3 of the Coastal Act for the portion of the proposed development in the Commission's retained original jurisdiction. 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 permittees 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 permittees 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 Expansion of Existing Shoreline Protective Device and Future Removal of Development.**

- A. By acceptance of this permit, the applicant agrees, on behalf of itself 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 Permits No. 5-16-0054 and A-9-12-77-1847, 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 of the subject shoreline protective device seaward in order to protect the landside development approved pursuant to Coastal Development Permit No. 5-16-0054 including, but not limited to, the residence and garages, 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 coastal hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such shoreline protective devices that may exist under applicable law.
- B. By acceptance of this Permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowners shall remove and/or relocate, in whole or in part, the development authorized by this permit, including the residence and garage, foundations, patio and any future improvements, if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above, in subsection A. of this condition. In the event that portions of the development fall to the bay before they are removed, the landowner shall remove all recoverable debris associated with the development from the bay and lawfully dispose of the material in an approved disposal site. Removal of any development from the subject property and from areas bayward of the subject property, shall require an amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no coastal development permit is legally required.
- C. 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. 5-16-0054 and A-9-12-77-1847, as generally described above and shown on the topographic survey included as **Exhibit 13** of this staff report, showing the footprint and the elevation of the device referenced to NGVD (National Geodetic Vertical Datum).

2. **Future Removal of Appurtenances and Improvements to Shoreline Protective Device.** Authorization of the landscaping, concrete walk, raised planters, guardrail and after-the-fact improvements to the existing protective device (i.e., new coping and tiebacks) within State tidelands which is the subject of this permit shall be limited to the term of the existing Lease agreement between the applicant and the County of Orange commencing in March 22, 1988 for a period of forty-nine (49) years until March 22, 2037 for the exclusive, private use of filled public State tidelands lying between the extension of the property side lines from the adjudicated mean high tide line to the U.S. bulkhead line. By acceptance of this Permit, the applicant agrees, on behalf of itself and all successors and assigns, that the landowner(s) shall remove and/or relocate, the above described development authorized by this permit which is situated on State Tidelands when there is no longer a valid lease for exclusive, private use of filled public State tidelands.

PRIOR TO THE ISSUANCE OF THE PERMIT, the applicant shall submit, for the Executive Director's review and approval, a written agreement between the applicant and the Commission for removal of the landscaping, concrete walk, raised planters, guardrail and after-the-fact improvements to the existing shoreline protective structure on State tidelands as required by this special condition.

3. **Revised Plans.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of architectural plans that substantially conform to the project plans by the Ritner Group, but shall be revised to indicate the finished floor elevation of the proposed basement level and crawl space level and specifically indicate that the basement and crawl space areas are not proposed as nor shall ever be intended as livable area and shall never be converted to livable area due to its elevation below current base flood level.

The applicant shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

4. **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>). Use of reclaimed water for irrigation is encouraged. If using potable water for irrigation, only drip or microspray irrigation systems may be used. Other water conservation measures shall be considered, such as weather based irrigation controllers.

5. **Conformance with the Drainage and Runoff Control Plan.** The applicant shall conform with the preliminary grading and drainage plan by Toal Engineering dated 6/17/16 and received by the Coastal Commission South Coast District 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. **Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.** The permittees shall comply with the following construction-related requirements:
 - A. No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion;
 - B. No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers;
 - C. Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project;
 - D. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
 - E. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
 - F. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
 - G. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the Coastal Zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;
 - H. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
 - I. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
 - J. The discharge of any hazardous materials into any receiving waters shall be prohibited;
 - K. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;

- L. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and
 - M. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.
7. **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.
 8. **Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-16-0054. 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. 5-16-0054. Accordingly, any future improvements to the residence and garage, foundations and patio authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-16-0054 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
 9. **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.
 10. **Application Fee.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall pay the balance of the application fee for the proposed new development and the after-the-fact development, which totals \$24,930.
 11. **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

The project site is a vacant 18,111 sq.ft. bayfront lot located at 24 Harbor Island, a private gated island community within Newport Harbor, in the City of Newport Beach, Orange County (**Exhibit 1**). The single family residence previously on the site was demolished circa 2010, so the site is currently vacant. The Commission issued De Miminis waiver 5-10-131-W for a lot merger in August 2010 combining two adjacent lots into a single larger lot for residential purposes. The City of Newport Beach LCP Coastal Zoning Map designates the site as R-1 (Single Unit Residential) and the proposed project adheres to this designation. The project is located in an urbanized area of the bay. Harbor Island is a small private gated island in Lower Newport Harbor with approximately 30 single family residences. To the north of the project site at 24 Harbor Island is a private residential street, single family homes to the east and west and on the south facing side of the lot is an area of filled tidelands followed by the waters of Lower Newport Bay Harbor.

The harborside boundary line of this parcel separates private property from public tidelands. This is an adjudicated line established through a judgment rendered in Orange County Superior Court Case No. 23690 which was recorded 7/12/28 in book 181 page 162 of the County's official records. Harbor Island is surrounded by a strip of filled reclaimed public tidelands approximately 30 feet wide. Beyond the upland filled public tidelands are the submerged tidelands of Newport Bay. These filled public tidelands are part of a legislative trust grant to the County of Orange (Chapter 526, Statutes of 1919, later amended by Chapter 415, Statutes of 1975) which presently continues to manage these tidelands on behalf of the State of California. As a result of special legislation (Chapter 715, Statutes of 1984), the County of Orange has entered into 49-year leases (beginning in 1988 through 2037) with the landowners on Harbor Island providing each landowner with the exclusive private use of the 30-foot wide area of filled public tidelands seaward of their private property lines for "*landscaping and non-permanent recreational purposes as an adjunct to the residence...*" such as patios, walks, dock access walks, and garden walls not exceeding 36 inches in height above natural grade. Seawalls are not a permitted use per the County lease of public tidelands, nor are seawalls permitted on public tidelands per the 2017 certified City of Newport Beach LCP. In order to comply with the Public Trust Doctrine, the 1988 lease of filled public tidelands specifically restricted the uses of that land to only landscaping and non-permanent recreational improvements including any and all landscaping and non-permanent improvements existing as of August 1, 1990. However, previously, in 1976, the County issued a permit for a 'non-commercial structure' at 24 Harbor Island and in 1977, the Commission issued CDP A-9-12-77-1847 for 'construction of 112-ft. long seawall to replace existing failed seawall' – the repair and maintenance of which is proposed as part of this permit – on public tidelands in front of 24 Harbor Island, prior to any

lease of filled public tidelands. Therefore, the subject seawall was an existing, County-permitted ‘non-commercial structure’ on State tidelands prior to the Lease agreement.

The subject site is currently mostly vacant, with the exception of existing development within the public tidelands leasehold which consists of a grass lawn and a 9-ft. tall seawall. In the submerged tidelands, beyond the seawall is a private dock associated with the previous single-family residence use on the site. No work is proposed to the existing dock system under this permit application. The applicant is proposing new development on its private property and after-the-fact approval of development within the 30-foot wide area of filled public tidelands currently under lease.

