

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
301 Ocean Boulevard, Suite 300
Long Beach, CA 90802
(562) 590-5071



Th15b

Filed: 1/22/18
Substantial Issue Found: 8/10/18
Staff: F. Sy-LB
Staff Report: 11/27/19
Hearing Date: 12/12/19

STAFF REPORT: APPEAL – DE NOVO

Appeal No.: A-5-NPB-18-0006

Applicant/Agent: Nicholson Construction; Attention: John Ramirez

Location: 2607 Ocean Boulevard, Corona del Mar, Newport Beach, Orange County (APN: 06059-052-041-05)

Project Description: Demolition of a 3-level, approx. 2,260 square foot single-family residence, and construction of a 4-level, approx. 4,500 square foot single-family residence with rooftop deck and 3-car garage.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

This staff report is for the De Novo portion of the hearing on an appeal of a single family residence approved by the City of Newport Beach. The Commission determined that the appeal raised a substantial issue on August 10, 2018 and the applicant has revised components of the proposed project for the De Novo review. The standard of review for a project located between the first public road and the sea, like this one, are the City's certified Local Coastal Program and the public access and public recreation policies of the Coastal Act. The LCP issues addressed by the staff recommendation include scenic and visual resources, geologic stability, hazards, marine resources, and water quality policies and the public access and public recreation policies of the Coastal Act. Commission staff is recommending **APPROVAL** of the residential development with nine special conditions.

The project has been revised by the applicant to be consistent with LCP policies regarding scenic and visual resources and additional information has been provided to demonstrate that the project

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
301 Ocean Boulevard, Suite 300
Long Beach, CA 90802
(562) 590-5071



Th15b

Filed: 1/22/18
Substantial Issue Found: 8/10/18
Staff: F. Sy-LB
Staff Report: 11/27/19
Hearing Date: 12/12/19

STAFF REPORT: APPEAL – DE NOVO

Appeal No.: A-5-NPB-18-0006

Applicant/Agent: Nicholson Construction; Attention: John Ramirez

Location: 2607 Ocean Boulevard, Corona del Mar, Newport Beach, Orange County (APN: 06059-052-041-05)

Project Description: Demolition of a 3-level, approx. 2,260 square foot single-family residence, and construction of a 4-level, approx. 4,500 square foot single-family residence with rooftop deck and 3-car garage.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

This staff report is for the De Novo portion of the hearing on an appeal of a single family residence approved by the City of Newport Beach. The Commission determined that the appeal raised a substantial issue on August 10, 2018 and the applicant has revised components of the proposed project for the De Novo review. The standard of review for a project located between the first public road and the sea, like this one, are the City's certified Local Coastal Program and the public access and public recreation policies of the Coastal Act. The LCP issues addressed by the staff recommendation include scenic and visual resources, geologic stability, hazards, marine resources, and water quality policies and the public access and public recreation policies of the Coastal Act. Commission staff is recommending **APPROVAL** of the residential development with nine special conditions.

The project has been revised by the applicant to be consistent with LCP policies regarding scenic and visual resources and additional information has been provided to demonstrate that the project

minimizes landform alteration. As originally proposed, the project would have resulted in adverse impacts to visual resources, especially views from Ocean Boulevard which are specifically protected in the City's LCP. In order to minimize the adverse impacts to visual resources, the applicant has proposed to reduce the most bayward section of the roof top deck by forty-one (41) square feet and reduced the height of the roof top guardrail screen by half a foot. The proposed project also includes development of a private pedestrian gate, stairway and deck located on City property and could result in adverse impacts to public access. Thus, the Commission imposes **Special Condition No. 1**, which requires the applicant to submit revised plans removing the proposed private pedestrian gate and all deck area from City property and not restrict public access to the stairway that is located on City property.

Based on the applicant's geologic reports and explanation of the foundation plan, the project minimizes landform alteration, has been determined to be safe from erosion by a licensed engineer, and is therefore consistent with Newport Beach LCP policies requiring new development to ensure bluff stability. To minimize the project's potential future impact on shoreline processes, Commission staff recommends the Commission impose **Special Condition No. 2**, which prohibits construction of any future bluff or shoreline protective device(s) such as revetments, seawalls, cliff retaining walls, shotcrete walls, and other such construction that armors or otherwise substantially alters the bluff face. Development on coastal bluff sites is inherently dangerous; therefore, Commission staff recommends the Commission impose **Special Condition No. 3**, which requires the applicant to assume the risk of development.

The applicant is proposing a roof top pool. If not properly designed, pools can leak and lead to erosion and bluff instability. In order to prevent possible bluff erosion and instability caused by water saturated slopes, Commission staff recommends the Commission impose **Special Condition No. 4**, which requires a pool leak prevention and detection system.

During construction and post construction, the proposed project has potential for adverse impacts to water quality and marine resources. Therefore, Commission staff recommends the Commission impose **Special Condition No. 5**, which outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. In order to deal with these post construction water quality impacts, the applicant has indicated that all water from the project site will be directed onto permeable areas located at the base of the bluff slope, the lowest point of the site, along Way Lane. While the applicant has indicated how drainage will operate on the site, a specific Water Quality and Hydrology Plan ("WQHP") as required by the City's certified LCP has not yet been submitted. Therefore, **Special Condition No. 6** requires the applicant to a Water Quality and Hydrology Plan. In addition, Commission staff recommends the Commission impose **Special Condition No. 7**, which requires the applicant to submit revised landscape plans that consist entirely of native plants or non-native drought tolerant plants, which are non-invasive.

The proposed project raises concerns that future development at the project site potentially may result in a development which is not consistent with the City's LCP. In order to ensure that development on the site does not occur which could potentially adversely impact the visual resources and geologic stability concerns expressed in this staff report, Commission staff recommends the Commission impose **Special Condition No. 8**, which informs the applicant that

future development at the site requires an amendment to this permit or a new coastal development permit.

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, Commission staff recommends the Commission impose **Special Condition No. 9**, 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.

As conditioned, the proposed project will conform with the City's certified Local Coastal Program and the public access and public recreation policies of the Coastal Act.

The motion to approve the coastal development permit application is on **Page Five**. The special conditions begin on **Page Six**.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION.....	5
II. STANDARD CONDITIONS	5
III. SPECIAL CONDITIONS.....	6
IV. FINDINGS AND DECLARATIONS.....	12
A. PROJECT DESCRIPTION AND LOCATION	12
B. STANDARD OF REVIEW	13
C. SCENIC AND VISUAL RESOURCES.....	13
D. PUBLIC ACCESS	25
E. HAZARDS/GEOLOGIC STABILITY	27
F. MARINE RESOURCES/WATER QUALITY.....	33
G. DEED RESTRICTION	35
H. LOCAL COASTAL PROGRAM (LCP).....	35
I. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)	35

APPENDICES

[Appendix A – Substantive File Documents](#)

EXHIBITS

[Exhibit No. 1 – Location Map](#)

[Exhibit No. 2 – Project Plans](#)

[Exhibit No. 3 – Revised Project Plans](#)

[Exhibit No. 4 – Grading Plans](#)

[Exhibit No. 5 – Foundation Plans](#)

