

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: CONSENT CALENDAR

Application No.: 5-16-0776

Applicant: California CDM, LLC

Agent: Mark Wheeler

Location: 101 Bayside Place, Newport Beach, (Orange County)

Project Description: Demolition of a 5,000 square foot, two-story single-family residence with a two-car garage and a guest house, and construction of a new 8,874 square foot, two-story, single-family residence with a 4,053 square foot basement that includes a five-car garage on a bayfronting lot.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

Commission staff is recommending **APPROVAL** of the demolition of a single-family residence and construction of a new single-family residence on a bayfronting lot. The major issues raised by this proposed development concern bayfront development that could be affected by waves, erosion, storm conditions, sea level rise or other natural hazards in the future. In addition, the proposed development raises water quality and marine resource concerns.

The proposed development is located on privately-owned filled tidelands within the Coastal Commission's retained permit jurisdiction. The standard of review for development within the Commission's original permit jurisdiction is Chapter 3 of the Coastal Act. However, the City's

Local Coastal Program (LCP), certified January 13, 2017, includes development standards for the area and provides specific guidance for the Commission's approval of proposed development.

The project is consistent with previous Commission approvals in the area. However, conditions must be imposed in order to minimize potential adverse impacts from the development and to ensure consistency with the Chapter 3 policies of the Coastal Act, using the the City's certified Local Coastal Program (LCP) as guidance.

The applicant has revised the foundation plan, but no revised plans have been submitted to Commission staff. Therefore, the Commission imposes **Special Condition No. 1**, which requires the applicant to submit revised project plans indicating the following: 1) the basement, 1st floor, 2nd floor and pool shall be set back a minimum of 10 feet from the existing bulkhead and quarry stone revetment; 2) the basement level plan shall include notation specifically indicating that the basement area is not proposed as habitable area and shall never be converted to habitable area due to its elevation below current base flood level; and 3) the proposed foundation plans shall be revised so that the caissons originally proposed at the northwest portion of the project are deleted from the project.

The proposed project is located in an area where coastal hazards exist and can adversely impact the development. Therefore, the Commission imposes **Special Condition No. 2**, requiring the applicant to assume the potential risk of injury and damage arising from coastal hazards that may threaten the development. No work is currently proposed to the existing shoreline protective devices, the bulkhead and quarry stone revetment. However, to ensure that no future work to these devices results in bayward extension of them, and thereby intrusion into public tidelands, the Commission imposes **Special Condition No. 3**, which requires no future bayward extension of the existing shoreline protective devices, the bulkhead and quarry stone revetment.

Any potential changes to the proposed project may result in adverse impacts to coastal resources. 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 No. 4**, which informs the applicant that future development at the site requires an amendment to Coastal Development Permit No. 5-16-0776 or a new coastal development permit.

During construction and post construction, the proposed project has potential for adverse impacts to water quality and marine resources. Therefore, as a result, two special conditions address and minimize impacts to water quality and marine resources as follows: **Special Condition No. 5** outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris; and **Special Condition No. 6** 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.

Public trust tidelands are located bayward of the subject site. The proposed project does not involve any new development on publicly-owned public trust tidelands, and, as conditioned, the proposed development will not impact public access to or along the public trust tidelands. To preserve and maintain access to the public trust tidelands, the Commission imposes **Special**

Condition No. 7, which states 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.

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. 8**, 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.

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EXHIBITS

[Exhibit No. 1 – Location Map](#)

[Exhibit No. 2 – Site Plan](#)

[Exhibit No. 3 – Floor Plans](#)

[Exhibit No. 4 – Elevation Plans](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve the Coastal Development Permit applications included on the consent calendar in accordance with the staff recommendations.

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

Resolution:

The Commission hereby approves a Coastal Development Permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent 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 permittee to bind all future

owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. Submittal of Final Revised Plans.