PROJECT DESCRIPTION

Within its private property lines, the applicant proposes construction of a new single-family residence, two-stories over a basement, 29-ft. high above finished grade, 8,254 sq. ft. livable space, 2,669 sq. ft. basement with a 1,504 sq. ft. attached 3-car garage, golf cart garage, and storage. The foundation of the proposed residence consists of a 30-in. thick mat slab with 10-in. thick poured in place concrete basement walls and wood framed construction above grade. Proposed grading (primarily for the proposed basement) consists of 2,400 cubic yards of cut, consisting of 1,700 cubic yards of export and 650 cubic yards of re-compaction on site. Shoring for the proposed basement and crawl space construction consists of 24-in. diameter concrete caissons, wide flange soldier piles, and wood lagging. Excavation at the site will extend to below the water table and will require dewatering. A proposed temporary dewatering system consisting of eight (8) wells up to 40 feet deep outside the shored excavation area will be required during construction. Waterproofing of the basement and crawl space is also proposed for the long term. The project includes hardscape and landscape areas up to the adjudicated mean high tide line that marks the bayward property line. The proposed landscaping plan includes a non-invasive, low water use, drought tolerant plant palette. A drainage system is proposed within the private property lines to treat and partially retain water runoff via enclosed planter boxes prior to discharge in order to eliminate direct discharge into Newport Bay. Downspouts will direct the roof drainage into one of four large enclosed planter boxes for bio-filtration and storage prior to discharging to an existing storm drain pipe beneath Harbor Island Road. Project plans are included as **Exhibit #2 – Site Plan, Exhibit #3 – Floor Plans, Exhibit #4 - Elevations, Exhibit #5 – Cross-Sections, and Exhibit #6 – Foundation Plan.**

A lawn, concrete walk, and raised planters are proposed in the public tidelands area under a County of Orange Lease. These improvements are considered “*landscaping and non-permanent recreational improvements*” and thus, are allowable uses per the County Lease of filled public tidelands. Seawalls are not allowable in this area per the County Lease, however the subject seawall at this site, 24 Harbor Island was in existence prior to the lease agreement. Additionally, the applicant is requesting after-the-fact approval for improvements made circa 2010 to the existing 112’ long seawall previously constructed on public tidelands in front of the subject site. These improvements consisted of removal of the seawall’s coping and installation of a new concrete coping atop the existing seawall panels, thus raising the height of the existing seawall to 9.00 ft. MLLW and reinforcement of the seawall by the addition of four (4), 20-25-ft. long concrete deadmen connecting to the seawall coping with three tie-backs rods each, for a total of twelve (12) approximately 30-ft. long tiebacks. As built seawall improvements are included as

Exhibit #9 – Seawall/Bulkhead Plan. Additionally, installation of a wood guardrail is proposed for the top of the seawall.

PREVIOUS COMMISSION ACTIONS AT THE SITE

A-11-15-74-4304 – Administrative Permit issued on December 3, 1974 for the construction of a 1-story, 11.5 feet high from finished grade, 315 sq. ft. residential greenhouse.

P-12-15-77-2446 – Coastal Development Permit issued on February 6, 1978 for a two-story addition to an existing two-story single-family dwelling; construction of swimming pool, spa and gazebo, 26 feet above centerline of frontage road.

A-9-12-77-1847 – Coastal Development Permit issued on October 18, 1977 for the construction of 112-ft. long new seawall to replace existing seawall which failed, existing dock to be temporarily removed and re-installed in the same location.

5-89-812 – DeMinimis Waiver effective September 15, 1989 to rebuild and relocate boat dock, pile and ramp within the U.S. Pierhead Line.

5-10-079 – DeMinimis Waiver effective May 10, 2010 for the after-the-fact approval of demolition of a single family residence. No additional development or grading is proposed. All debris removed from the site and disposed of at a location outside of the Coastal Zone

5-10-131 – DeMinimis Waiver effective August 13, 2010 for a lot line adjustment to combine two lots into one lot resulting in a 15,463 square foot (0.355 acre) lot. No additional development proposed.

STANDARD OF REVIEW

The City of Newport Beach Local Coastal Plan (LCP) was recently certified on January 13, 2017. The proposed project includes development (i.e., single-family residence) located within the permit jurisdiction of the certified LCP and development (i.e., after-the-fact request for approval of seawall repair/reinforcements) located within the permit jurisdiction of the Commission. As the CDP application was submitted to the Commission and deemed complete prior to the City taking over CDP applications (based on LCP certification), the Commission retains the CDP application for processing 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. (Pub. Res. Code § 30604(b).) In addition, since the proposed project is located between the sea and the first public road, the landside development must also conform to the public access and recreation policies of the Coastal Act. (Pub. Res. Code § 30604(c).) The standard of review for development within the Commission's jurisdiction is Chapter 3 of the Coastal Act and the City's certified LCP may be used as guidance. (Pub. Res. Code § 30519(b).)

B. HAZARDS

Section 30253 of the Coastal Act states, in pertinent part:

New development shall do all of the following:

- (a) *Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*

(b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Section 30235 of the Coastal Act states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible.

City of Newport Beach LCP Policies

LUP Policy 2.8.1-1: *Review all applications for new development to determine potential threats from coastal and other hazards.*

LUP Policy 2.8.1-2: *Design and site new development to avoid hazardous areas and minimize risks to life and property from coastal and other hazards.*

LUP Policy 2.8.1-4: *Require new development to assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

LUP Policy 2.8.6-5: *Permit revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls and other structures altering natural shoreline processes or retaining walls when required to serve coastal-dependent uses or to protect existing principal structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply, unless a waiver of future shoreline protection was required by a previous coastal development permit.*

LUP Policy 2.8.6-6: *Design and site protective devices to minimize impacts to coastal resources, minimize alteration of natural shoreline processes, provide for coastal access, minimize visual impacts and eliminate or mitigate adverse impacts on local shoreline sand supply.*

LUP Policy 2.8.6-8: *Limit the use of protective devices to the minimum required to protect existing development and prohibit their use to enlarge or expand areas for new development or for new development. "Existing development" for purposes of this policy shall consist only of a principal structure, e.g. residential dwelling, required garage, or second residential unit, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping, etc.*

LUP Policy 2.8.6-9: Require property owners to record a waiver of future shoreline protection for new development during the economic life of the structure (75 years) as a condition of approval of a coastal development permit for new development on a beach, shoreline or bluff that is subject to wave action, erosion, flooding, landslides or other hazard associated with development on a beach or bluff. Shoreline protection may be permitted to protect existing structures that were legally constructed prior to the certification of the LCP, unless a waiver of future shoreline protection was required by a previous coastal development permit.

IP Section 21.30.015.E.2(d) – Coastal Hazards Report. On sites with an existing bulkhead, a determination as to whether the existing bulkhead can be removed and/or the existing or a replacement bulkhead is required to protect existing principal structures and adjacent development or public facilities on the site or in the surrounding area.

IP Section 21.30.015.E.2(e) – Coastal Hazards Report. Identification of necessary mitigation measures to address current hazardous conditions such as siting development away from hazardous areas and elevating the finished floor of structures to be at or above the base flood elevation including measures that may be required in the future to address increased erosion and flooding due to sea level rise such as waterproofing, flood shields, watertight doors, moveable floodwalls, partitions, water-resistive sealant devices, sandbagging and other similar flood-proofing techniques.

