

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



Th10a

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-18-0821

Applicants: Joseph Foster, John Foster, and West Coast Turf

Agent: Shellmaker, Inc., Attn: Lisa E. Miller

Locations: 4018, 4020 and 4022 Channel Place, Newport Isle, City of Newport Beach, Orange County.

Project Description: Demolition of bulkheads fronting three contiguous residential lots, and construction of a 10.32-foot tall precast concrete panel bulkhead/seawall with concrete coping in the same location, with 42-inch tall glass railing, and two concrete decks cantilevered 5 feet over the fronting channel beyond the bulkhead/seawall at 4018 and 4022 Channel Place. Also, remove and replace in-kind three private boat docks and pier platforms.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The proposed project is within the Commission's original permit jurisdiction within and over the waters of Newport Bay in the City of Newport Beach, a certified jurisdiction. The proposed project is the demolition of concrete bulkheads spanning across three contiguous residentially-zoned properties, and replacement with a new 10.32-foot tall concrete bulkhead in the same location and alignment. The project also includes the construction of concrete decks with a 42-inch tall glass railing, and removal and replacement of the three private boat docks and pier platforms. Two of the three decks, at 4018 and 4022 Channel Place, are proposed to be cantilevered 5 feet over the waterway beyond the reconstructed bulkhead. The deck proposed at

4020 Channel Place does not extend beyond the new bulkhead. The standard of review for development within the Commission's original permit jurisdiction is Chapter 3 of the Coastal Act. The City of Newport Beach certified LCP may be used for guidance.

Property records indicate that a portion of each of the three applicants' properties extends about 35 feet bayward of the existing bulkhead into the fronting channel (Newport Isle Channel). Bayward of each bulkhead, within the channel, each lot is developed with a private recreational boat dock. Only one out of the three lots (4018 Channel Place) currently has deck cantilevered over the water beyond the bulkhead.

Commission staff notes that, even if the applicants hold title for part of the channel, the submerged lands bayward of the bulkhead are subject to the Public Trust Doctrine as they are submerged lands. The Public Trust Doctrine provides that tidelands and submerged lands, and the beds of lakes, streams and other navigable waterways, are to be held in trust by the State for the benefit of the people of California for uses including the right to swim, boat and engage in other forms of water recreation, navigation and/or commerce. In this case, the channel is used primarily for recreational boating activities, as evidenced by the numerous docks that line the channel.

Construction of the proposed 25-foot by 5-foot cantilevered deck over the channel at two of the subject properties (4018 and 4022 Channel Place) would further narrow the channel by five feet and adversely affect public access and use of this area subject to the Public Trust, as the general public will be unable or unwilling to access the area beneath the cantilevered decks for recreational purposes. Construction of the cantilevered decks would result in adverse impacts to public access inconsistent with Sections 30210, 30211, 3012, 30220 and 30221 of the Coastal Act. The City of Newport Beach Local Coastal Program (LCP) includes policies (3.1.1-1, 3.1.1-9, 3.1.1-11, and 3.1.4-3) protecting public access and approval of new cantilevered decks over Public Trust area would be inconsistent with those LCP policies.

In addition, Section 30250 of the Coastal Act requires that new development be located where it will not have cumulative adverse effects on coastal resources. Permitting the proposed cantilevered decks would result in cumulative adverse effects upon public access, because of the likelihood of similar development being proposed along the shoreline of Newport Bay. Therefore, the Commission imposes Special Condition 1 requiring the applicants to provide revised plans to delete the cantilevered decks proposed for 4018 and 4022 Channel Place. As revised to delete the cantilevered decks, staff recommends approval of the proposed bulkhead replacement project.

Staff is recommending **approval** of the proposed coastal development permit with **eight (8)** special conditions requiring: 1) Submittal of Revised Plans; 2) No Future Seaward Expansion of Shoreline Protective Device; 3) Construction Phase BMPs; 4) Assumption of Risk, Waiver of Liability; 5) Future Development; 6) Best Management Practices (BMP) Program; 7) Public Rights; and 8) Deed Restriction. The applicants do not agree with the staff recommendation.