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit No. A-5-NPB-18-0006 subject to the conditions set forth in 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 Coastal Development Permit No. A-5-NPB-18-0006 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the Certified Local Coastal Plan and the public access and recreation policies of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent 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. **Revised Project Plans.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director's review and written approval, two (2) full size sets of revised project plans, including floor, elevation, grading, drainage, shoring, foundation, pool, pool foundation, etc. The revised project plans shall be in substantial conformance with the plans received by South Coast District staff on January 22, 2018, except they shall be modified according to the following:
 - A. Reduce the most bayward section of the roof top deck by forty-one (41) square feet and also the height of the roof top guardrail screen by half a foot;
 - B. Remove the proposed private pedestrian gate and all deck area located on City property;
 - C. Stairway access on public property shall not be restricted;
 - D. Oceanfront deck railing systems, fences, screen walls, gates, and windows and the like that are subject to this permit shall use materials designed to minimize bird-strikes with the deck railing, fence, gate, window or similar feature. Such materials may consist of 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 may be installed only if it contains UV-reflective glazing that is visible to birds or is used with appliques (e.g. stickers/decals) designed to reduce bird-strikes by reducing reflectivity and transparency. Any appliques used shall be installed to provide coverage consistent with manufacturer specifications (e.g. one applique for every 3 foot by 3 foot area). Use of opaque or partially opaque materials is preferred to clear glass or Plexiglas and appliques. All materials and appliques shall be maintained throughout the life of the development to ensure continued effectiveness at minimizing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications; and
 - E. The revised plans submitted to the Executive Director shall bear evidence of Approval-in-Concept of the revised design from the City of Newport Beach Planning Department.

The permittee 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 Bluff or Shoreline Protective Devices.** By acceptance of this permit, the applicant agrees, on behalf of itself and all successors and assigns, that no bluff or shoreline protective device(s) shall be constructed to protect the development approved pursuant to Coastal Development Permit No. A-5-NPB-18-0006 including, but not limited to, the residence, foundations, decks, hardscape and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, 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 devices that may exist under Public Resources Code Section 30235.

By acceptance of this Permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner is required to remove the development authorized by the permit if the City or any other government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to coastal hazards and that there are no measures that could make the structures suitable for habitation or use without the use of bluff or shoreline protective devices. In addition, the boundary between public land (tidelands) and private land may shift with rising seas, the structure(s) may eventually be located on public trust lands, and the development approval does not permit encroachment onto public trust land; any future encroachment must be removed unless the Coastal Commission determines that the encroachment is legally permissible pursuant to the Coastal Act and authorizes it to remain, and any future encroachment would also be subject to the State Lands Commission's (or other trustee agency's) leasing approval.

In the event that portions of the development fall to the beach or to the public road before they are removed, the landowner(s) shall remove all recoverable debris associated with the development and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

- 3. 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 geologic conditions, 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.
- 4. Pool Protection Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of a pool protection plan prepared by an appropriately licensed professional that incorporates mitigation of the potential for geologic instability caused by leakage from the proposed pool. The pool protection plans shall incorporate and identify on the plans the follow measures, at a minimum: 1) installation of a pool leak detection system such as, but not limited to, leak detection system/moisture sensor with alarm and/or a separate water meter for the pool which is separate from the water meter for the house to allow for the monitoring of water usage for the pool, and 2) use of materials and pool design features, such as but not limited to, double linings, plastic linings or specially treated cement, to be used to waterproof the undersides of the pool to prevent leakage, along with information regarding the past and/or anticipated success of these materials in preventing leakage; and where feasible 3) installation of a sub drain or other equivalent drainage system under the spa that

conveys any water leakage to an appropriate drainage outlet. The applicant shall comply with the pool protection plans approved by the Executive Director.

The permittee 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 unless the Executive Director determines that no amendment is legally required.

5. Construction Best Management Practices (BMPs). 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.

- 6. Water Quality and Hydrology Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, two (2) sets of a Water Quality and Hydrology Plan for the post-construction project site, prepared by a licensed civil engineer or qualified water quality professional. The plan shall include detailed drainage and runoff control plans with supporting calculations showing drainage directed off site. The plans shall incorporate Best Management Practices (BMPs) including site design, source control and treatment control measures designed to reduce, to the maximum extent practicable, the volume, velocity and pollutant load of stormwater and dry weather flows leaving the developed site.
- A. The plan shall demonstrate the use of distributed small-scale controls or integrated Best Management Practices (BMPs) that serve to minimize alterations to the natural pre-development hydrologic characteristics and conditions of the site, and effectively address pollutants of concern;
 - B. Post-development peak runoff rate and average volume from the site shall be maintained at levels similar to pre-development conditions;
 - C. Selected BMPs shall consist, or primarily consist, of site design elements and/or landscape based systems or features that serve to maximize site permeability, avoid directly connected impervious area and/or retain, infiltrate, or filter runoff from rooftops, driveways and other hardscape areas, where feasible;
 - D. Post-construction structural BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs;
 - E. All BMPs shall be operated, monitored, and maintained in accordance with manufacturer's specifications where applicable, or in accordance with well recognized technical specifications appropriate to the BMP for the life of the project and at a minimum, all structural BMPs shall be inspected, cleaned-out, and where necessary, repaired prior to the onset of the storm season (October 15th each year) and at regular intervals as necessary between October 15th and April 15th of each year. Debris and other water pollutants removed from structural BMP(s) during clean-out shall be contained and disposed of in a proper manner;
 - F. For projects located on a hillside, slope, or which may otherwise be prone to instability, drainage plans should be approved by the project consulting geotechnical engineer; and
 - G. Should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work; and
 - H. The plan shall be consistent with Local Coastal Plan Implementation Plan Section 21.35.050

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

7. Revised Landscape Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review and written approval, two (2) sets of revised landscape plans prepared by an appropriately licensed professional which demonstrates the following:

A. The plans shall demonstrate that:

- (1) All planting shall provide 90 percent coverage within ninety (90) days and shall be repeated if necessary to provide such coverage;
- (2) All plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan;
- (3) All landscaping shall consist of native drought tolerant on-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>); and

B. The plan shall include, at a minimum, the following components:

- (1) A map showing the type, size, and location of all plant materials that will be on the developed site, the irrigation system, topography of the developed site, and all other landscape features,
- (2) a schedule for installation of plants; and
- (3) Use of reclaimed water for irrigation is encouraged. If using potable water for irrigation, only drip or microspray irrigation systems may be used.

The permittee 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.

8. Future Improvements. This permit is only for the development described in Coastal Development Permit No. A-5-NPB-18-0006. Pursuant to Title 14, California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to this development governed by the Coastal Development Permit No. A-5-NPB-18-0006. Accordingly, any future improvements to the

structures 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 Coastal Development Permit No. A-5-NPB-18-0006 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

- 9. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowners have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION AND LOCATION

The project site is a 4,257 square foot irregularly shaped lot with an approximately 35 foot grade difference, containing a slope that varies from 15%-45% for most of the lot. The site is located within China Cove in the Corona del Mar area of the city of Newport Beach (Orange County) ([Exhibit No. 1](#)). The property is 110 feet wide with a depth ranging from 35 to 53 feet. The certified LCP designates the site as a RSD-B (Single Unit Residential Detached: 6.0-9.9 DU/AC) in the Coastal Land Use Plan (LUP) and Single-Unit Residential District (R-1) in the Implementation Plan (IP).