IP Section 21.30.030.C.3 – Protective Structures. The following shall apply to the construction of protective structures:

(a) The construction of protective structures shall be prohibited, except to protect coastal-dependent uses, or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply, and existing structures that are:

- (1) Not subject to recorded waivers of future protection*
- (2) Threatened by natural hazards, provided that the protective structures are limited to the minimum required to protect the existing structure and located on private land, not State tidelands.*

(b) Enlargement and Expansion of Land Areas. The construction of protective structures shall be prohibited for the purpose of enlarging or expanding areas for new development or for new development. However, this shall not preclude the expansion or encroachment into coastal waters to the minimum extent necessary to repair, maintain, or replace an existing protective device that is in general alignment with any adjacent protective device(s). Under no circumstances shall the backfill be used to create new usable land areas.

(d) Protective Devices Shall be Designed and Sited to:

- 1. Be as far landward as possible and within private property, where feasible;*
- 2. Eliminate or mitigate adverse impacts to coastal resources;*
- 3. Minimize alteration of natural shoreline processes*
- 4. Provide for public access to State Tidelands and recreational areas and facilities*
- 5. Minimize visual impacts and maximize the enjoyment of the natural shoreline environment;*

6. *Eliminate or mitigate adverse impacts on local shoreline sand supply*
7. *To have the smallest footprint possible; and*
8. *Cause no reduction in public access, use or enjoyment of the natural shoreline environment and preserve or provide access to public recreational lands and facilities.*

(g) Limits on Authorization. Authorization of the protective device shall be limited to the development being protected. Such permits shall expire when the existing structure requiring protection is redeveloped, is no longer present, or no longer requires a protective device, whichever comes first. Coastal development permits shall also be conditioned to require the removal of shoreline protective devices when they are no longer needed.

(h) Removal from State Tidelands Required. Encroachment permits and removal agreements shall be required for protective structures that are located on State tidelands and/or subject to potential future removal.

Proposed Landside Development – Single Family Residence

The standard of review for the proposed landside development is the City of Newport Beach certified LCP which requires that new development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard and requires that new development shall not create or contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area, or require construction of protective devices that substantially alter natural landforms along bluffs and cliffs.

As noted in the project description, the submitted plans for the proposed project show that the top of slab/finished floor elevation of the residence at the ground floor will be at 12.45 ft. MLLW and 2.54 ft. MLLW for a basement level (**Exhibit #3 – Floor Plans**). The basement level is proposed along the front street facing side of the residence. No living area is proposed for this basement level. Along the bay front facing side of the residence, closer to the seawall, the residence will not have an actual basement, but instead will have a crawl space with a top of slab elevation of 7.1 ft. MLLW. Thus, the project has been designed with a 12.45 ft. finished floor elevation for interior living space that is 4.65 ft. above the current highest high tide in the area (7.8 ft. MLLW). The current design flood elevation in Newport Bay is +9.0 feet MLLW and the finished floor would be 3.45 ft. above that elevation.

The applicant provided a Coastal Hazards Analysis prepared by William Simpson & Associates, Inc. (WSA Job #6838-4) dated November 25, 2015, a Technical Memorandum: Evaluation of Coastal Hazards prepared by Anchor QEA dated December 21, 2016 evaluating coastal hazards for the project based on the Commission’s 2015 Sea Level Rise Policy Guidance, and an Addendum to the Anchor QEA Technical Memorandum dated May 18, 2017. The analysis identifies the highest high tide in the project area as 7.8-foot Mean Lower Low Water (MLLW). The analysis concludes that due to its location within a bay, the subject site is not subject to typical ocean waves and the associated wave run-up. In addition, it states that the beach area in front of the wall is stabilized and not subject to significant long term erosion, assuming erosion rates continue at their historic rate. The study concludes that wave run-up and erosion will not significantly impact the property over the proposed life of the development (75 years), but

because the applicant's analysis used historic erosion rates, as opposed to accelerated erosion rates that may occur due to sea level rise, this conclusion may not be accurate.

The report notes that there have been no visible indications of shoreline change or landward movement of the Mean High Tide (MHT) Line. The position of the MHT line for this vacant lot is based on the position of the existing seawall. Since the site includes a seawall, the landward migration of the MHT has been blocked. Erosion in front of the seawall was found to be very small, but the report does not provide any estimates for erosion of the shoreline if the existing bulkhead were to be removed. The applicant/property owner leases a 30' wide portion of filled public tideland inland of the existing seawall, therefore, the actual inland extent of the MHT cannot be determined while the seawall is in place. Extrapolation of the future ground level without the seawall would suggest that the MHT line would be inland of the area covered by the lease.

It is in the May 18, 2017 Addendum to the Technical Memorandum dated December 21, 2016 that the conclusion is made that *"The seawall protecting 24 Harbor Island could be removed, since the base elevation of the house floor slab is at an elevation unlikely to be impacted by worst-case conditions and the basements are sufficiently waterproofed; e.g., sea level rise coupled with astronomical high tides and storms."* Thus, the proposed new development is found to not be reliant on the existing seawall. However, the Addendum report further opines that should the sea wall be removed, slope protection would be required to prevent continued erosion and property line seawalls would be needed along the east and west property lines with adjacent homes to prevent adjacent property loss e.g., structural undermining of foundations and landscaping improvements. The applicant's expert concludes that the seawall repairs/improvements are necessary to protect adjacent existing private development.

Furthermore, the information provided includes a mid-range of sea level rise projection 75 years into the future that is an increase of 3.1 feet for 2092. Thus, a 3-foot rise in sea level would result in a flooding height of 10.8 feet MLLW (7.8 feet MLLW + 3 feet = 10.8 feet MLLW), and the residence would still be protected based on the designed floor height of the proposed structure (12.45 feet MLLW). However, the upper range of sea level rise projections by 2100, based on the 2012 National Research Council Report, is 5.5 feet. If there were to be a 5.5-foot rise, a still water level of 13.3-feet MLLW (7.8-feet + 5.5-feet = 13.3-feet MLLW) would result. The residence might be at risk from small waves generated within the bay, and the residence would have less than 1 inch (0.85 inches) of freeboard (the difference between the elevation of the structure and the elevation of the water). Also, much of the landscaping and patio areas could be routinely flooded during most high tide events. At 13.3-feet MLLW, water levels would be higher than the top of the slab/finished floor elevation of 12.45-feet MLLW on the inland side of the house, putting the floor at risk if the concrete footings were overtopped by waves. Therefore, the proposed development may be impacted by hazards related to sea level rise if the high amount of sea level rise (5.5 feet by 2100) occurs.

In considering sea level rise impacts, the Commission has recognized that there can be differences between the conditions that should be used in planning level analysis and those that are used in design decisions. It is important to understand the range of impacts from the highest possible sea level rise conditions; however, it may not be appropriate or possible to design all projects for the worst possible sea level rise projections. Thus, the Commission considers both

the initial design, as well as options for adaptation, in cases where future sea level may exceed the amount used in the initial design. In reviewing projects for flood risk and hazards related to sea level rise, the Commission considers both the design elements and the options for adaptation.

LCP Policies 2.8.1-2 and 2.8.1-4 state that new development shall be designed and sited to minimize risks to life and property from coastal and other hazards and states that new development shall not contribute to the destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. A seawall would lead to significant erosion/destruction of beach area in front of the seawall. Current aerial images of Harbor Island provide evidence of such erosion on sites near to the subject site. In the following image there is a beach at 4 Harbor Island, which has no apparent seawall. Whereas, the site at 1 Harbor Island clearly has a seawall but little to no beach. Such effects will become more pronounced on Harbor Island with sea level rise.