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EXHIBITS

- Exhibit 1 – Vicinity Map
- Exhibit 2 – Record of Survey
- Exhibit 3 – Project Plans
- Exhibit 4 – Site Photographs

I. MOTION AND RESOLUTION

Motion: *I move that the Commission **approve** Coastal Development Permit No. 5-18-0821 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 the provisions of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the 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. **Revised Plans.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for the Executive Director's review and approval, two (2) full size sets of plans that substantially conform to the project plans by William Simpson & Associates, Inc. dated 8/14/18, but shall be revised as follows:
 - A. No decks or patios are permitted to extend beyond the face of the approved bulkhead. Concrete decks cantilevered beyond the bulkheads shall be deleted from the revised plans;
 - B. Revised plans shall clearly show the location, design, size and shape of the reconstructed or reinstalled pier platforms, gangways, dock floats and pier piles. The size of the proposed reconstructed/reinstalled pier platforms and dock floats shall not exceed the size or footprint of the existing pier platforms and floats, unless authorized by as subsequent Commission action.
 - C. Revised plans shall show the location, design, height and materials of bayfront glass walls for the review and approval of the Executive Director. Said plans shall clearly indicate the proposed bird strike prevention method for proposed new bayfront railing. Bayfront railings subject to this permit shall use materials designed to minimize bird-strikes with the railing. Material selection and structural design shall be made in consultation with a qualified project biologist, the California Department of Fish and Wildlife and the United States Fish and Wildlife Service (herein 'Resource Agencies'), and the Executive Director of the Commission. Such materials may consist, all or in part, of wood; wrought iron; frosted or partially-frosted glass, Plexiglas or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas shall not be installed unless appliqués (e.g. stickers/decals) designed to reduce bird-strikes by reducing reflectivity and transparency are applied to the surface. Any appliqués used shall be installed to provide coverage consistent with manufacturer specifications (e.g. one appliqué for every 3 foot by 3 foot area) and the recommendations of the Executive Director. Use of opaque or partially opaque materials is preferred to clean glass or Plexiglas and appliqués. All materials and appliqués shall be maintained throughout the life of the development to ensure continued effectiveness at addressing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications and as recommended by the Executive Director.

The applicants 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.

2. **No Future Expansion of Existing Shoreline Protective Device.**

- A. By acceptance of this coastal development permit, the applicants agree, on behalf of themselves and all successors and assigns, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device that is the subject of Coastal Development Permit No. 5-18-0821, 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 bayward in order to protect existing or proposed new landside development 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. Prior to the issuance by the Executive Director of the NOI FOR THIS PERMIT, the applicants shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a graphic depiction of the shoreline protective device that is the subject of Coastal Development Permit No. 5-18-0821, as generally described above and shown on the topographic survey included as **Exhibit 2** of this staff report, showing the footprint and the elevation of the device referenced to NGVD (National Geodetic Vertical Datum).

3. **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.
 - O. No eelgrass shall be disturbed unless an amendment to this coastal development permit is obtained.
4. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards 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.
5. **Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-18-0821. 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. 5-18-0821. Accordingly, any future improvements to the development 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. 5-18-0821 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

6. Best Management Practices (BMPs) Program

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

A. Boat Cleaning and Maintenance Measures:

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

B. Solid and Liquid Waste Management Measures.

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

C. Petroleum Control Management Measures:

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

7. Public Rights. The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittees shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

8. Deed Restriction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the landowners have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the

Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

The project site consists of three contiguous bayfront lots on Newport Isle within Newport Harbor (**Exhibit 1**). The lots at 4018 and 4022 Channel Place are each developed with a single-family residence, and the middle lot (4020 Channel Place) is developed only with turf and hardscape. All three lots are protected by bulkheads and have private boat dock facilities (pier platforms and floats). Additionally, 4018 Channel Place has an existing wood deck cantilevered 5 feet beyond the bulkhead. The City of Newport Beach LCP Coastal Zoning Map designates the three lots as the R-2 (Two Unit Residential) zone.

The project is located on Newport Isle, a triangle shaped island on the west side of Lower Newport Harbor developed with public streets and approximately 120 residences (single-family and duplexes). The northern side of the project site is bounded by Newport Isle Channel, an approximately 100-foot wide waterway used for recreational boating activities. The other side of the channel is developed with single-family residential development and associated residential docks at the Balboa Coves. The bayfront property lines of the three subject lots extends approximately 35 feet beyond the existing bulkheads into the channel, which the City's LCP identifies as a "Waterway Dedicated or Reserved for the Same."

The proposed project is the replacement of the bulkheads that span the three subject lots. The existing bulkheads will be demolished, and a new 10.32-foot high precast concrete panel bulkhead/seawall will be constructed in the same location and alignment as the existing bulkheads. After the old bulkheads are demolished, the new precast concrete panels will be jettied in from the landside at least 8 feet below the mudline, the new wall will be tied back with 18-foot long helical anchors. Additionally, the proposed development at 4018 and 4022 Channel Place includes construction of concrete decks with a 42-inch high glass railing cantilevered 5 feet over the water beyond the bulkhead/seawall. Project plans are included as **Exhibit #2**.