The City-approved development is the demolition of a 3-level, approx. 2,260 square foot single-family residence, and construction of a 4-level, approx. 4,500 square foot single-family residence with a rooftop deck and 3-car garage ([Exhibit No. 2](#)). Grading for the proposed residence includes approximately 320 cubic yards of cut and 20 cubic yards of fill. The lower level includes a three -car garage and a foyer for access from Way Lane. The two main levels above provide the majority of the living area, including a kitchen, dining room, sitting room, bedrooms, laundry and game room. The rooftop level provides an outdoor recreation area including a pool, sitting and dining area, outdoor bar, and barbeque. Glass guardrail screens are proposed included along the northerly side (landward) of the roof level. The property takes vehicular access from Way Lane, on the lowest portion of the site. There is also a pedestrian accessway to the property from Ocean Boulevard comprised of an existing walkway that connects the property to the public sidewalk that runs along Ocean Boulevard on top of the bluff.

North (landward) and west of the project site, the City owns property that is a largely undeveloped and vegetated bluff face ([Exhibit No. 1](#)). Landward of this City property, running down the bluff face, is the Fernleaf Ramp right-of-way, which descends the bluff from Ocean Boulevard. The Fernleaf Ramp turns into Way Lane and provides public access to China Cove Beach. Landward of the Fernleaf Ramp is additional City property on the bluff that is undeveloped and vegetated, and landward of this City property on top of the bluff is the Ocean Boulevard right-of-way ([Exhibit No. 1](#)). The project site takes its address from Ocean Boulevard, even though the site is situated below Ocean Boulevard and the Fernleaf Ramp, between the Fernleaf Ramp and Way Lane. South of the project site at the bottom of the bluff is Way Lane, which ends at the beach. To the east of the site are two developed residential lots and then Fernleaf Avenue, which transitions from the Fernleaf Ramp right-of-way ([Exhibit No. 1](#)).

Under the LCP, the front yard (Ocean Boulevard) setback requirement is 10 feet and the rear yard (Way Lane) setback requirement is 10 feet as well. The side yard setback requirements are 4 feet. The existing home has a legal nonconforming rear setback from 0-to-4 feet along Way Lane and a legal nonconforming front setback of 7 feet along the Ocean Boulevard/Fernleaf Ramp side. The proposed home has a 0 foot rear setback along Way Lane, a 3 foot rear front setback along the Ocean Boulevard/Fernleaf Ramp side and 4 foot sideyard setbacks.

B. STANDARD OF REVIEW

Section 30604(b) of the Coastal Act states:

(b) After certification of the local coastal program, a coastal development permit shall be issued if the issuing agency or the commission on appeal finds that the proposed development is in conformity with the certified local coastal program.

In addition, Section 30604(c) of the Coastal Act states:

(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

Therefore, the standard of review for the Commission's de novo review of a project located between the first public road and the sea, like this one, is the City's certified Local Coastal Program and the public access and public recreation policies of the Coastal Act. The City of Newport Beach LCP was effectively certified on January 13, 2017. The LCP was amended on December 12, 2018 to allow for the variance procedure and [any other LCP amendments]. In order for the waiver or modification of certain standards of this Implementation Plan, the LCP amendment states that it may only occur: "...when, because of special circumstances applicable to the property, including location, shape, size, surroundings, topography, or other physical features, the strict application of the development standards otherwise applicable to the property denies the property owner privileges enjoyed by other property owners in the vicinity and in the same coastal zoning district." In reviewing an application for development requesting a variance, the review authority must review whether the development is consistent with the certified LCP to the maximum extent feasible and whether or not there are feasible alternatives that provide greater consistency with the LCP and/or are more protective of coastal resources.

C. SCENIC AND VISUAL RESOURCES

Coastal Land Use Plan, Scenic and Visual Resources, Coastal Views, Policy 4.4.1-1 states,

Protect and, where feasible, enhance the scenic and visual qualities of the coastal zone, including public views to and along the ocean, bay, and harbor and to coastal bluffs and other scenic coastal areas.

Coastal Land Use Plan, Scenic and Visual Resources, Coastal Views, Policy 4.4.1-2 states,

Design and site new development, including landscaping, so as to minimize impacts to public coastal views.

Coastal Land Use Plan, Scenic and Visual Resources, Coastal Views, Policy 4.4.1-3 states,

Design and site new development to minimize alterations to significant natural landforms, including bluffs, cliffs and canyons.

Coastal Land Use Plan, Scenic and Visual Resources, Coastal Views, Policy 4.4.1-4 states,

Where appropriate, require new development to provide view easements or corridors designed to protect public coastal views or to restore public coastal views in developed areas.

Coastal Land Use Plan, Scenic and Visual Resources, Coastal Views, Policy 4.4.1-5 states,

Where feasible, require new development to restore and enhance the visual quality in visually degraded areas.

Coastal Land Use Plan, Scenic and Visual Resources, Coastal Views, Policy 4.4.1-6 states,

Protect public coastal views from the following roadway segments:

...

- *Ocean Boulevard.*

...

Coastal Land Use Plan, Scenic and Visual Resources, Coastal Views, Policy 4.4.1-7 states,

Design and site new development, including landscaping, on the edges of public coastal view corridors, including those down public streets, to frame and accent public coastal views.

Coastal Land Use Plan, Scenic and Visual Resources, Coastal Views, Policy 4.4.1-8 states,

Design and maintain parkway and median landscape improvements in public rights-of-way so as not to block public coastal views at maturity.

Coastal Land Use Plan, Scenic and Visual Resources, Coastal Views, Policy 4.4.1-9 states,

Where feasible, provide public trails, recreation areas, and viewing areas adjacent to public coastal view corridors.

Coastal Land Use Plan, Scenic and Visual Resources, Bulk and Height Limitation, Policy 4.4.2-2 states,

Continue to regulate the visual and physical mass of structures consistent with the unique character and visual scale of Newport Beach.

Coastal Land Use Plan, Scenic and Visual Resources, Bulk and Height Limitation, Policy 4.4.2-3 states,

Implement the regulation of the building envelope to preserve public views through the height, setback, floor area, lot coverage, and building bulk regulation of the Zoning Code in effect as of October 13, 2005 that limit the building profile and maximize public view opportunities.

Coastal Land Use Plan, Scenic and Visual Resources, Bulk and Height Limitation, Policy 4.4.2-4 states,

Prohibit projections associated with new development to exceed the top of curb on the bluff side of Ocean Boulevard. Exceptions for minor projections may be granted for chimneys and vents provided the height of such projections is limited to the minimum height necessary to comply with the Uniform Building Code.