The effects of this destruction on biological resources, and public access and recreation are discussed in those sections of this staff report.

The Hazard Analysis states that if sea level rises the amount predicted by the upper end of the National Research Council's 2012 report, "obviously, the entire Newport Bay area would be affected [...] and regional efforts to mitigate the potential flooding hazard shall be taken." This statement highlights the importance of planning ahead for possible sea level rise, notifying future property owners of potential hazards, understanding the impacts of adaptation options on coastal resources, and planning regionally. Efforts should be taken by the City of Newport Beach and County of Orange, including in their capacities as Trustees of public tidelands in Newport Harbor, to create such a regional adaptation plan.

The proposed new development (i.e., new single family residence) cannot rely on the existing seawall or the repairs/reinforcements undertaken in 2010, or a future seawall to protect the structure, as discussed below, in the next section. For the proposed new single family residence, the applicant proposes a design that accommodates a significant amount of future sea level rise,

but less-than-worst-case sea level rise condition. The top of slab/finished floor for the residence is designed to be above the still water level that will result from a 3-foot rise in sea level without reliance on the existing seawall. To further adapt to potential flooding from a higher level of sea level rise, without the need of a protective device, the foundation, crawl space and basement level are proposed to be fully waterproofed. Given the facts of this project, the Commission finds the applicant's landside proposal is adequately designed and sited to minimize risk to life and property from coastal and other hazards, consistent with LUP Policy 2.8.1-2. Additionally, the Commission finds that the proposed residence is setback and sited so that it does not contribute to the destruction of the site or surrounding area per LUP Policy 2.8.1-4 requiring new development assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Therefore, to ensure that the proposed new development does not contribute to the destruction of the surrounding area nor contribute significantly to erosion throughout the life of the development that is approved under this permit, and consistent with the policies of the certified LCP, the Commission imposes **Special Condition 1** requiring the applicant agree that no future expansion of the existing shoreline protective device shall be undertaken to protect the landside 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. Special Condition 1 also requires that the landowner remove the development authorized by this permit if any government agency has ordered that the structure is not to be occupied due to the hazards identified above. The landowner must also remove any recoverable debris associated with the development that should fall into bay waters before they are removed.

Although no shoreline protection is necessary to protect the proposed residence, the proposed development is located in an area where coastal hazards exist and can adversely impact the development. Therefore, the Commission imposes **Special Condition 7**, which requires the applicant to assume the risk of development. Since coastal processes are dynamic and structural development may alter the natural environment, future development adjacent to the site on public tidelands 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 8** informing the applicant and any future property owners that future development at the site requires an amendment to this Coastal Development Permit No. 5-16-0054 or a new coastal development permit. Thus, as conditioned, the Commission finds that the proposed project is consistent with Section 30253 of the Coastal Act.

Proposed Tidelands Development – ATF Seawall Reinforcement and New Wood Railing

The existing seawall is seaward of the proposed new development and outside the applicant's property line on public tidelands. Tidelands, submerged lands, lands subject to the Public Trust, or lands that were subject to the Public Trust at any time are within the Commission's retained, original jurisdiction. (Pub. Res. Code § 30519(b).) Therefore, the Chapter 3 policies of the

Coastal Act are the standard of review and the City's certified LCP serves as guidance in the review of the after-the-fact (ATF) seawall repairs/reinforcements.

In 2010, seawall repairs commenced after a DeMinimis Waiver was issued by the Commission for the demolition of the single family residence previously on the site. These repairs/reinforcements were made without the benefit of a coastal development permit. These improvements consisted of removal of the seawall's coping and installation of a new concrete coping atop the existing seawall panels, thus raising the height of the existing seawall to 9.00 ft. MLLW and reinforcement of the seawall by the addition of four (4), 20-25-ft. long concrete deadmen connecting to the seawall coping with three tie-backs rods each, for a total of twelve (12) approximately 30-ft. long tiebacks. The applicant is now requesting after-the-fact approval of these seawall repairs as the seawall is deemed necessary to protect development adjacent to the subject site by the information provided by the applicant's coastal hazards expert. The applicant also proposes to install a new wood fence railing on top of the improved seawall for safety considerations.

As previously stated, in the late 1970's both the County of Orange and the Commission permitted the demolition of an existing seawall and construction of a new seawall at the subject site. The seawall is now located within an area of public tidelands leased to the property owner/applicant for its exclusive, private enjoyment. The lease provides that only non-permanent recreational improvements are allowed on the leased tidelands and that the tenant shall not use the leased area "*for any other purpose nor to engage in or permit any other activity within or from [the leased area].*" Since a seawall is not a non-permanent recreational improvement, it would not currently be allowed in the leased area under the terms of the lease.

Furthermore, although only guidance for the ATF seawall repairs/reinforcements component of this project located on State Tidelands, the 2017 certified City of Newport Beach LCP contains a requirement to limit authorization of shoreline protective devices such as seawalls and require their removal once the existing structures requiring protection is redeveloped, is no longer present, or no longer require a protective device. The LCP also requires removal agreements for protective structures located on State tidelands and/or subject to potential future removal. The seawall at this subject site and all other seawalls on State tidelands surrounding Harbor Island are subject to potential future removal at the time when the County's tidelands Leases expire in 2037. At that time, there is also the possibility that the County may re-enter and re-negotiate the Leases with Harbor Island property owners.

At this time, although the seawall (including ATF repairs/improvements) is not necessary to protect the proposed residence at 24 Harbor Island, the seawall was legally permitted, and the applicant may repair and maintain it. The improvements to the seawall that the applicant undertook did not involve the actual concrete panels that make up the seawall and thus did not increase the footprint of the seawall, or move the seawall further seaward. The method of repair and maintenance did not result in adverse environmental impacts, was not inconsistent with Coastal Act requirements, and is the feasible alternative that avoids adverse impacts to existing development adjacent to the proposed new development site and to erosion rates as concluded by the Hazard Analysis provided by the applicant.

C. PUBLIC ACCESS & RECREATION

Coastal Act Section 30210 states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Coastal Act Section 30211 states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Coastal Act Section 30212 states:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

(b) For purposes of this section, "new development" does not include:

(1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.

(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.

(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.

(4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not a seaward of the location of the former structure.

(5) Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the commission determines that the activity will have an adverse impact on lateral public access along the beach.

As used in this subdivision "bulk" means total interior cubic volume as measured from the exterior surface of the structure.

(c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

Coastal Act Section 30220 states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Coastal Act Section 30221 states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Coastal Act Section 30222 states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Coastal Act Section 30224 states:

Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

LUP Policy 2.5.2.1, in part: *Administer the use of tidelands and submerged lands in a manner consistent with the tidelands trust and all applicable laws including...and the Coastal Act.*

LUP Policy 2.5.2-2: *Promote the public's right of access to the ocean, beach, and bay and to the provision of coastal-dependent uses adjacent to the water in the leasing or re-leasing of publicly owned land.*

LUP Policy 2.5.2-3: *Evaluate and ensure the consistency of the proposed use with the public trust restrictions and the public interest at the time any tideland lease is re-negotiated or renewed.*

LUP Policy 3.1.1-6: *Continue to cooperate with the State Department of Parks and Recreation, the State Department of Fish and Game, the State Coastal Conservancy, Orange County, and private organizations to protect, expand and enhance public access to and along the shoreline and to beaches, coastal parks and trails.*

LUP Policy 3.1.1-11: *Require new development to minimize impacts to public access to and along the shoreline.*

LUP Policy 3.1.1-12: *Implement building design and siting regulations to protect public access through setback and other property development regulations of the Zoning Code that control building placement.*

LUP Policy 3.1.4-7: *Design and site bulkheads to protect the character of the existing shoreline profiles and avoid encroachment onto public tidelands.*

LUP Policy 3.1.4-8: *Limit bulkhead expansion or encroachment into coastal waters to the minimum extent necessary to repair, maintain, or replace an existing bulkhead and do not allow the backfill to create new usable residential land areas.*

LUP Policy 3.2.1-1: *Protect, and where feasible, expand and enhance recreational opportunities in the coastal zone.*

IP Section 21.48.085.D – Public Trust Lands - Leases

2. Land Use. Land uses shall be consistent with the Public Trust land use restrictions. Priority shall be given to the provision of coastal-dependent uses.