Thus, the proposed cantilevered deck portions of the proposed development would result in the bayward extension of development associated with two single-family residences. The proposed project also includes the retention and improvement of the three existing private boat docks at the site. The proposed plans show that three existing 10' x 14' pier platforms that extend into the bay from the subject lots are proposed to be removed and rebuilt as part of the project. Each pier would

be attached to the proposed new seawall/bulkhead (and/or cantilevered decks). The three existing boat dock floats would also be reattached to the existing piles after completion of the proposed new seawall/bulkhead.

The area of the bay over which the proposed residential decks would be cantilevered is a 20' x 5' portion of the applicants' property that is situated bayward of the existing bulkhead. These portions of the applicants' lots are not identified as State Tidelands as they have historically been part of the property deeds for these lots, even though they are within the channel and submerged. As previously described, all three subject sites have a private residential recreational boat dock bayward of the existing bulkhead; and 4018 Channel Place has a wood deck cantilevered 5 feet beyond the bulkhead. There is no CDP approval on record for the cantilevered deck or the existing residential dock at 4018 Channel Place.

PREVIOUS COMMISSION ACTIONS

4022 Channel Place

- De Minimis Waiver 5-03-292-W, effective September 10, 2003 for a 327 sq. ft. second story addition and remodel of a 1,380 square foot, two-story single-family residence with an attached 485 square foot two-car garage.
- Staff's record search found no Commission approval for the existing dock.

4020 Channel Place

- Administrative Coastal Development Permit 5-06-403 approved March 15, 2007 for demolition of a boat dock, gangway, and piles; and installation of a new dock system consisting of a 3' x 24' gangway and a 10' x 16' dock float secured with two 12-inch diameter concrete piles.
- Local Coastal Development Permit No. CD2017-045 effective August 28, 2017 for the demolition of a single-family residence and garage.

4018 Channel Place

- Staff's record search found no Commission approval for the existing single family residence or dock.

The proposed project consists of development located on submerged lands and is therefore within the Commission's jurisdiction and the Commission is the permit-issuing authority. 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 certified LCP Policies and Standards:

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 21.30.030.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.*

The applicants have provided a Coastal Hazards Analysis Report prepared by William Simpson & Associates, Inc. (WSA Job #7101, 7193, and 7108) dated July 26, 2018 and a Bulkhead Condition Letter, also prepared by William Simpson & Associates, Inc. (WSA Job #7101, 7193, and 7108) dated August 14, 2018, for 4018, 4020 and 4022 Channel Place. The findings of the Bulkhead Condition Letter indicate that the cast-in-place concrete bulkheads were found in poor condition with distressed concrete, severe cracks and lateral bayward movements. The bulkheads were deemed necessary to protect existing and future principal structures on the lots. The Coastal Hazards Analysis identifies the highest high tide in the project area as +7.38-feet Mean Lower Low Water (MLLW). The estimated sea level rise at the site appears to be between 1.20' and 2.70' feet over the next 75 years, accounting for bay water levels rising in the range of +8.40' to +9.90' NAVD88.

Additionally, 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. The existing bulkhead's elevations vary from +10.27' NAVD88 at 4018 Channel Place, +9.60' NAVD88 at 4020 Channel Place, and 9.39' NAVD88 at 4022 Channel Place. The elevation of the proposed new bulkhead/seawall across all three lots is +10.32' NAVD88. Additionally, the finished floor elevations for the existing residential development on the landward side of the lots are all above +10' NAVD88, all above the Base Flood Elevation established for the area.

The study concludes that wave run-up and erosion will not significantly impact the property over the proposed life of the development (75 years), noting that even at accelerated shoreline erosion rates that may occur due to rapid rates of sea level rise, there will be no impact to the structures on the subject lots over their economic life. The report notes that there have been no visible indications of shoreline change or landward movement of the Mean High Tide Line (MHTL). The position of the MHTL for these lots is based on the position of the existing bulkheads. Erosion in front of the bulkheads was found to be very small, but the report does not provide any estimates for erosion of the shoreline if the existing bulkheads were to be removed and not replaced.