- A. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the Executive Director's review and approval, two (2) full size sets of the following final updated plans, modified as required below:
 - 1. Revised Project Plans that substantially conform with the site plans, floor plans, elevations and shoring plans received on May 24, 2017, foundation plans received on August 10, 2017, and grading plans received on October 3, 2017, except they shall be modified as required below:
 - (a) The proposed project shall be revised so that there is a 10-foot minimum structural (i.e., the basement, 1st floor, 2nd floor and pool) set back from the existing bulkhead and quarry stone revetment; and
 - (b) The basement level plan shall include notation specifically indicating that the basement area is not proposed as habitable area nor shall ever be used as habitable area due to its elevation below current base flood level; and
 - (c) The proposed foundation plans shall be revised so that the caissons originally proposed at the northwest portion of the project are deleted from the proposed project.
- B. All final revised plans shall be prepared and certified by a licensed professional or professionals as applicable (e.g., architect, surveyor, geotechnical engineer), based on current information and professional standards, and shall be certified to ensure that they are consistent with the Commission's approval and with the recommendations of any required technical reports.
- C. The permittee shall undertake development in conformance with the approved final updated plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

- 2. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, erosion, storm conditions, liquefaction, flooding, including but not limited to basement flooding due to changes in the water table levels, and sea level rise; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

3. No Future Bayward Extension of the Existing Shoreline Protective Devices

Coastal Development Permit 5-16-0776 does not permit any work or alterations to the existing shoreline protective devices (bulkhead and quarry stone revetment) located on the bayward edge of the project site. 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 existing shoreline protective devices (bulkhead and quarry stone revetment) shall be proposed or undertaken if such activity would extend the footprint of the existing shoreline protective devices more bayward than the current footprint. By acceptance of this Permit, the applicant waives, on behalf of itself and all successors and assigns, any rights to such activity that may exist under applicable law. Any proposal to modify the existing shoreline protective devices (e.g., repair, reinforce or increase the height vertically) shall be subject to a coastal development permit application.

- 4. Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-16-0776. 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. 5-16-0776. Accordingly, any future improvements to the residence, garage, foundation 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. 5-16-0776 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

5. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris. The permittee shall comply with the following construction-related requirements:

- A. No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion;
- B. No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers;
- C. Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project;
- D. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
- E. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- F. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- G. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the Coastal Zone, a coastal development permit or an

- amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;
- H. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
 - I. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
 - J. The discharge of any hazardous materials into any receiving waters shall be prohibited;
 - K. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;
 - L. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and
 - M. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.
 - N. During construction of the project, no runoff, site drainage or dewatering shall be directed from the site into any street, alley or stormdrain, unless specifically authorized by the California Regional Water Quality Control Board.

6. Landscaping-Drought Tolerant, Non-Invasive Plants. Vegetated landscaped areas shall only consist of native drought tolerant non-invasive plant species native to coastal Orange County and appropriate to the habitat type. 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 potable water is used for irrigation only drip or micro spray irrigation systems may be used. Other water conservation measures shall also be considered, such as use of weather based irrigation controllers.

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

8. 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 landowner has executed and recorded against the

parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized 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, LOCATION AND STANDARD OF REVIEW

The applicant proposes to demolish a 5,000 square foot, two-story single-family residence with a two-car garage, a 600 square foot guest house and a pool, and to construct a new 24-foot high, 8,874 square foot, two-story, single-family residence with a 4,053 square foot basement that includes a five-car garage on a bayfronting (Newport Bay) lot ([Exhibits No. 2-4](#)). A maid's quarter is incorporated into the residence. The proposed project also includes installation of hardscape and a new approximately 650 square foot swimming pool. The proposed swimming pool will be encased within a concrete waterproofed well which will be constructed concurrent with the foundation for the proposed single-family residence.

The proposed foundation system consists of footings and a mat slab which will have a waterproof membrane underneath. Since the water table is above the base of the foundation by approximately 8 feet, the basement walls and mat foundation will be designed to resist hydrostatic pressure. A shoring system consisting of a permanent soldier pile retaining wall system along the western and northern sides of the site is also proposed. Grading will consist of 2,351 cubic yards of cut, 50 cubic yards of fill and 192 cubic yards of recompaction. Excavation at the site will extend to below the water table and will require dewatering. A dewatering plan has been submitted, which states that all discharges will be treated to reduce contaminants prior to discharging to the bay. The applicant has obtained dewatering approval from the RWQCB.

The project site, 101 Bayside Place, is located in a gated community within the Corona del Mar area of the City of Newport Beach, Orange County ([Exhibit No. 1](#)). The lot size is 11,090 square feet and the City of Newport Beach's certified LCP designates the site as Two Unit Residential (RT) and the proposed project adheres to this designation. Upon completion of the project, the development will remain as a single-family residence.