3. Public Access. Public access shall be provided in a manner consistent with Chapter 21.30A (Public Access and Recreation) and the public access and recreation policies of Chapter 3 of the Coastal Act.

IP Section 21.30.030.C.3 – *Protective Structures. The following shall apply to the construction of protective structures:*

(g) Limits on Authorization. Authorization of the protective device shall be limited to the development being protected. Such permits shall expire when the existing structure requiring protection is redeveloped, is no longer present, or no longer requires a protective device, whichever comes first. Coastal development permits shall also be conditioned to require the removal of shoreline protective devices when they are no longer needed.

(h) Removal from State Tidelands Required. Encroachment permits and removal agreements shall be required for protective structures that are located on State tidelands and/or subject to potential future removal.

Effects of Seawalls Generally

Seawalls are known to interrupt normal processes of erosion and sediment transport, which can lead to regional sediment starvation in beaches, inconsistent with Coastal Act policies protecting access and recreation. In addition, shoreline protection is placed on waterfront areas that are protected for public access and recreational uses. In this case, part of the site is public trust tidelands. The adjudicated boundary line lies within the existing garden on the seaward side of the proposed residence and the existing seawall is located on public trust land. Public trust lands must be protected for public trust allowed uses, such as public recreational piers, visitor-serving facilities, and boating facilities. The tidelands in Newport Harbor were granted by legislation to the County of Orange and City of Newport Beach. Public Trust doctrine traditionally describe

navigation, commerce and fisheries as the acceptable uses within public tidelands, but these uses have been broadened to include the right of the public to fish, hunt, bathe, swim; boating and general recreation; preservation; scientific study; use as open space; and the right of the public to use the bottom of the navigable waters for anchoring, walking, or standing. The grant to the County specifically delineates the allowable uses of the filled tidelands on this project site, stipulating that the tidelands at the project site can only be used for purposes of general statewide interest, including the operation of docks and similar structures, recreational facilities, preservation of nature for scientific study, open space, and wildlife habitat.

When seawalls/bulkheads are constructed along the shores of Newport Bay they have a generally consistent design that involves placing a vertical sheetpile, embedded in bedrock, parallel to the shoreline. To provide lateral support, tie backs are affixed to the seawall coping, extending landward, that are embedded in soil or a large block of concrete known as a ‘deadman’ behind the wall. As described in the ‘Hazards’ portion of these findings, such walls lead to erosion of the soils and beach in front of the seawall.

Where the shoreline is eroding and armoring is installed, the armoring will eventually define the boundary between the bay and the upland. On an eroding shoreline, a beach will exist between the shoreline or waterline as long as sand is available to form a beach. As erosion proceeds, the profile of the beach also retreats and the beach area migrates inland. This process stops, however, when the backshore is fronted by a hard protective structure such as a seawall/bulkhead. While the shoreline on either side of the armor continues to retreat, shoreline in front of the armor eventually stops at the armoring. The beach area will narrow, being squeezed between the moving shoreline and the fixed backshore. Eventually, there will be no available dry beach area and the shoreline will be fixed at the base of the structure. In the case of an eroding shoreline, this represents the loss of a beach as a direct result of the armor.

Additionally, rising sea levels must be taken into consideration. There is a growing body of evidence that there has been an increase in global temperature and that an increase in sea level can be expected to accompany this increase in temperature (some shoreline experts have indicated that sea level could rise by as much as 5.5 feet by the year 2100). Mean sea level and projected sea level rise affects shoreline erosion in several ways, and an increase in the average sea level will exacerbate all these conditions. On the California coast the effect of a rise in sea level will be the landward migration of the intersection of the ocean/bay with the shore, leading to a faster loss of the beach as the beach is squeezed between the landward migrating ocean and the fixed backshore.

Proposed Landside Development – Single Family Residence

Expanding the existing wall or placement of a new seawall to protect the proposed single family residence would preclude the future public use of the area as it becomes available upon expiration of the lease, including the public trust lands, for recreational uses. Even a wall located further landward will eventually stop the inland migration of beach, that with rising sea level, will become submerged, which prevents the natural inland migration of the public trust tidelands. Thus, a shoreline protective device at the site would be inconsistent with public access and recreation policies of the certified LCP. Thus, the residence as proposed, is the feasible alternative that will avoid future impacts to public access because it has been designed in a manner that will not require shoreline protection. To ensure that future impacts to public access

resources identified above are avoided throughout the life of the development that is approved under this permit, thereby enabling the Commission to find the development consistent with the certified LCP and public access and recreation policies of the Coastal Act, noted above, the Commission imposes **Special Condition 1** requiring the applicant agree that no future expansion of the existing shoreline protective device shall be undertaken to protect the landside 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. **Special Condition 1** also requires that the landowner remove the development authorized by this permit if any government agency has ordered that the structure is not to be occupied due to the hazards identified above. The landowner must also remove any recoverable debris associated with the development that should fall into bay waters before they are removed.

In the short term, the State Lands Commission, through its tidelands grantee the County of Orange, which thereby acts as the trustee of the granted tidelands, has entered into a 49-year lease (through 2037) giving the applicant exclusive use of an approximate 30-foot wide area of filled and reclaimed former tidelands seaward of their property for landscaping and non-permanent recreational improvements, such as patios, walks, dock access walks, and garden walls not exceeding 36 inches in height above natural grade. All other property owners on Harbor Island have the same lease with the County of Orange. Seawalls are not a permitted use per the County lease of public tidelands, nor are seawalls permitted on public tidelands per the 2017 certified City of Newport Beach LCP. In order to comply with the Public Trust Doctrine, the 1988 lease of filled public tidelands to the homeowners contained certain restrictions. For instance, the uses on the land were specifically restricted only to landscaping and non-permanent recreational improvements including any and all landscaping and non-permanent recreational improvements existing as of August 1, 1990.

Over the long-term, these tidelands must be protected for public trust allowed uses, such as public recreational piers, visitor-serving facilities and boating facilities. The tidelands lease ends in 2037, at that time the County can return the lands back to the public domain and require all private improvements to be removed, or the County may choose to re-enter into a new re-negotiated lease agreement. At that time, the County will have to address the question of whether or not seawalls in the leasehold area are considered an allowable use under the Public Trust Doctrine.