The applicants propose to replace the compromised and failing bulkheads in their current location and alignment. The new bulkhead/seawall will not encroach into the channel beyond the footprint of the existing bulkheads. The existing bulkheads were most likely constructed prior to passage of the Coastal Act. According to online City records, it appears that existing development at the three subject sites was also constructed prior to passage of the Coastal Act. The residential structure at 4018 Channel Place was constructed in 1964, the previous residential structure (since demolished) at 4020 Channel Place was constructed in 1953, and the residential structure at 4022 Channel Place was constructed in 1953.

As previously mentioned, the elevation of the proposed bulkhead/seawall across all three lots is +10.32' NAVD88. As proposed, the height of the new seawall would protect existing landside development for the next 75 years, accounting for bay water levels rising in the range of +8.40' to +9.90' NAVD88. All of Newport Isle, including private residential development and public streets, are protected by a series of similar bulkheads, and the replacement of the proposed shoreline protection is necessary to protect the existing residences and public infrastructure on the island.

The construction of seawalls and other shoreline protective devices is generally disfavored under the Coastal Act, as these structures interfere with natural shoreline processes, erode beaches, and have numerous, related adverse impacts on public access and visual resources. Thus, Coastal Act section 30253(b) requires that new development “neither create nor contribute significantly to erosion . . . 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.” The proposed construction of a seawall to protect the subject private residences on Newport Isle does not raise these concerns, however. First, the island is not a natural feature, as it would not exist without the dredging of the channel and the construction of the seawalls that prevent the island from sliding into the channel. Secondly, there is no beach or natural shoreline processes in this location, since the existing vertical seawalls already separate the channel from the land. There also is no bluff or cliff in this location. Finally, the proposed replacement of the seawall will not adversely affect coastal access, since the new bulkhead/seawall will result in no change to existing public access opportunities. This is in contrast to seawalls built on beaches and/or bluffs, where such development can have significant adverse impacts to public access and coastal resources.

Nevertheless, section 30235 of the Coastal Act provides that shoreline protective devices “shall” be permitted when required to protect *existing* structures, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. The City’s recently adopted LCP includes policies that specifically address bulkheads and shoreline protective devices, including LUP Policy 2.8.6-9, which states that shoreline protection may be permitted to protect existing structures legally constructed prior to *certification of the LCP*, which occurred in 2017.

Here, the Coastal Act is the standard of review for the Commission’s review of the proposed development, although the City’s LCP, certified by the Commission in 2017, provides guidance. The project site includes three lots, with single-family residences on the two outside lots and a vacant lot in-between. The two existing homes were constructed in 1953 and 1964 and, thus, prior to adoption of the Coastal Act of 1976. Accordingly, the proposed bulkhead is necessary to protect existing structures in danger from erosion and may be authorized as long as it is designed to eliminate or mitigate adverse impacts on shoreline sand supply. In addition, even though the vacant lot does not contain an existing structure and would not itself be entitled to shoreline protection under section 30235, the efficacy of the proposed bulkhead to protect the two existing homes on the outside lots would be diminished if the bulkhead were not replaced across all three lots. In other words, in order to protect the two existing homes, the bulkhead must be constructed across all three lots, including the vacant lot.

Notwithstanding the need for shoreline protection, which, according to the applicants’ Coastal Hazards Analysis, will be adequate to protect the residences from sea-level rise impacts, the proposed development is located on a bay island where coastal hazards exist and can adversely impact existing development. Therefore, the Commission imposes **Special Condition 4**, which requires the applicants to assume the risks of development.

Additionally, since coastal processes are dynamic and structural development may alter the natural environment, future development at these sites 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 5** informing the applicants and any future property owners that future development at the site requires an amendment to this Coastal Development Permit No. 5-18-0821 or a new coastal development permit. Thus, as conditioned, the Commission finds that the proposed project is consistent with Section 30235 and Section 30253 of the Coastal Act.

C. PUBLIC ACCESS AND RECREATION

Section 30210 of the Coastal Act, Access; recreational opportunities; 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.

Section 30211 of the Coastal Act, Development not to interfere with access, 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.

Section 30212 of the Coastal Act, New development projects (in part), 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.

Section 30220 of the Coastal Act, Protection of certain water-oriented activities, states:

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

Section 30221 of the Coastal Act, Oceanfront land; protection for recreational use and development, 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.

Section 30250 of the Coastal Act, Location, existing developed areas, states:

(a) New residential...development...shall be located...where it will not have significant adverse effects, either individually or cumulatively, on coastal resources....