To the north of the project site is a neighboring bayfronting residence. To the east of the project site is the private street, Bayside Place, and then a steep ascending slope. To the south of the project site, a continuation of the steep ascending slope located to the east and then a cove, which are all part of a separately owned property.

To the west of the project site is Newport Bay. There is no sandy beach at the site. The property has an existing bulkhead and quarry stone revetment on the bayward side of the property and no work is proposed to either of these structures. According to the City of Newport Beach, the bulkhead and revetment are part of a continuous system built prior to 1961. No significant work to either of the structures is known to have taken place since their installation.

The project site is privately-owned filled tidelands. The western (bayside) property line generally runs along the rocky shoreline a few feet bayward of the property's existing bulkhead and revetment ([Exhibit No. 2](#)). Based on the information available to the Commission at this time, the upland portion of the subject property is private property, and not State Tidelands, because the mean high tide line (MHTL) was adjudicated in 1942 by Orange County Superior Court Case No. 40024. The western property line of the subject site is the court-identified MHTL pursuant to Case No. 40024. Public Trust rights may still exist on the submerged portion of the site located seaward of the existing bulkhead and revetment. An existing dock associated

with the project site is located bayward of the adjudicated MHTL in public tidelands and submerged lands that are managed by the County of Orange. No dock work is currently proposed.

Because the project site is located on privately-owned filled tidelands, the proposed development is located within the Coastal Commission original permit jurisdiction. 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 LCP was effectively certified on January 13, 2017. The City's certified LCP is advisory in nature and may provide guidance for development. As conditioned, the proposed project is consistent with the certified LCP and the Chapter 3 policies of the Coastal Act, including the public access and recreation policies.

There is no public vehicular or pedestrian access within the gated community. The nearest public access to the shoreline is located about 500 feet southeast of the site at China Cove Beach, and even further southeast at Corona Del Mar State Beach. Because there is no existing public pedestrian or vehicle access to the property, the project will not impact such public access. However, the public is able to access the public trust areas bayward of the subject site by watercraft or by swimming. The proposed project does not involve any development on publicly-owned public trust tidelands. In order to preserve and maintain access to the public tidelands, **Special Condition No. 7** is imposed stating that the approval of a coastal development permit for the project does not waive any public rights or interest that exist or may exist on the property.

Five parking spaces are provided in the proposed below-grade garage. Thus, the proposed development provides adequate parking consistent with the parking standards set forth in City's certified LCP.

The City's certified LCP requires structures to be set back a minimum of 10 feet from the bulkhead and quarry stone revetment. However as currently proposed, northwest portions of the rear of the residence fronting the bay, including the basement, 1st floor, 2nd floor and pool, are located within the 10-foot setback area from the existing bulkhead and quarry stone revetment. The City's certified LCP also requires that the minimum top of slab elevation for interior living areas of all new structures shall be at least +9.00 feet NAVD88. While the minimum first floor elevation is proposed at +10.64 feet NAVD88, the proposed minimum basement elevation will be at -0.17 feet NAVD88. The basement will contain a parking garage, mechanical rooms, a storage room, workout room and workshop area. While these uses are not considered "habitable uses" typical for an interior living area, it needs to be specified that no "habitable area" is proposed in the basement level.

The foundation system for the project will consist of footings and a mat slab. Originally, three (or four) 24-inch diameter caissons located at the northwest section of the site were proposed as part of the foundation system to provide vertical support for the mat foundation, but they have now since been deleted from the proposed project. However, no revised foundation plans have yet been submitted which reflect the deletion of the caissons.

Revised project plans are needed to indicate the changes discussed above. Therefore, the Commission imposes **Special Condition No. 1**, which requires the applicant to submit revised

project plans indicating the following: 1) the basement, 1st floor, 2nd floor and pool are set back a minimum of 10 feet from the bulkhead and quarry stone revetment; 2) the basement level plan shall include notation specifically indicating that the basement area is not proposed as nor shall ever be used as habitable due to its elevation below current base flood level; and 3) the proposed foundation plans shall be revised so that the caissons originally proposed at the northwest portion of the project are removed. As conditioned, the project is consistent with the City's certified LCP.

Due to its oceanfront location, the project site is exposed to the hazard of waves, erosion, storm conditions, sea level rise or other natural hazards. To analyze the suitability of the site for the proposed development relative to potential hazards from sea level rise, erosion, wave attack, flooding and other coastal hazards, Commission staff requested the preparation of a hazards analysis, prepared by an appropriately licensed professional (e.g. coastal engineer). The purpose of this analysis is to determine the potential for future storm damage and any possible mitigation measures, which could be incorporated into the project design.