Proposed Tidelands Development – ATF Seawall Reinforcement and New Wood Railing Coastal Act Sections 30220, 30221, 30222 and 30224 respectively require that coastal areas suited for water-oriented recreational activities be protected for such uses; that oceanfront land suitable for recreational use be protected for such uses; that visitor-serving commercial recreational facilities shall have priority over private residential uses on private lands; and that recreational boating be encouraged by limiting non-water dependent land uses that congest access corridors and preclude boat support facilities. Further Coastal Act Sections 30210 through 30212 require maximum public access and recreational opportunities to be provided. The portions of the project site which include filled and submerged public trust lands are coastal areas suitable for boating and other water-oriented recreation activities.

The ATF repairs/improvements to the seawall that the applicant undertook did not involve the actual concrete panels that make up the seawall and thus did not change the footprint of the existing seawall. The method of repair and maintenance did not result in adverse environmental impacts, was not inconsistent with Coastal Act requirements, and as such, staff concludes is the feasible alternative that avoids adverse impacts to public access.

Additionally, in order for the ATF seawall repairs/improvements to be in compliance with Coastal Act public access policies, and although just guidance, the City of Newport Beach certified LCP also has a requirement for an agreement to remove protective structures that are located on State tidelands and/or subject to potential future removal, the Commission imposes **Special Condition 2** limiting the authorization of the after-the-fact improvements to the existing protective device (i.e., new coping and tiebacks) within State tidelands to the term of the existing Lease agreement between the applicant and the County of Orange commencing in March 22, 1988 for a period of forty-nine (49) years until March 22, 2037 for the exclusive, private use of filled public State tidelands lying between the extension of the property side lines from the adjudicated mean high tide line to the U.S. bulkhead line. At that time, when the lease is up for all the landowners on Harbor Island the State Lands Commission/County of Orange may return these leased filled tidelands to the public domain, or the SLC/County may choose to re-enter into another lease period with the Harbor Island landowner(s), or may re-negotiate the terms of the lease and clarify the question of whether seawalls/bulkheads on public State tidelands is consistent with the Public Trust land use restrictions. The after-the-fact improvements approved by this CDP shall be assessed for removal and/or relocation at the expiration of the Lease Agreement in the context of a comprehensive and coordinated approach of all similar improvements within State Tidelands located on Harbor Island.

Recreation and Parking

Section 30212 of the Coastal Act states, in relevant part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(2) adequate access exists nearby...

Section 30252 of the Coastal Act states, in relevant part:

The location and amount of new development should maintain and enhance public access to the coast by...

(4) providing adequate parking facilities or providing substitute means of serving the development with public transportation...

LUP Policy 2.9.3-2: *Continue to require new development to provide off-street parking sufficient to serve the approved use in order to minimize impacts to public on-street and off-street parking available for coastal access.*

LUP Policy 2.9.3-5: *Continue to require off-street parking in new development to have adequate dimensions, clearances, and access to ensure their use.*

IP Section 21.40.040 – Off-Street Parking Spaces Required: *Single-Unit Dwellings-Detached and 4,000 sq. ft. or greater of floor area – 3 per unit in a garage.*

Since the proposed development (i.e., new single family residence and ATF repairs/improvements to existing seawall) is located on a private island within the first public road and the sea, both the LCP policies and the public access policies of the Coastal Act are the standard of review. Section 30212 of the Coastal Act requires that public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where adequate access exists nearby. Section 30252 of the Coastal Act requires that public access to the coast be maintained and enhanced by supplying adequate parking to support new development. IP Section 21.40.040 requires three (3) parking spaces in a garage for a single family residence with 4,000 sq. ft. or greater of floor area.

The Commission has consistently found that two parking spaces are adequate to satisfy the parking demand generated by one individual residential unit. In this case, the certified LCP requires two parking spaces for single family residences under 4,000 sq. ft. and three parking spaces for residences 4,000 sq. ft. and greater. The proposed single family residence is 10,923 sq. ft. excluding parking and 12,427 sq. ft. including the proposed three parking spaces located in an attached garage, plus a golf cart garage/storage. As designed, the new single family residence meets the LCP parking requirement for a new single family residences.

Harbor Island is a private community within Newport Bay. No general public pedestrian or vehicle access presently exists onto Harbor Island. The nearest public access is located along a beach in the Beacon Bay community located on the landward side of the bridge leading to the island. There is also a public walkway that surrounds Balboa Island, approximately ¼ mile southeast of the project site and public beaches approximately ½ mile south along the Balboa Peninsula. Because there is no public pedestrian or vehicle access to the island, the project will not impact such public access. However, the public is able to access the beach/public tidelands area seaward of the subject site by watercraft or by swimming to the site. Therefore, except as described above with regard to future potential opening of public access to the filled tideland areas currently under lease to Harbor Island property owners, the proposed development will not have a direct impact to the current public access resources to or along the public tidelands. In order to preserve and maintain access to the public tidelands, **Special Condition 9** 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. As conditioned, the Commission finds that the proposed project is consistent with Sections 30212 and 30252 of the Coastal Act.

D. BIOLOGICAL RESOURCES

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Seawalls and docks/dock piles are known to adversely impact marine resources if the structures are placed on actual marine resources, resulting in fill and shading resulting in the loss of surrounding marine habitat areas. Newport Harbor contains eelgrass beds, which are important nursery habitats for many fish species that maintain the populations of open ocean fish species, many of which are fished commercially and recreationally. Eelgrass beds are the kind of habitat area that, pursuant to Section 30230 of the Coastal Act, deserves special protection as an area of special biological significance. The National Marine Fisheries Service Eelgrass Mitigation Policy (October 2014) states the following about eelgrass:

*Eelgrass species (*Zostera marina* L. and *Z. pacifica*) are seagrasses that occur in the temperate unconsolidated substrate of shallow coastal environments, enclosed bays, and estuaries. Eelgrass is a highly productive species and is considered to be a "foundation" or habitat forming species. Eelgrass contributes to ecosystem functions at multiple levels as a primary and secondary producer, as a habitat structuring element, as a substrate for epiphytes and epifauna, and as sediment stabilizer and nutrient cycling facilitator. Eelgrass provides important foraging areas and shelter to young fish and invertebrates, food for migratory waterfowl and sea turtles, and spawning surfaces for invertebrates and fish such as the Pacific herring. Eelgrass also provides a significant source of carbon to the detrital pool which provides important organic matter in sometimes food-limited environments (e.g., submarine canyons). In addition, eelgrass has the capacity to sequester carbon in the underlying sediments and may help offset carbon emissions. Given the significance and diversity of the functions and services provided by seagrass, Costanza et al. (2007) determined seagrass ecosystems to be one of Earth's most valuable ecosystems.*

Thus, eelgrass beds are the kind of habitat area that, pursuant to Section 30230 of the Coastal Act, deserves special protection as an area of special biological significance.

The NMFS October 2014 eelgrass policy also reports the following adverse effects of human development on eelgrass beds like those in front of the subject site:

Seagrass habitat has been lost from temperate estuaries worldwide (Duarte 2002, Lotze et al. 2006, Orth et al. 2006). While both natural and human-induced mechanisms have contributed to these losses, impacts from human population expansion and associated pollution and upland development is the primary cause (Short and Wyllie-Echeverria 1996). Human activities that affect eelgrass habitat distribution and abundance, including, but not limited to, urban development, harbor development, aquaculture, agricultural runoff, effluent discharges, and upland land use associated sediment discharge (Duarte 2008) occur throughout California. For example, dredging and filling; shading and alteration of

circulation patterns; and watershed inputs of sediment, nutrients, and unnaturally concentrated or directed freshwater flows can directly and indirectly destroy eelgrass habitats.