City of Newport Beach certified LCP Policies and Standards:

LUP Policy 3.1.1-1 states:

Protect, and where feasible, expand and enhance public access to and along the shoreline and to beaches, coastal waters, tidelands, coastal parks, and trails.

LUP Policy 3.1.1-9 states:

Protect, expand, and enhance a system of public coastal access that achieves the following:

Maximizes public access to and along the shoreline;

LUP Policy 3.1.1-11 states:

Require new development to minimize impacts to public access to and along the shoreline.

LUP Policy 3.1.4-3 states:

Design and site piers, including remodels of and additions to existing piers so as not to obstruct public lateral access and to minimize impacts to coastal views and coastal resources.

Development Standards, Harbor Development Regulations, 21.30.15.E(3) states:

Bulkhead Condition Report. Where a coastal hazards report shows that an existing bulkhead on the site cannot be removed and/or an existing or replacement bulkhead is required to protect existing principal structures or public facilities, the applicant shall submit a bulkhead condition report that includes the following:

- a. A statement of the preparer's qualifications;*
- b. An analysis of the condition of any existing bulkhead including whether the top elevation meets current City standards, the condition of the sheetpiles or panels, the condition of existing tiebacks and/or deadmen or similar, and any other relevant conditions;*
- c. Recommendations regarding the need for repair, augmentation or replacement of the bulkhead or any parts thereof;*
- d. If augmentation or replacement is necessary, recommendations that will avoid seaward encroachment of the bulkhead;*
- e. If replacement is necessary and the existing bulkhead is not in alignment with adjacent bulkheads, recommended alternatives that will relocate the bulkhead in as much in alignment with adjacent bulkheads, and as far landward, as possible.*

Development Standards, Harbor Development Regulations, 21.30.30.C(3)(j) states:

Bulkhead for nonresidential and residential waterfront development (as identified in Sections 21.30.015(C) and (D)). In cases where the coastal hazards report required in Section 21.30.015(E)(2) establishes that an existing bulkhead on the site cannot be removed and/or an existing or replacement bulkhead is required to protect existing

principal structures and adjacent development or public facilities on the site or in the surrounding areas, the following shall apply to new development:

- (4) As a condition of approval an agreement shall be required between the landowner, including its successors and assigns, and the City in favor of the City, in a form approved by the City Attorney, and recorded by the applicant, waiving rights to future protection, including repair or maintenance, enhancement, reinforcement, or any other activity affecting the bulkhead, that results in any encroachment seaward of the authorized footprint of the bulkhead;*

Harbor Development Regulations, 21.30.C.050(G) states:

G. Piers.

1. Limits on Use. Only piers, floats and patio decks and their appurtenances pursuant to subsection (G)(5) of this section shall be permitted bayward of the bulkhead.

2. Street Ends. No private piers shall be permitted at street ends.

3. Setbacks.

- a. All piers and slips for residential properties shall be set back a minimum of five feet from the prolongation of the property line.*
- b. With the prior approval of the City, piers and slips for commercial properties may extend past the prolongation of the property line.*
- c. The prolongation of the property line bayward of the same bearing from the bulkhead shall generally be used in determining the allowable setbacks for piers and slips. Because there are certain physical conditions which preclude the strict application of this policy without prejudice to adjoining properties, special consideration will be given to areas where precise prolongation of the property line has not been determined and the following conditions exist:
 - i. Where property lines are not approximately perpendicular to the bulkhead line;*
 - ii. Where curves or angles exist in the bulkhead line;*
 - iii. Where bridges, topography, street ends or publicly owned facilities adjoin the property.**
- d. Setbacks apply to joint ownership piers with the exception that the slips, floats and piers may extend over the common property line.*

4. Joint Ownership. Permits may be granted for joint ownership piers at the prolongation of common lot lines. The permit for joint ownership piers shall provide that all parties shall have equal rights under the permit and shall be held jointly responsible for compliance with all rules, regulations, and conditions set forth in the permit.