In response, the applicant has submitted three coastal hazard investigation reports. Because of the site's location within Newport Bay, it is not subject to the full force of open ocean waves. The report states that small waves on the order of inches high generated by wind from the north reach the site's shoreline. Boat wakes are the main source of waves that may impact the shore protection fronting the site. Furthermore, the studies state that the bulkhead and quarry stone revetment are not necessary to protect the existing development or the proposed development. However at this time, they provide protection to the adjacent properties.

The project's finished first floor elevation is +10.64 feet NAVD 8 and the basement finished floor is -0.17 feet NAVD88. The top of the bulkhead is +12.6 feet NAVD88 and the top of the quarry stone revetment is +10.25 feet NAVD88. Using the sea level rise projections from the National Research Council (NRC) 2012 report to estimate the project's 75-year design life, sea levels may rise between 1.25-feet to 4.6-feet by the year 2092 (75 years). If there were to be a 4.6 foot rise (the upper range of the NRC projections for southern California), an extreme bay water level of +11.8 feet NAVD88 (+7.20 feet NAVD88 + 4.6 feet Sea Level Rise (SLR) = +11.8 feet NAVD88) could result. Such a rise would exceed the finished first floor elevation by +1.16 feet, the basement finished floor elevation by +11.97 feet and the quarry stone elevation by 1.55 feet, but it would not exceed the top of the bulkhead. Therefore, the proposed development may be impacted by future flooding hazards if sea level rise approaches the upper range of the NRC projections. To adapt for future SLR, the applicant has proposed to include a minimum 18-inch waterproofing system around the base of the building. While the waterproofing will be discontinued at the opening of the doors, flood shields (such as sand bags or other methods) can be deployed across the openings to prevent flooding of the structure. Within the next 75 years it may be necessary to raise the height of the bulkhead to protect the proposed development and the adjacent properties/structures. This can be done with no further bayward encroachment of the bulkhead.

An additional analysis was submitted that also evaluated the impact of sea level rise on groundwater that may impact the basement and foundation. It states that the proposed basement is to be founded into the shallow bedrock underneath the site. Typically groundwater would perch on this bedrock, which in some locations is well above the maximum tidal range. SLR

will raise the groundwater elevation on the site and if the adjacent bay water is above the bedrock contact elevation, groundwater elevated by SLR may impact the development. To mitigate groundwater issues, particularly the basement, the foundation has been waterproofed and has been designed to resist hydro-static pressure. In conclusion, the analysis states that SLR impacts on groundwater will not adversely impact the development based upon foundation design.

The proposed project was analyzed to determine if it will be impacted by sea level rise and, based upon the analysis above, it has been determined that no additional future shoreline protective device for the proposed residence is necessary. Additionally, the applicant's studies conclude that the raised groundwater level will not adversely impact the structure, because the development will be waterproofed and will be designed to resist hydro-static pressure.

Therefore, the proposed development may be impacted by future flooding hazards if sea level rise approaches the interpolated upper range of the NRC projections. To ensure the applicant accepts the responsibility for all hazards associated with coastal development, the Commission imposes **Special Condition No. 2**, which requires the applicant to agree to assume the risk that the development is susceptible to hazards and **Special Condition No. 3**, which requires no future bayward extension of the existing shoreline protective devices, the bulkhead and quarry stone revetment.

Since coastal processes are dynamic and structural development may alter the natural environment, future development adjacent to the site 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 No. 4**, which informs the applicant that future development at the site requires an amendment to Coastal Development Permit No. 5-16-0776 or a new coastal development permit.

The proposed project has the potential to adversely impact water quality. To minimize erosion and prevent debris from being dispersed down the storm drain system leading to the ocean during construction, the Commission imposes **Special Condition No. 5**, which provides construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris.

The applicant has submitted a drainage and runoff control plan that minimizes impacts to water quality the proposed project may have after construction. On-site drainage will be gathered and filtered per the catch basin, sump pump and perforated infiltration drain/trench system before being discharged into Newport Bay. In addition, the driveway and guest parking area will have a permeable paver system.

Currently, no landscaping is being proposed. If it were proposed in the future, the placement of any vegetation that is considered to be invasive which could supplant native vegetation should not be allowed and water-efficient practices should be followed. Therefore in order to minimize the use of water and the spread of invasive vegetation, the Commission imposes **Special Condition No. 6**, which 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.