Implementation Plan, Chapter 21.18 Residential Coastal Zoning Districts (R-A, R-1, R-BI, R-2 and RM), Section 21.18.030 Residential Coastal Zoning Districts General Development Standards, Table 21.18-2 – Development Standards for Single-Unit Residential Coastal Zoning Districts, Notes (2), states,

Notes

- (2) *On the bluff side of Ocean Boulevard, the maximum height shall not exceed the elevation of the top of the curb abutting the lot.*

Implementation Plan, Chapter 21.30 Property Development Standards, Section 21.30.060(B)(4) Height Limits and Exceptions, states:

B. Height of Structures and Measurement.

4. *Structures on Ocean Boulevard. New structures and additions/changes to existing structures on the bluff side of Ocean Boulevard in Corona del Mar shall not be constructed to a height greater than the elevation of the adjacent curb. The top of curb height limit shall be established by a plane created by the extension of the top of curb line across each lot.*

Implementation Plan, Chapter 21.30 Property Development Standards, Section 21.30.100(B-F, I) Scenic and Visual Quality Protection, states:

B. Initial Evaluation. Any coastal development permit application for development involving the construction of a new building or the expansion of an existing building and having one or more of the characteristics listed below shall be reviewed to evaluate the development's impact to a public viewshed or the scenic and visual qualities of the coastal zone.

1. *The development site is located between the first public roadway paralleling ocean, bay, harbor, channels, estuary, marsh, or slough.*
2. *The development site is located on a coastal bluff or canyon.*
3. *The development site is adjacent to, or within the viewshed of, a public view point, coastal view road, public park or beach, or public accessway, as identified on Coastal Land Use Plan Map 4-3 (Coastal Views).*
4. *The development site contains significant natural landforms or natural vegetation.*

C. Visual Impact Analysis. Where the initial evaluation indicates that a proposed development has the potential to significantly impact a public view or viewshed, or the scenic and visual qualities of the coastal zone, a view impact analysis shall be prepared

at the project proponent's expense. The analysis shall include recommendations to avoid or minimize impacts to public views from the identified public view points and corridors identified in Policy 4.4.1-6 and Map 4-3 of the Coastal Land Use Plan.

D. Siting and Design. Development shall be sited and designed in accordance with the following principles, where applicable in order to meet the purpose of section:

- 1. Avoid or minimize impacts to public coastal views and, where feasible, restore and enhance the scenic and visual qualities of the coastal zone.*
- 2. Development on the edges of public coastal view corridors, including those down public streets, shall be designed and sited to frame and accent public coastal views.*
- 3. Clustering of buildings to provide open view and access corridors to the harbor.*
- 4. Modulation of building volume and mass.*
- 5. Variation of building heights.*
- 6. Inclusion of porticoes, arcades, windows, and other "see-through" elements in addition to the defined open corridor.*
- 7. Minimization of landscape, fencing, parked cars, and other nonstructural elements that block views and access to the harbor.*
- 8. Prevention of the appearance of the harbor being walled off from the public right-of-way.*
- 9. Inclusion of setbacks that in combination with setbacks on adjoining parcels cumulatively form functional view corridors.*
- 10. Encourage adjoining property owners to combine their view corridors to achieve a larger cumulative corridor than would be achieved independently.*
- 11. Where feasible, development along coastal view roads shall prevent an appearance of the public right-of-way being walled off from the public viewsheds.*

E. Landform Alteration. Development shall be sited and designed to minimize the alteration of gullies, ravines, rock outcroppings, and other natural landforms and the removal of native vegetation. Site design and construction techniques include, but are not limited to, the following:

- 1. Siting development on the flattest area of the site, except when an alternative location is more protective of coastal resources.*
- 2. Utilizing existing driveways and building pads to the maximum extent feasible.*
- 3. Clustering building sites.*
- 4. Shared use of driveways.*

5. *Designing buildings to conform to the natural contours of the site, and arranging driveways and patio areas to be compatible with the slopes and building design.*
6. *Utilizing special foundations, such as stepped, split level, or cantilever designs.*
7. *Detaching parts of the development, such as a garage from a dwelling unit.*
8. *Requiring any altered slopes to blend into the natural contours of the site.*

F. Landscape Standards. Landscape improvements shall be installed and maintained to ensure that landscape materials do not unnecessarily obstruct public views at maturity. Landscaping at the edges of roads from which there is an identified public view should be designed, planted and maintained to frame and accent public views

I. View Protection Easement. The review authority shall require applicants to provide public view protection through deed restriction and/or public view protection easements. (Ord. 2016-19 § 9 (Exh. A)(part), 2016)

Implementation Plan, Chapter 21.18 Residential Coastal Zoning Districts (R-A, R-1, R-B1, R-2 and RM), Section 21.18.020 Residential Coastal Zoning District Land Uses, Table 21.18-2 Development Standards for Single-Unit Residential Coastal Zoning Districts, states:

**TABLE 21.18-2
DEVELOPMENT STANDARDS FOR SINGLE-UNIT RESIDENTIAL
COASTAL ZONING DISTRICTS**

Development Feature	R-A	R-1	R-1-6,000	Additional Requirements
<i>Lot Dimensions</i>	<i>Minimum dimensions required for each newly created lot.</i>			
<i>Lot Area (1):</i>				
<i>Corner lot</i>	<i>87,120 sq. ft.</i>	<i>6,000 sq. ft.</i>	<i>6,000 sq. ft.</i>	
<i>Interior lot</i>	<i>87,120 sq. ft.</i>	<i>5,000 sq. ft.</i>	<i>6,000 sq. ft.</i>	
<i>Lot Width:</i>				
<i>Corner lot</i>	<i>125 ft.</i>	<i>60 ft.</i>	<i>60 ft.</i>	
<i>Interior lot</i>	<i>125 ft.</i>	<i>50 ft.</i>	<i>60 ft.</i>	
<i>Lot Depth</i>	<i>N/A</i>	<i>N/A</i>	<i>80 ft.</i>	
<i>Density/Intensity</i>	<i>Each legal lot shall be allowed one single-unit detached dwelling.</i>			
<i>Setbacks</i>	<i>The distances below are minimum setbacks required for primary structures. See Section 21.30.110 (Setback Regulations and Exceptions) for setback measurement, allowed projections into setbacks, and exceptions. The following setbacks shall apply, unless different requirements are identified on the setback maps in which case the setback maps shall control. (See Part 8 of this Implementation Plan.) Side and rear setback areas shown on the setback maps shall be considered front setback areas for the purpose of regulating accessory</i>			
<i>Front</i>	<i>20 ft.</i>	<i>20 ft.</i>	<i>20 ft.</i>	<i>Section 21.30.110</i>