5. Patio Decks. [Emphasis added] Patios are not permitted to extend over the waters of Newport Harbor unless the waters are adjacent to the upland property and outside the areas described in the tidelands trust, and provided the patio complies with the following conditions:

- a. The maximum projection of patio decks encroachments beyond the bulkhead line shall be limited to five feet.***

- b. The minimum setbacks from the prolongations of the side property lines shall be five feet.*
- c. No float shall be permitted within one foot of the decks.*
- d. No permanent structure shall be permitted on the projecting portion of the patios except:
 - i. Planters and benches not over sixteen (16) inches in height;*
 - ii. Railings not over forty-two (42) inches in height with approximately ninety-five (95) percent open area.**
- e. A harbor and building permit has been obtained.*

6. Storage Lockers. Storage lockers and boat boxes may be installed on shore-connected piers and floats subject to the following limitations:

- a. The overall height shall not exceed thirty (30) inches when located bayward of residential property zones.*
- b. The overall height shall not exceed thirty (30) inches when located bayward of commercial and industrial property zones where the piers and floats are used primarily for the mooring of pleasure boats.*
- c. The overall height shall not exceed sixty (60) inches when located on facilities bayward of commercial and industrial zoned property where the use is not primarily for the mooring of pleasure boats.*
- d. The overall height shall be measured from the deck of the pier or float to the top of the storage locker and overall height to include the enclosed portion of the locker or box.*

Coastal Act Section 30210 and Coastal Act Section 30211 mandate that maximum public access and recreational opportunities be provided and that development not interfere with the public's right to access the coast. Section 30212(a) of the Coastal Act provides that adequate public access to the sea be provided in new development projects. Additionally, Sections 30220 and 30221 of the Coastal Act protect coastal areas suited for water-oriented recreational activities and oceanfront land for recreational uses. Section 30250 of the Coastal Act requires new development to not have significant adverse effects, individually or cumulatively, on coastal resources.

Newport Bay, both Upper and Lower Bay, are popular for small vessel boating, kayaking, and paddle boarding recreation. Sandy shoreline areas along the bay are also used for coastal access/recreation. All three properties subject to this application have an existing private dock system including a pier platform, gangway and dock float. The proposed plans indicate that the existing 10' x 14' pier platforms attached to the bulkhead will be removed during the bulkhead demolition and reconstruction and then reinstalled/reconstructed once the seawall construction is finished. No increase in water coverage from the existing dock systems is proposed to occur as part of the proposed project. However, the proposed plans for 4018 and 4022 also propose construction of a 5' x 20' cantilevered deck at each location and to re-attach a 10' x 14' pier platform to the proposed cantilevered deck.

The City determined that the proposed cantilevered concrete deck falls under the jurisdiction of the California Coastal Commission because it projects beyond the bulkhead and over the bay waters. The City states that the proposed decks are designed in compliance with the patio deck standards of the IP Section 21.30C.050(G)(5). Specifically, the deck would project a maximum of 5 feet beyond

the bulkhead, maintains minimum setbacks of 5 feet from the prolongations of the side property lines, and would be located outside Tidelands Trust, which are mapped State tidelands administered by the City.

An approximately 30-foot wide by 35-foot deep portion of each of the applicant's properties is situated bayward of the existing bulkhead on each lot (see **Exhibit #2**). This water area is identified as "Waterways Dedicated or Reserved for the same" and is not part of the mapped State Tidelands held in trust by the City, thus, these portions of the applicants property have not been officially deemed to be State Tidelands. Although the proposed bulkhead, cantilevered decks and the existing private boat dock systems may not be specifically located on mapped State Tidelands administered by the City of Newport Beach pursuant to a Tidelands Grant, because the property seaward of the bulkhead at all three sites is fully submerged bay waters at all times, it is subject to the Public Trust Doctrine. The Public Trust provides that tide and submerged lands and the beds of lakes, streams and other navigable waterways are to be held in trust by the State for the benefit of the people of California for uses including the right to swim, boat and engage in other forms of water recreation. Private residential development is not an allowable use in over submerged waters subject to the Public Trust as it not considered a recreational boating use. In addition, the construction of a private cantilevered deck over submerged lands subject to the Public Trust would adversely impact public access to and along the shoreline and public use of recreational waters.

There is no direct public pedestrian access to the water through these subject private residential lots. Public pedestrian access to these submerged lands is available approximately 220 feet east of the project site at the 40th St. street end (**Exhibit #1**). From this access point, members of the public may access the Newport Isle Channel which connects to the greater waters of Newport Bay and, for example, launch a kayak or standup paddle board. The public can access the submerged lands subject to the Public Trust immediately seaward of the subject site by watercraft or by swimming.