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. 8**, which requires the property owner to 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.

B. HAZARDS

Development adjacent to the ocean is inherently hazardous. Development which may require a protective device in the future cannot be allowed due to the adverse impacts such devices have upon, among other things, public access, visual resources and shoreline processes. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned to: require an appropriate set-back from the water; require a drainage and run-off control plan to direct, treat, and minimize the flow of water offsite; prohibit construction of protective devices (such as a seawall) in the future; and to require that the landowner and any successor-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development conforms to the requirements of the certified City of Newport Beach LCP and Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

C. DEVELOPMENT

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission finds that a future improvements special condition be imposed. As conditioned, the Commission finds that the development conforms to the requirements of the certified City of Newport Beach LCP and the Chapter 3 policies of the Coastal Act.

D. PUBLIC ACCESS

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. As conditioned, the Commission finds that the development conforms with the requirements of the certified City of Newport Beach LCP and Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

E. WATER QUALITY

The proposed development has a potential for a discharge of polluted run-off from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, reducing run-off through the use of permeable surfaces, the use of non-invasive drought tolerant vegetation to reduce and treat the run-off discharged from the site, and for the use of post-construction best management practices to minimize the

project's adverse impact on coastal waters. As conditioned, the Commission finds that the development conforms with the requirements of the certified City of Newport Beach LCP and Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

F. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes one additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

G. LOCAL COASTAL PROGRAM (LCP)

The City of Newport Beach LCP was effectively certified on January 13, 2017. The proposed development is located within the Commission's original permit jurisdiction. The standard of review for development within the Commission's original permit jurisdiction is Chapter 3 of the Coastal Act. The City's certified LCP is advisory in nature and may provide guidance for development. As conditioned, the proposed development is consistent with the certified LCP and the Chapter 3 policies of the Coastal Act.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by findings showing the approval, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (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. The Commission's regulatory program for reviewing and granting CDPs has been certified by the Resources Secretary to be the functional equivalent of CEQA. (14 CCR § 15251(c).)

In this case, the City of Newport Beach Community Development Department is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Newport Beach Community Development Department determined that the proposed development is statutorily exempt (CCR § 15268) from CEQA on August 3, 2016. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the marine resources, water quality, hazards and public access policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A: SUBSTANTIVE FILE DOCUMENTS

Geotechnical Engineering Investigation for Proposed Residential Addition at 101 Bayside Place in Newport Beach, California prepared by Keith Tucker Consulting Engineer dated April 29, 2016; Letter from Commission staff to Mark Wheeler dated September 29, 2016; Coastal Hazards Analysis, 101 Bayside Place, Corona Del Mar, Newport Beach, Orange County, California prepared by GeoSoils, Inc. dated August 31, 2016; Letter from Commission staff to Mark Wheeler dated October 28, 2016; Letter from Mark Wheeler to Commission staff dated March 14, 2017; Letter from Commission staff to Mark Wheeler dated March 14, 2017; Letter from Mark Wheeler to Commission staff dated May 23, 2017; Sea Level Rise and Groundwater Fluctuations, 101 Bayside Place, Corona Del Mar, Newport Beach, Orange County, California prepared by GeoSoils, Inc. dated November 23, 2016; Water Treatment Plan Submission (Dewatering) prepared by Griffin Dewatering LLC dated April 2017; Letter from Commission staff to Mark Wheeler dated June 22, 2017; Letter from Mark Wheeler to Commission staff dated August 9, 2017; Letter from Paul Rohrer Structural Engineers dated June 26, 2017; Letter from Cefali & Associates, Inc. dated July 5, 2017; Letter from Commission staff to Mark Wheeler dated September 7, 2017; Letter from Commission staff to Mark Wheeler received October 3, 2017; Santa Ana Regional Water Quality Control Board Discharge Authorization and Monitoring and Reporting Program No. R8-2015-0004-042, Under General De Minimis Permit No. R8-2015-0004, NPDES No. CAG998001 dated April 4, 2017; Letter from Jones, Cahl & Associates, Inc. dated September 29, 2017; OC Parks Permit No. P2017-01595 dated October 2, 2017; Letter from Paul Rohrer Structural Engineers dated February 7, 2017; and GeoSoils, Inc. letter dated February 9, 2018.