<i>Side (interior, each):</i>				
<i>Lots 40 ft. wide or less</i>	<i>5 ft.</i>	<i>3 ft. (3)</i>	<i>6 ft.</i>	<i>Section 21.30.110</i>
<i>Lots wider than 40 ft.</i>	<i>5 ft.</i>	<i>4 ft.</i>	<i>6 ft.</i>	
<i>Side (street side):</i>				
<i>Lots 40 ft. wide or less</i>	<i>5 ft.</i>	<i>3 ft.</i>	<i>6 ft.</i>	<i>Section 21.30.110</i>
<i>Lots wider than 40 ft.</i>	<i>5 ft.</i>	<i>4 ft.</i>	<i>6 ft.</i>	
<i>Rear</i>	<i>25 ft.</i>	<i>10 ft.</i>	<i>6 ft.</i>	<i>Lots abutting a 10 ft. alley or less that are directly across the alley from the side yard of a lot abutting an alley shall provide a setback for the first floor of at least 10 ft. from the alley.</i>
<i>Abutting Alley:</i>	<i>N/A</i>	<i>5 ft.</i>	<i>N/A</i>	
<i>10 ft. wide or less</i>	<i>N/A</i>	<i>5 ft.</i>	<i>N/A</i>	
<i>15 ft. wide or less</i>	<i>N/A</i>	<i>3'9"</i>	<i>N/A</i>	
<i>15'1" to 19'11"</i>	<i>N/A</i>	<i>0</i>	<i>N/A</i>	
<i>20 ft. wide or more</i>				
<i>Bluff edge setback</i>	<i>As provided in Section 21.28.040 (Bluff (B) Overlay District).</i>			
<i>Canyon face setback</i>	<i>As provided in Section 21.28.050 (Canyon (C) Overlay District).</i>			
<i>Bulkhead setback</i>	<i>Structures shall be set back a minimum of 10 ft. from the bulkhead in each coastal</i>			
<i>Waterfront lots</i>	<i>Setbacks on waterfront lots may be increased to avoid coastal hazards through the approval of a coastal development permit. See Sections 21.30.015(D)</i>			
<i>Site Coverage:</i>	<i>Maximum percentage of the total lot area that may be covered by structures.</i>			
<i>Lots 40 ft. wide or less</i>	<i>N/A</i>	<i>N/A</i>	<i>60%</i>	
<i>Lots wider than 40 ft.</i>	<i>40%</i>	<i>N/A</i>	<i>60%</i>	
<i>Floor Area Limit (gross floor area)</i>	<i>N/A</i>	<i>2.0 (4)(5)</i>	<i>N/A</i>	
<i>Citywide</i>		<i>1.5 (4)(5)</i>		
<i>Corona del Mar</i>				
<i>Height (2)</i>	<i>Maximum height of structures without discretionary approval. See Section 21.30.060(C) (Increase in Height Limit) for possible increase in height limit.</i>			
<i>Flat roof</i>				
<i>Sloped roof; minimum 3/12 pitch</i>	<i>24 ft.</i> <i>29 ft.</i>	<i>24 ft.</i> <i>29 ft.</i>	<i>24 ft.</i> <i>29 ft.</i>	<i>See Sections 21.30.060(C)(2) (Height Limit Areas) and 21.30.060(B) (Height of Structures and Measurement)</i>
<i>Bluffs</i>	<i>See Section 21.28.040 (Bluff (B) Overlay District).</i>			
<i>Canyons</i>	<i>See Section 21.28.050 (Canyon (C) Overlay District).</i>			
<i>Fencing</i>	<i>See Section 21.30.040 (Fences, Hedges, Walls, and Retaining Walls).</i>			
<i>Landscaping</i>	<i>See Sections 21.30.075 (Landscaping) and 21.30.085 (Water Efficient Landscaping).</i>			
<i>Lighting</i>	<i>See Section 21.30.070 (Outdoor Lighting).</i>			
<i>Parking</i>	<i>See Chapter 21.40 (Off-Street Parking)</i>			
<i>Signs</i>	<i>See Section 21.30.065 (Signs)</i>			

Notes:

(1) All development and the subdivision of land shall comply with the requirements of Section 21.30.025 (Coastal Zone Subdivisions).

(2) On the bluff side of Ocean Boulevard, the maximum height shall not exceed the elevation of the top of the curb abutting the lot.

(3) Side setback areas for lots designated Special Fire Protection Areas shall be a minimum of five feet unless reduced by the Fire Marshal.

(4) The floor area of a subterranean basement is not included in the calculation of total gross floor area.

(5) The maximum gross floor area for a residential structure is determined by multiplying either 1.5 or 2.0 times the buildable area of the lot.

Implementation Plan, Chapter 21.52 Coastal Development Review Procedures, Section 21.52.090 (b)(2) Relief from Implementation Plan Development Standards, states:

A. Purpose. The purpose of this section is to provide relief from the development standards of this Implementation Plan when so doing is consistent with the purposes of the certified Local Coastal Program and will not have an adverse effect, either individually or cumulatively, on coastal resources.

B. Applicability. Any development standard of this Implementation Plan may be modified or waived through the approval of a coastal development permit, except: allowed and prohibited uses; residential density; nonresidential floor area ratios; specific prohibitions (for example, prohibitions intended to protect coastal resources, prohibited barriers to public access, limits on the use of protective structures, prohibited materials, prohibited plant species, prohibited signs, etc.); or procedural requirements.

- 2. Variances. Waiver or modification of certain standards of this Implementation Plan may be permitted when, because of special circumstances applicable to the property, including location, shape, size, surroundings, topography, or other physical features, the strict application of the development standards otherwise applicable to the property denies the property owner privileges enjoyed by other property owners in the vicinity and in the same coastal zoning district.*

C. Considerations. In reviewing a coastal development permit application for development requesting a modification or variance, the review authority shall consider the following:

- 1. Whether or not the development is consistent with the certified Local Coastal Program to the maximum extent feasible; and*
- 2. Whether or not there are feasible alternatives that would provide greater consistency with the certified Local Coastal Program and/or that are more protective of coastal resources.*

D. Findings and Decision. The review authority may approve or conditionally approve a modification or waiver to a development standard of this Implementation Plan only after first making all of the following findings:

- 1. The granting of the modification is necessary due to practical difficulties associated with the property and that the strict application of the Implementation Plan results in physical hardships; or*
- 2. The granting of the variance is necessary due to special circumstances applicable to the property, including location, shape, size, surroundings, topography, and/or other physical features, the strict application of the development standards otherwise applicable to the property denies the*

property owner privileges enjoyed by other property owners in the vicinity and in the same coastal zoning district; and

- 3. The modification or variance complies with the findings required to approve a coastal development permit in Section 21.52.015(F);*
- 4. The modification or variance will not result in development that blocks or significantly impedes public access to and along the sea or shoreline and to coastal parks, trails, or coastal bluffs;*
- 5. The modification or variance will not result in development that blocks or significantly impairs public views to and along the sea or shoreline or to coastal bluffs and other scenic coastal areas;*
- 6. The modification or variance will not result in development that has an adverse effect, either individually or cumulatively, on coastal resources, including wetlands, sensitive habitat, vegetation, or wildlife species; and*
- 7. The granting of the modification or variance will not be contrary to, or in conflict with, the purpose of this Implementation Plan, nor to the applicable policies of the certified Local Coastal Program. (Ord. 2019-5 § 6, 2019)*

Implementation Plan, Chapter 21.80 Maps, Section 21.080.040 Setback Maps, S-10B Corona Del Mar, states:

A 10-front yard setback along Ocean Boulevard/Fernleaf Ramp is required.

The City's certified LCP sets forth policies that protect scenic and visual resources, such as Policies 4.4.1-1 and 4.4.1-2. In addition, the certified LCP includes specific policies, such as Policies 4.4.1-6 and 4.4.2-4, that protect views from Ocean Boulevard. The project site is also located adjacent to a public sidewalk that is part of Ocean Boulevard, which affords the public coastal views of the bay, beach, ocean and surrounding areas.

The project has been designed so that it is restricted to a maximum height of 29 feet for sloped roofs and is lower than the curb height of Ocean Boulevard by almost 2 feet. While the project has been designed to be below the top of curb of Ocean Boulevard as required by policies in the LCP, the height and design of the project still impacts public coastal view opportunities protected by other policies of the LCP by extending into the view lines from Ocean Boulevard to the bay and beach below.