The proposed project involves the construction of two 20' x 5' concrete decks cantilevered over the bay associated with two single-family residences on bay fronting lots. The area of water over which the proposed decks will cantilever is part of the applicants' property that is situated bayward of the existing bulkhead. These portions of the applicants' lots have not been officially deemed to be State Tidelands because it has historically been part of the property deeds for the landside lots. Despite the lack of official designation, the facts demonstrate that the property seaward of the bulkhead is inundated by bay waters, thus this area constitutes submerged lands that are subject to the Public Trust Doctrine. The area of water located below the proposed cantilevered decks must be maintained as available to the public for recreational purposes. Placing the proposed 20' x 5' cantilevered decks adjacent to the proposed bulkhead would in effect privatize the use of this channel subject to the Public Trust. Construction of the proposed cantilevered decks would impact the public's ability to access this area and result in a private development only enjoyed by the applicants, inconsistent with uses allowed within the public trust.

Thus, the proposed cantilevered decks are inconsistent with Section 30210, which requires maximization of public access, and Section 30211, which provides that new development shall not interfere with the public's right of access to the sea. Likewise, the proposal to build a deck over the bay—and, essentially privatize this portion of submerged lands held in trust for the public—prevents use of the area for water-oriented recreational activities that must be preserved in coastal areas

(Section 30220) and fails to protect oceanfront land for recreational use and development (required by Section 30221).

While not the standard of review, the City's LCP does contain policies and development standards that protect public access similar to the policies in Chapter 3 of the Coastal Act. Approval of the project would be inconsistent with those policies protecting public access (Land Use Policies 3.1.1-1, 3.1.1-9, 3.1.1-11, and 3.1.4-3). A specific development standard in the Implementation Plan (IP) that allows patio decks in specific circumstances is 21.30C.050(G)(5), prohibits decks within the Tidelands Trust areas. While the proposed project is not inconsistent with this LCP policy since it is not located within an area specifically designated as Tidelands Trust, it is still located in an area subject to the Public Trust. Additionally, the proposed cantilevered decks are inconsistent with the public access policies, as discussed above, and approval of the project would result in cumulative impacts to public access.

Therefore, the Commission imposes **Special Condition 1** requiring the applicants to submit revised plans deleting the cantilevered concrete decks at 4018 and 4022 Channel Place and requiring plans clearly depicting the reconstructed pier platforms. Additionally, in order to preserve and maintain access to open bay waters subject to the Public Trust, **Special Condition 6** 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.

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 that include public trust lands are coastal areas suitable for boating and other water-oriented recreation activities. Only as conditioned is the project consistent with Sections 30210, 30211, 30212, 30220, 30221, and 30250 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.

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 certified LCP Policies:

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

LUP 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.*

LUP 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.*

LUP 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.*

LUP 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.*

LUP 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.*

LUP 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.*

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.

Bird Strike Hazards

The proposed project includes the installation of a tempered glass railing/screenwall. Due to the coastal bayfront location of the proposed tempered glass railing/screenwall spanning across three contiguous lots, there is a substantial risk of bird strikes to the screenwall. Glass walls are known to have adverse impacts upon a variety of bird species. Birds are known to strike glass walls causing their death or stunning them which exposes them to predation and/or drowning. Some authors report that such birds strikes cause between 100 million to 1 billion bird deaths per year in North America alone. Birds strike the glass because they either don't see the glass, or there is some type of reflection in the glass which attracts them (such as the reflection of bushes or trees that the bird might use for habitat). Some type of boundary treatment is typically required where the backyards of residences abut coastal waters. The proposed plans indicate a "min ½ inch" thick tempered monolithic bird strike prevention glass panels," along the edge of the proposed decks at 4018 and 4022 Channel Place and atop the seawall concrete coping at 4020 Channel Place. However, there is no detail provided on the plans describing exactly what safeguards the glass from bird strikes, or at least minimizes the hazard. **Special Condition 1** requires revised project plans to eliminate the proposed cantilevered decks at 4018 and 4022 Channel Place, but they applicant may still construct the proposed glass panels atop the seawall concrete coping at 4018 and 4022 Channel Place, as is proposed along the seawall at 4020 Channel Place. To ensure coastal avian species are adequately protected, **Special Condition 1** requires the applicants to submit revised plans that among other things, also clearly specifies the treatment to the tempered glass screenwall used to address bird strike issues, necessary to protect against significant disruption of habitat values.

There are a variety of methods available to address bird strikes against glass. For instance, glass can be frosted or etched in a manner that renders the glass more visible and less reflective. Where clear glass is used, appliqués (e.g.) stickers can be affixed to the glass that have a pattern that is visible to birds. Some appliqués incorporate features that allow humans to see through the glass, but which are visible birds. Usually appliqués must be replaced with some frequency in order to retain their effectiveness. In the case of fences or walls, alternative materials can be used, such as wood, stone, or metal (although this approach isn't usually palatable when there is a desire to see through the wall). Use of frosted or etched glass, wood, stone or metal material is preferable to appliqués because of the lower maintenance and less frequent replacement that is required.