Eelgrass surveys performed by the City in 2016 identify eelgrass beds in the channel offshore of the subject site. Coastal Act Section 30230 states that marine resources shall be maintained and enhanced, and Coastal Act Section 30231 states that the biological productivity of coastal waters shall be maintained, so construction of a future bulkhead or seawall that encroach on this habitat would be inconsistent with these policies.

Furthermore, on a shoreline without a fixed back beach marine habitats would have the opportunity to move inland along with rising sea levels. However, where there is a back beach fixed by a structure, like a seawall, that inland migration of habitat would be stopped at the face of the wall. As seas continue to rise, the habitat in front of the wall will convert to deep water habitat type. So, in this case, even if a seawall were placed inland of the tidelands, erosive forces would eventually reach the wall, converting the nearshore sandy beach environment to deep-water habitat. Eelgrass thrives in shallow water areas of the harbor. As the area converts to deeper water it becomes less suitable to the growth of eelgrass and subsequent loss of eelgrass beds. The construction of a future bulkhead or seawall would not maintain, enhance, or lead to restoration of eelgrass beds which are areas of special biological significance and would not sustain the biological productivity of coastal waters. As such, the seawall repairs (removal of the existing seawall's coping and installation of a new concrete coping atop the existing seawall panels, and reinforcement of the seawall by the addition of four concrete deadmen connecting to the seawall coping with tie-backs rods) for which the applicant is requesting ATF approval may be considered the feasible alternative that avoids marine resource impacts because the maintenance activities themselves did not expand the footprint of the seawall seaward, did not result in disturbance of soft bottom intertidal sediment or water turbidity as all the work was conducted from the landside and outside of coastal waters and thus did not result in direct or indirect impacts to marine biological resources.

Additionally, to ensure that marine resource impacts identified above are avoided throughout the life of the proposed new development that is approved under this permit, (i.e., single family residence on the landside of the subject site) and to assure that the proposed project is consistent with the certified LCP, the Commission imposes **Special Condition No. 1** that prohibits the future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device to be undertaken if such activity extends the footprint seaward of the subject shoreline protective device in order to protect the landside development. In sum, expanding or building a future new seawall to protect the proposed development would cause significant impacts to coastal resources including marine habitats. Thus, as conditioned, the Commission finds that the proposed single family residence and associated improvements is consistent with the policies of the certified LCP.

E. WATER QUALITY

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological

productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30232 of the Coastal Act states:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

City of Newport Beach LCP Policies

LUP Policy 4.3.1-6: *Require grading/erosion control plans to include soil stabilization on graded or disturbed areas.*

Policy 4.3.1-7: *Require measures be taken during construction to limit land disturbance activities such as clearing and grading, limiting cut-and-fill to reduce erosion and sediment loss, and avoiding steep slopes, unstable areas, and erosive soils. Require construction to minimize disturbance of natural vegetation, including significant trees, native vegetation, root structures, and other physical or biological features important for preventing erosion or sedimentation.*

Policy 4.3.2-2: *Require that development not result in the degradation of coastal waters (including the ocean, estuaries and lakes) caused by changes to the hydrologic landscape.*

Policy 4.3.2-1: *Promote pollution prevention and elimination methods that minimize the introduction of pollutants into coastal waters, as well as the generation and impacts of dry weather and polluted runoff.*

Policy 4.3.2-7: *Incorporate BMPs into the project design in the following progression: Site Design BMPs, Source Control BMPs, and Treatment Control BMPs. Include site design and source control BMPs in all developments. When the combination of site design and source control BMPs are not sufficient to protect water quality as required by the LCP or Coastal Act, structural treatment BMPs will be implemented along with site design and source control measures.*

Policy 4.3.2-8: *To the maximum extent practicable, runoff should be retained on private property to prevent the transport of bacteria, pesticides, fertilizers, pet waste, oil, engine*

coolant, gasoline, hydrocarbons, brake dust, tire residue, and other pollutants into recreational waters.

Policy 4.3.2-22: Require beachfront and waterfront development to incorporate BMPs designed to prevent or minimize polluted runoff to beach and coastal waters.

Policy 4.3.2-24: To further reduce runoff, direct and encourage water conservation via the use of weather- and moisture-based irrigation controls, tiered water consumption rates, and native or drought-tolerant plantings in residential, commercial, and municipal properties to the maximum extent practicable.

Section 30230 of the Coastal Act requires that marine resources including biological productivity be protected. Section 30231 of the Coastal Act requires that the biological productivity of coastal waters be maintained, and where feasible, restored. In addition, Sections 30230 and 30231 require that the quality of coastal waters be maintained and protected from adverse impacts. Section 30232 of the Coastal Act requires protection against the spillage of crude oil, gas, petroleum products, or hazardous materials in relation to any development.

Proposed Landside Development - Construction Impacts to Water Quality

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species' ability to see food in the water column. Eelgrass, known to grow offshore of the subject site, is also adversely impacted by poor water quality and sedimentation. In order to avoid adverse construction-related impacts upon marine resources, the Commission imposes **Special Condition 6**, which outlines construction-related best management practices to provide for the safe storage of construction materials and the safe disposal of construction debris. This condition requires, among other things, the applicant to remove any and all debris resulting from construction activities within 24 hours of completion of the project. In addition, all construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

Proposed Landside Development - Post-Construction Impacts to Water Quality

The proposed single family residence is considered new development and there is an opportunity to improve water quality. Much of the pollutants entering the ocean come from land-based development. The LCP requires new projects minimize to the extent feasible, the cumulative adverse impacts on water quality resulting from incremental increases in impervious surface associated with additional development. In order to deal with these post construction water quality impacts, the applicant has submitted a drainage and runoff control plan. To minimize any impacts to water quality the proposed project may have after construction; all onsite runoff will be directed to a trench drain and bottomless trench drain. In order to ensure that the drainage and runoff control plan is adhered to, the Commission imposes **Special Condition 5**, which requires the applicant to conform with the submitted drainage and runoff control plan and to adequately maintain it throughout the life of the proposed development.

Additionally, the applicant has submitted a landscape plan. The proposed landscaping plan does not include any plant species listed as problematic and/or invasive by the California Native Plant Society or the California Invasive Plant Council. Furthermore, the landscape plan should only be drought tolerant to minimize the use of water. Commission staff has reviewed the proposed landscape plan and determined that it contains drought tolerant non-invasive plant species.

Special Condition 4 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 for the life of the project. The applicant has also stated that they are in compliance with the applicable water efficiency and conservation measures of the City's adopted CALGreen standards concerning irrigation systems, and efficient fixtures and appliances.

Thus, as conditioned, the Commission finds that the proposed project is consistent with the certified LCP policies regarding water quality.

F. PERMIT FEES

Development has occurred on the site without the required coastal development permit, specifically within the State public tidelands leasehold area of the site, placement of solid materials, including a new concrete coping to an existing seawall and twelve (12) new tiebacks connected to four (4) new deadmen all of which occurred in or adjacent to coastal waters.

The applicant is proposing after-the-fact approval of the unpermitted development noted above and described in more detail in the project description. Although the development has taken place prior to submittal of this application, consideration of the proposed development on State public tidelands by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act with the policies of the Newport Beach Local Coastal Program used as guidance. Commission review and action on this permit will resolve the unpermitted development identified in this section once the permit has been fully executed and the terms and conditions of the permit complied with by the applicant.