In order to analyze the visual impacts, the project has toward the beach and bay, the applicant has provided two photographs of the site with story poles included and with a visual simulation of the building. The beach and bay are at a lower elevation than Ocean Boulevard; thus the public view of the bay is a downward view, not a horizontal view straight across the top level of the house. **Photo No. 1** is the existing view taken from one point on the seaward side of Ocean Boulevard that includes the story poles connected with a string of small pink flags. It shows the Fernleaf Ramp in the foreground, the project site, and then the coastal public view. **Photo No. 2** is taken from the same location, but instead of the story poles it includes a visual simulation of the City-approved building.



Photo No. 1. Existing view from the seaward side of the Ocean Blvd.



Photo No. 2. Proposed view from the seaward side of the Ocean Blvd.

Photo No. 1 and **No. 2** both show that visual impacts are minimized, if not completely avoided, since the views the proposed structure obscures are primarily of existing buildings and streets. The tallest structural elements located on the eastern (right) side of the building on both pictures are roof top deck glass guardrail screens made of transparent materials.

In addition to the still pictures, the applicant provided a video taken from a car traveling along Ocean Boulevard passing the project site with the story poles still in place and showing the views through the project site. Commission staff has provided stills from the video below. **Photo No. 3** shows coastal views from the western section of the project site and **Photo No. 4** shows coastal views from the eastern section of the project site. The top of the story poles shown in both pictures represent the highest point of the proposed roof top transparent guardrail screens.



Photo No. 3. Proposed west view while traveling in a car along the seaward side of Ocean Blvd.



Photo No. 4. Proposed east view while traveling in a car along the seaward side of Ocean Blvd.

Unlike the **Photos No 1** and **No. 2**, these video stills show that the view from Ocean Boulevard to China Cove Beach below would be partially obscured by the proposed project. This is a different impact than the impact shown in **Photos No. 1** and **No. 2**, where it did not appear that public views would be impacted by the proposed project. The difference is in the point on Ocean Boulevard from where the images were taken.

In order to minimize adverse impacts to the view of the beach and bay below Ocean Boulevard, the applicant has proposed to reduce the most bayward section of the roof top deck by forty-one (41) square feet and also the height of the roof top guardrail screen by half a foot ([Exhibit No. 3](#)). This proposal will reduce visual impacts on the portion of the lot (shown on the right side of the images) where they are most severe and impact bay views. The portion of the deck nearest to the water, which is where the view horizon would be restricted, is the portion being reduced in size. The reduction in height of the guardrail will also lower the restriction on the view horizon by half a foot, which will minimize impacts to blue water views. As a result, views of the beach and bay below would be improved and visual impacts would be reduced. While the applicant has proposed and provided plans showing these changes to the project, the revised project has yet to obtain an approval-in-concept from the City of Newport Beach. Therefore, the Commission imposes **Special Condition No. 1**, which requires the applicant to submit revised project plans incorporating the applicant's proposed project modifications to minimize scenic and visual resource impacts to views from Ocean Boulevard above the project site, which are approved by the City of Newport Beach Planning Department.

In support of more general policies protecting scenic and visual resources, like Policies 4.4.1-1, 4.4.1-2, 4.4.1-6 and 4.4.2-4, the City's certified LCP includes Policy 4.4.1-3, to minimize impacts to natural landforms, which avoids visual impacts associated with massive foundations. The residence has been designed to utilize a majority of the existing structure's foundation and retaining walls, which have a stepped design, and also to reduce the amount of new cuts into the slope and avoid new visual impacts associated with a massive foundation system. The applicant has worked with the constraints of the lot and there is no alternative location on the property where development can be sited to further minimize alteration of the bluff, and the associated visual impacts. As detailed in Section E of this report, the bluff is stable as confirmed by the geology report and the existing retaining walls and proposed shoring walls that include caissons are intended to accommodate floor construction, generally under the building envelope of the residence. The subterranean caissons will be installed into a stable bluff and will not be exposed, and thus will not adversely impact visual resources.

The City initially processed a Variance (VA2016-005) and a Coastal Development Permit (CD2017-080) for the site prior to it being appealed to the Commission. In the City's analysis for the entitlements, the findings stated that that unusual lot shape and topography of this lot did not generally apply to other properties in the vicinity under the same R-1 zoning classification and that strict application of the City's development standards including setbacks and floor area limit results in a buildable area of 1,910 square feet and a new residence of approximately 2,865 square feet in size. In its variance approval, the City allowed a development consisting of a total of 4,500 square feet, which is found to be comparable in size to other single-family residences in the vicinity. The variance allowed the development to exceed the maximum floor area; encroach 10 feet into the 10-foot rear yard setback along Way Lane (for a 0-foot setback); and

encroach 7 feet into the 10-foot front yard setback along Ocean Boulevard (for a 3-foot setback) In the City's approval of the coastal development permit, the City determined that the proposed design, bulk and scale of the development was consistent with the pattern of development in the area, consisting of single-family residences.

One issue that was the basis for the appeal to the Commission and the Commission's finding of substantial issue was that, at the time of its approval of the subject project, the City did not have the authority to issue variances from development standards in the Coastal Zone. However, since the time of the City's action to approve the project, the Commission approved LCP Amendment No. 4-17 Part C (LCP-5-NPB-18-0084-1; December 2018), with suggested modifications including adding Section 21.52.090 (Relief from Implementation Plan Development Standards) to allow for modifications and waivers of IP requirements in specific circumstances. The City has since issued variances from floor area and setbacks for other projects in the vicinity, while requiring consistency with visual resource protection policies of the LCP. As stated, the Commission is now the permit issuing authority and is tasked with analyzing the project and analyzing it for consistency with the development standards and visual resource protection policies of the LCP. As the permit issuing authority for the subject project, in the subject De Novo review, the Commission may consider the applicant's request for relief from certain development standards of the LCP.

The applicant has modified the project to reduce visual impacts, but the project still includes a 0 foot rear (along Way Lane) setback and a 3 foot front (along Ocean Boulevard/Fernleaf Ramp) setback, and exceeds the allowed flood area ratio of the lot, which is inconsistent with LCP policies. Section 21.18.020 Residential Coastal Zoning District Land Uses, Table 21.18-2 Development Standards for Single-Unit Residential Coastal Zoning Districts and Section 21.80 Maps of the LCP require that the rear and front yard setbacks be 10 feet. In addition, application of the development standards of Section 21.18.020 Residential Coastal Zoning District results in a buildable area of 1,910 square feet and a new residence of approximately 2,865 square feet in size. Therefore as proposed, to be approved by the Commission the project requires a variance, as allowed under Section 21.52.090 of the LCP, from the development standards of the LCP—specifically, Section 21.18.020 Residential Coastal Zoning District Land Uses, Table 21.18-2 Development Standards for Single-Unit Residential Coastal Zoning Districts and Section 21.80 Maps.