Eelgrass

Seawalls and boat docks 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. 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.

Eelgrass surveys performed by the City in 2016 did not identify any eelgrass beds in the channel fronting the subject site. More recent project site specific eelgrass surveys were conducted on March 12, 2018 also did not find any eelgrass at the subject site. However, 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 encroaches on submerged soft bottom habitat would be inconsistent with these policies.

The proposed demolition and replacement of the bulkhead/seawall at the site, along with the reconstruction of the three boat docks, will not adversely impact eelgrass beds because none exist in this waterway. This may be due to the depth and lack of sunlight in the channel. As such, the proposed project may be considered the feasible alternative that avoids marine resource impacts because the proposed project will not result in any new fill, additional shading, or other adverse impacts to marine resources if proper construction practices are implemented.

Therefore, to minimize potential marine resource impacts to marine resources, **Special Condition 3** requires implementation of construction-related best management practices to provide for the safe storage of construction materials and the safe disposal of construction debris. Additionally, **Special Condition 2** requires that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the approved development that is the subject of this CDP, shall be undertaken if such activity extends the footprint of the subject shoreline protective device seaward in order to protect existing or proposed new landside development. In sum, expanding or building a future new seawall to protect existing or proposed development would cause significant impacts to coastal resources including marine habitats. Thus, as conditioned, the Commission finds that the proposed seawall location and configuration is consistent with the cited Coastal Act policies.

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.

In order to avoid adverse construction-related impacts upon marine resources, the Commission imposes **Special Condition 3**, 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.

Post-Construction Impacts to Water Quality

The proposed project is considered development and there is an opportunity to improve water quality. Much of the pollutants entering the ocean come from vessel and over-water dock maintenance. The Commission finds that it is necessary to minimize to the extent feasible within its jurisdiction the cumulative adverse impacts on water quality resulting from boat cleaning and maintenance activities. To minimize any impacts to water quality the proposed project may have after construction, the Commission imposes **Special Condition 6**, requiring that the applicants agree that the long-term water-borne berthing of boat(s) in the approved boat docks and/or boat slips will be managed in a manner that protects water quality pursuant to the implementation of the following BMPs. Thus, as conditioned, the Commission finds that the proposed project is consistent with the Chapter 3 policies and certified LCP policies regarding water quality.

E. 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 8** requires the property owners to record a deed restriction against the properties, 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 properties. Thus, as conditioned, this permit ensures that any prospective future owner will receive 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.

F. LOCAL COASTAL PROGRAM (LCP)

On January 13, 2017, the Commission effectively certified the City of Newport Beach LCP. The proposed seawall and boat docks are proposed on or over tidelands and submerged lands that are within the Commission's jurisdiction and, consequently, the standard of review is Chapter 3 of the Coastal Act, and the certified LCP serves as guidance. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act.

G. 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 Categorically 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 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, biological resources, 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 Harbor Resources Division Harbor Permit/Approval in Concept, Plan Check #0619-2018 for 4018 Channel Place dated April 9, 2018

City of Newport Beach Harbor Resources Division Harbor Permit/Approval in Concept, Plan Check #0620-2018 for 4020 Channel Place dated April 23, 2018

City of Newport Beach Harbor Resources Division Harbor Permit/Approval in Concept, Plan Check #0621-2018 for 4022 Channel Place dated April 9, 2018

Coastal Hazards Analysis Report for 4018, 4020, & 4022 Channel Place, Newport Beach, CA, 92663, prepared by William Simpson & Associates, Inc. Consulting Structural Engineers, WSA Job #7107, 7193, & 7108, dated July 26, 2018

Coastal Development Permit Application, Bulkhead Assessment Report for 4018, 4020, & 4022 Channel Place, Newport Beach, CA, 92663, prepared by William Simpson & Associates, Inc. Consulting Structural Engineers, WSA Job #7107, 7193, & 7108, dated August 14, 2018

5-03-292-W – DeMinimis Waiver effective September 10, 2003 for an addition/remodel of the existing single family residence at 4022 Channel Place

5-06-403 – Administrative Permit effective March 15, 2007 for construction of a dock at 4020 Channel Place

CDP 5-NPB-17-0817 and local CDP No.CD2017-045 for the demolition of a single family residence and garage at 4020 Channel Place