Section 30620(c)(1) of the Coastal Act states, in relevant part:

The Commission may require a reasonable filing fee and the reimbursement of expenses for the processing by the Commission of an application for a coastal development permit...

Section 13055 of the California Code of Regulations sets the filing fees for coastal development permit applications, and states in relevant part:

(d) Fees for an after-the-fact (ATF) permit application shall be five times the amount specified in section (a) unless such added increase is reduced by the Executive Director when it is determined that either:

(1) the ATF permit application can be processed by staff without significant additional review time (as compared to the time required for the processing of a regular permit,) or

(2) the owner did not undertake the development for which the owner is seeking the ATF permit, but in no case shall such reduced fees be less than double the amount specified in section (a) above. For applications that include both ATF development and development that has not yet occurred, the ATF fee shall apply only to the ATF development. In addition, payment of an ATF fee shall not relieve any persons from fully complying with the requirements of Division 20 of the Public Resources Code or of any permit granted thereunder or from any penalties imposed pursuant to Chapter 9 of Division 20 of the Public Resources Code.

(i) The required fee shall be paid in full at the time an application is filed. However, applicants for an administrative permit shall pay an additional fee after filing if the executive director or the commission determines that the application cannot be processed as an administrative permit. The additional fee shall be the amount necessary to increase the total fee paid to the regular fee. The regular fee is the fee determined pursuant to this section. In addition, if the executive director or the commission determines that changes in the nature or description of the project that occur after the initial filing result in a change in the amount of the fee required pursuant to this section, the applicant shall pay the amount necessary to change the total fee paid to the fee so determined. If the change results in a decreased fee, a refund will be due only if no significant staff review time has been expended on the original application. If the change results in an increased fee, the additional fee shall be paid before the permit application is scheduled for hearing by the commission. If the fee is not paid prior to commission action on the application, the commission shall impose a special condition of approval of the permit. Such special condition shall require payment of the additional fee prior to issuance of the permit.

The Commission received a fee of \$554 with this coastal development permit application on January 22, 2016. Based on the CDP application Filing Fee Schedule for the 2015/2016 fiscal year (Section 13055, subsection (a)(2)(A) of the California Code of Regulations), the fee for residential development on the regular calendar is \$6,648 for a single-family dwelling between 5,001 to 10,000 sq. ft., plus an additional \$2,216 fee for grading, in this case grading is proposed between 1,001 to 10,000 cubic yards (Section 13055, subsection (a)(4)), for a total fee of \$8,864 for the proposed residential development on the subject property.

Additionally, the applicant is seeking an after-the-fact permit for improvements to an existing seawall on public tidelands currently under lease by the applicant. Subsection (d) of California Code of Regulations Section 13055 indicates that the fee for an after-the-fact permit application shall be five times the amount specified in section (a) unless such added increase is reduced by the Executive Director when it is determined that either: the permit application can be processed by staff without significant additional review time or the owner did not undertake the development for which the owner is seeking the after-the-fact permit. In this case, the owner did undertake the development for which he is seeking the after-the-fact permit and additional staff review time was required, thus, the fee for the unpermitted portion of the proposed development is not reduced by the Executive Director. Therefore, per the CDP application Filing Fee

Schedule for the 2015/2016 fiscal year (Section 13055, subsection (a)(5)(B)(1) of the California Code of Regulations), the fee for development based on development cost is \$3,324 (development cost up to and including \$100,000) times five (5) is \$16,620.

Therefore, \$8,864 plus \$16,620 equals a total of \$25,484. Because the applicant has already paid \$554, **Special Condition 10** requires the applicant to pay the balance of \$24,930 prior to issuance of the permit, consistent with the requirements of California Code of Regulations Section 13055(i).

G. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, **Special Condition 11** requires the applicant/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 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.

H. LOCAL COASTAL PROGRAM (LCP)

On January 13, 2017, the City of Newport Beach LCP was effectively certified. The development proposed within private property lines 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. Development proposed seaward of the property line identified as an adjudicated mean high tide line including development on filled tidelands is located within the Commission's jurisdiction and consequently, the standard of review is the Chapter 3 of the Coastal Act and the certified LCP serves as guidance. As conditioned, the proposed landside development is consistent with the City's certified LCP and the public access and recreation policies of the Coastal Act; and only as conditioned, is proposed development within the Commission's original jurisdiction consistent with Chapter 3 of the Coastal Act.

I. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City of Newport Beach is the lead agency responsible for certifying that the proposed project is in conformance with the California Environmentally Quality Act (CEQA). The City determined that in accordance with CEQA, the project is Categorical Exempt development from Provisions of CEQA for new construction. Section 13096(a) of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

Under Section 15251(c) of Title 14 of the California Code of Regulations, the Commission's CDP regulatory process has been certified as the functional equivalent to the CEQA process. The proposed project is located in an urban area. Infrastructure necessary to serve the project exists in the area. The proposed project has been conditioned in order to be found consistent with the public access and resource protection policies of the Coastal Act and the LCP, as applicable. As conditioned, the proposed project has been found consistent with the hazards, water quality and public access policies of the Coastal Act and the LCP, as applicable.

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

APPENDIX A - SUBSTANTIVE FILE DOCUMENTS

City of Newport Beach Certified LCP

City of Newport Beach Approval In Concept dated 12/22/15

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

Technical Memorandum Re: Evaluation of Coastal Hazards for 24 Harbor Island Development Permit Application No. 5-16-0054 prepared by Anchor QEA, LLC dated December 21, 2016

Technical Memorandum Re: Response to California Coastal Commission staff comment re: Seawall Removal: Impacts to Adjacent Properties, Addendum to Technical Memorandum dated December 21, 2016 prepared by Anchor QEA, LLC dated May, 18, 2017

Coastal Hazards Analysis For Proposed New Development at 24 Harbor Island, Newport Beach, County of Orange, prepared by William Simpson & Associates, Inc. Consulting Structural Engineers, WSA Job #6838-4, dated November 25, 2015

Water Quality Management Plan (WQMP) for the Quinn Residence, 24 harbor Island, Lot 24 & Por. Lot 25, Tract 802, Newport Beach, California, prepared by Toal Engineering, Inc., dated May 10, 2016.

A-11-15-74-4304 – Administrative Permit issued by on December 3, 1974 for the construction of a 1-story, 11.5 feet high from finished grade, 315 sq. ft. residential greenhouse.

P-12-15-77-2446 – Coastal Development Permit issued on February 6, 1978 for a two-story addition to an existing two-story single-family dwelling; construction of swimming pool, spa and gazebo, 26 feet above centerline of frontage road.

A-9-12-77-1847 – Coastal Development Permit issued on October 18, 1977 for the construction of 112-ft. long new seawall to replace existing seawall which failed, existing dock to be temporarily removed and re-installed in the same location.

5-89-812 – DeMinimis Waiver effective September 15, 1989 to rebuild and relocate boat dock, pile and ramp within the U.S. Pierhead Line.

5-10-079 – DeMinimis Waiver effective May 10, 2010 for the after-the-fact approval of demolition of a single family residence. No additional development or grading is proposed. All debris removed from the site and disposed of at a location outside of the Coastal Zone

5-10-131 – DeMinimis Waiver effective August 13, 2010 for a lot line adjustment to combine two lots into one lot resulting in a 15,463 square foot (0.355 acre) lot. No additional development proposed.