The property is shallow with a lot depth ranging from 35-53 feet and is 110 feet wide. Thus, after applying the 10 foot front and rear yard setback requirements, strict application of the certified Implementation Plan/zoning code results in a 15-33 feet deep sloping building pad. The lot is disproportionately shallow relative to its width, which results in a long and narrow building width and this unusual lot shape and topography is uncommon to other properties under the same R-1 designation. Other properties in the area within the same R-1 designation are an average 4,200 to 4,500 square feet in size, which is much larger than the buildable area of 1,910 square feet and new residence of approximately 2,865 square feet in size after application of the development standards. Thus, consistent with the requirements of Section 21.52.090 of the LCP that provides relief from IP development standards, the proposed development can make the seven required findings in order for the variance to be allowed:

- 1) The variance is necessary due to the unusual shaped lot and strict application of the IP development standards would result in physical hardship;
- 2) Strict application of the IP development standards for the subject property denies the property owner privileges enjoyed by other property owners in the vicinity in the same zoning district, since other properties in the area within the same R-1 designation are an average 4,200 to 4,500 square feet in size, which is much larger than the buildable area of 1,910 square feet and new residence of approximately 2,865 square feet in size after application of the development standards;
- 3) The variance conforms with the findings required to approve a coastal development permit in Section 21.52.015(F); as the project conforms to the applicable sections of the LCP and the public access and public recreation policies of Chapter 3 of the Coastal Act since the project has been conditioned to remove private development proposed on City property and also to not restrict access on any development on City property;
- 4) The project, as conditioned, will not result in development that blocks public access as the project has been conditioned to remove private development proposed on City property and also to not restrict access on any development on City property public and access to China Cove Beach/Newport Bay will continue to be available near the site post project;
- 5) The project, as conditioned to minimize visual resource impacts, will not result in development that significantly blocks public views;
- 6) The project, as conditioned, will not result in development that has an adverse effect, either individually or cumulatively, on coastal resources, since the project has been conditioned to minimize adverse impacts to visual resources; and
- 7) The granting of the variance for this project, as conditioned, will not conflict with the purpose of the IP nor to the applicable policies of the LCP.

As conditioned to require the project to be modified to reduce visual impacts by eliminating portions of the deck in the rear setback area and avoid impacts to public access in the front yard setback area, approval of the variance will not adversely impact public views, public access, or coastal resources, and will not adversely impact the purpose nor the implementation of the City's LCP.

Conclusion

As conditioned, the Commission finds that the proposed project is consistent with the scenic and visual resource policies of the certified Newport Beach LCP.

D. PUBLIC ACCESS

Section 30210 of the Coastal Act states, in pertinent part:

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 states, in pertinent part:

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

Coastal Land Use Plan, Public Access and Recreation, Shoreline and Bluff Top Access, 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.

Coastal Land Use Plan, Public Access and Recreation, Shoreline and Bluff Top Access, 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;*

Coastal Land Use Plan, Public Access and Recreation, Shoreline and Bluff Top Access, Policy 3.1.1-11 states,

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

The existing residential lot does not currently provide nor inhibit public coastal access. The nearest access to a public beach is available approximately 200 feet south of the site at China Cove Beach and access to this beach is provided by the China Cove pedestrian stairs and vehicle ramp, Way Lane, Fernleaf Avenue, Dahlia Avenue, and Cove Street ([Exhibit No. 1](#)).

To minimize disruption to public access caused by demolition and construction of the project, the applicant has submitted a construction management plan which addresses construction access, project construction phasing and contractor parking, to maintain street and emergency access in the area to avoid impacts to public access during construction.

The Commission has consistently found that two vehicle parking spaces are adequate to satisfy the parking demand generated by one individual residential unit. The proposed development provides three spaces. Therefore, as currently designed, the development provides adequate vehicle parking and will not adversely impact public parking which may be used to access the coast.

Located north (landward) and to the west of the project site, the City owns property on the bluff face that is largely undeveloped and vegetated. This City property currently contains portions of a private gated pedestrian walkway that connects an existing public sidewalk fronting Ocean Boulevard to a portion of an existing private deck associated with the existing residence ([Exhibit No. 2](#)). This pedestrian walkway is locked with a gate which appears to also be on public land for the private use of the single-family residence on the project site. The proposed project will demolish the portions of the private pedestrian walkway and gate on the City property.

The public sidewalk along Ocean Boulevard that the existing and proposed walkway connects to provides a location where public coastal views of the bay are available, and could be improved. However, the applicant's proposed plans identify private development including a private pedestrian gate, stairway and deck on public land that would impact public access from a potential recreational facility. The proposed stairway on public property can be used by the property owner to access their residence, but it should not be restricted for use by the public. The deck (landing area) is not necessary and should not be allowed on public property and should be relocated on the private property as needed for access to the residence. Thus, the Commission imposes **Special Condition No. 1**, which requires the applicant to submit revised plans removing the proposed private pedestrian gate and all deck area from City property and not restrict public access to the stairway that is located on City property.

In order to help improve public access in the Coastal Zone, the applicant has offered to donate \$50,000.00 to the City of Newport Beach. The City has stated that they are willing to accept this voluntary donation, and in a letter from the Deputy Community Development Director to Commission staff dated October 4, 2019, pledged to allocate the funds towards future projects to help improve public access and public views in the Coastal Zone. This donation was not required as a condition of approval of the City's permit and it is not being required by the Coastal Commission as mitigation for public access impacts. In fact, as conditioned, the project will improve public access and recreation because it will remove private development from public land; the donation will merely allow the City to invest in public improvements to the land which the City already owns and manages.

Conclusion

As conditioned, the Commission finds that the proposed project is consistent with the public access protection policies of the City's LCP. The proposed project, as conditioned, is also consistent with the public access and recreation policies of the Coastal Act.

E. HAZARDS/GEOLOGIC STABILITY

Coastal Land Use Plan, Land Use and Development, Hazards and Protective Devices, Policy 2.8.1-1 states,

Review all applications for new development to determine potential threats from coastal and other hazards.

Coastal Land Use Plan, Land Use and Development, Hazards and Protective Devices, Policy 2.8.1-2 states,

Design and site new development to avoid hazardous areas and minimize risks to life and property from coastal and other hazards.

Coastal Land Use Plan, Land Use and Development, Hazards and Protective Devices, Policy 2.8.1-4 states,

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.

Coastal Land Use Plan, Land Use and Development, Hazards and Protective Devices, Coastal Erosion, Policy 2.8.6-5 states,

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.

Coastal Land Use Plan, Land Use and Development, Hazards and Protective Devices, Coastal Erosion, Policy 2.8.6-6 states,

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.

Coastal Land Use Plan, Land Use and Development, Hazards and Protective Devices, Coastal Erosion, Policy 2.8.6-7 states,

Discourage shoreline protective devices on public land to protect private property/development. Site and design any such protective devices as far landward as possible. Such protective devices may be considered only after hazard avoidance, restoration of the sand supply, beach nourishment and planned retreat are exhausted as possible alternatives.

Coastal Land Use Plan, Land Use and Development, Hazards and Protective Devices, Coastal Erosion, Policy 2.8.6-8 states,

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.

Coastal Land Use Plan, Land Use and Development, Hazards and Protective Devices, Coastal Erosion, Policy 2.8.6-9 states,

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.

Coastal Land Use Plan, Scenic and Visual Resources, Natural Landform Protection, Policy 4.4.3-8 states,

Prohibit development on bluff faces, except private development on coastal bluff faces along Ocean Boulevard, Carnation Avenue and Pacific Drive in Corona del Mar determined to be consistent with the predominant line of existing development or public improvements providing public access, protecting coastal resources, or providing for public safety. Permit such improvements only when no feasible alternative exists and when designed and constructed to minimize alteration of the bluff face, to not contribute to further erosion of the bluff face and to be visually compatible with the surrounding area to the maximum extent feasible.

Coastal Land Use Plan, Scenic and Visual Resources, Natural Landform Protection, Policy 4.4.3-9 states,

Where principal structures exist on coastal bluff faces along Ocean Blvd., Carnation Ave., and Pacific Dr., in Corona del Mar, require all new development to be sited in accordance with the predominant line of existing development in order to protect public coastal views. Establish a predominant line of development for both principal and accessory improvements. The setback shall be increased where necessary to ensure safety and stability of the development.

Implementation Plan, Property Development Standards, Purpose and Applicability, Section 21.30.010(E)(4)(d)(iv) states,

*iv. Adaptation options and mitigation measures have been incorporated to address potential risk without having to rely on existing protective structures or the need to install additional protective structures in the future;**

Implementation Plan, Property Development Standards, Height Limits and Exceptions, Section 21.30.060(B)(3)(i) states,

i. Sea Level Rise. The minimum required top of slab elevation for interior living areas may be increased as necessary to minimize hazards associated with long-term sea level rise over the economic life of the structure identified in the coastal hazards report pursuant to Section 21.30.015(E)(2). To address the uncertainty inherent in sea level rise projections (see Appendix A), adjustments to the top of slab elevation may be based on a moderate sea level rise scenario within the projected range of possible sea level rise amounts identified by the current best available science, so long as the structure's design can, if necessary, accommodate future adaptation measures for the high sea level rise scenario that comply with the certified LCP and do not result in coastal resource impacts

1. Geology

The applicant submitted the following geotechnical investigation for the proposed development: *Geotechnical Investigation, Proposed Single-Family Residence, 2607 Ocean Boulevard, Corona Del Mar Area, Newport Beach, CA, Nicholson Construction (J.N. 17-125)* prepared by Petra Geosciences dated July 20, 2017. The investigation determined and evaluated the surface and subsurface conditions and presented preliminary recommendations for the foundation systems and grading requirements. The site consists of a steep coastal bluff lot which is not currently subject to tidal action because it is buffered by a private residential street (Way Lane), and single-family residences adjacent to China Cove Beach. Grading will be minimal, consisting of 230 cubic yards of cut and 20 cubic yards of fill because the new home is designed into the slope, consistent with the existing landform of the hillside. Some existing retaining wall structures will be removed; and some will remain so as not to unnecessarily disturb the existing slope, while the retaining wall that fronts Way Lane is being removed and reinstalled in place. To accommodate grading and floor construction, shoring walls are proposed that include twenty-one steel H piles or concrete caissons soldier piles ranging from 14-inches to 24-inches in diameter. The foundation system for the residence will also consist of a conventional slab-on-pad system with continuous footings above the retaining walls. Based on the results of stability analyses provided by the geotechnical investigation, the gross stability of the bluff is considered favorable. The natural landform will not be substantially altered as some of the existing retaining walls will remain and one retaining wall will be replaced with a new retaining wall in the same place. No individual retaining wall, nor series of retaining walls cumulatively, extend horizontally across the bluff in a manner that would retain the entire slope and sediment. The retaining walls and caissons are designed and set spatially to mimic the structural framing elements of the proposed residence in order to construct the floors and grade beams.

2. Bluff Face Development

The City's certified Local Coastal Program (LCP) includes policies that protect coastal bluffs from excessive grading, while allowing for bluff face development within the predominant line of existing development in specific locations, including the seaward side of Ocean Boulevard in this China Cove project area, where the existing design, bulk, and scale of development encroaches upon the bluff face similar to the proposed project and the other adjacent residences. As a result, the site is not regulated by the typical LCP standards and is consistent with Policy 4.4.3-8 which allows for bluff face development in this location, subject to requirements that landform alteration be minimized. Thus, as proposed to minimize the size and mass of the foundation system and re-use existing elements, the project is consistent with existing pattern of development.

3. Future Bluff and Shoreline Protection

Coastal Land Use Plan Policy 2.8.1-4, similar to Section 30253 of the Coastal Act, requires, in part, that new development be constructed in a manner that ensures that it will not require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. As stated by the applicant's geotechnical investigation, the subject bluff slope lot is not currently subject to stability issues or tidal action. However, bluff lots are inherently hazardous. It is the nature of bluffs to erode. Bluff failure can be episodic, and bluffs that seem stable now may not be so in the future. The proposed development could not be recommended for approval and deemed consistent with Coastal Land Use Plan Policy 2.8.1-4 if projected bluff

retreat would affect the proposed development and necessitate construction of a protection device. A protective device may be a seawall at the base of the bluff, or a rock anchor system, or shotcrete wall on the bluff face. If new development requires such forms of protective devices to be constructed, natural landforms and/or shoreline processes could be dramatically altered by the presence of the protective system.

Thus, the City's LCP, similar to the Coastal Act, limits construction of these protective devices because they have a variety of negative impacts on coastal resources including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach.

Regarding the new development needing a bluff protective device, the bluff is stable as confirmed by the geotechnical investigation and the existing retaining walls and proposed caissons are not necessary to protect or stabilize the bluff. These structures are only necessary in order to accommodate construction of the floors and framing elements on the steep slope, generally under the envelope of the residence. The caissons do not extend horizontally across the bluff in a manner that would retain the entire slope and sediment. The retaining walls and caissons are designed and set spatially to mimic the structural framing elements of the proposed residence in order to construct the floors and grade beams. As noted in Section C, the development is located in a highly developed area where development is permitted on the bluff face, so long as natural landform alteration is minimized. The proposed caisson system resembles a previous development, CDP No. 5-15-0413(239 Carnation NB, LLC), approved by the Commission in January 2016 for a similar residential project located on a bluff face at 239 Carnation Ave, approx. 575 feet north of the project site. Therefore, the new development does not require protective devices for stability of the site from geologic threats; it merely requires caissons to support the residence.

In terms of threats from marine erosion, flooding, wave uprush, and sea level rise, the submitted geotechnical investigation analyzed flooding of the site and determined that the only potential flooding threat would be due to seismically induced flooding (tsunami). The lowest elevation of the site is approximately 22 feet above mean sea level (it is unclear what datum the applicant references but MSL is generally close to NAVD88 in Southern California), which is higher than most sea level rise projections for the expected 75 year life of the residential structure, even the high end of the H++ scenario referenced in the best available science, the Ocean Protection Council's 2018 State of California Sea-Level Rise Guidance.

Development currently at the base of the coastal bluff includes a private residential street (Way Lane), existing single-family residences, and China Cove Beach which buffers the bluff face below the subject property from the coastal hazards, particularly, with regard to shoreline erosion. A shoreline protective device is not anticipated to be necessary to protect the subject property, and as discussed earlier in the report, the gross stability of the bluff is considered favorable and therefore, a bluff protective device is not anticipated as well.

If not for the information provided by the applicant that the site is safe for development, the Commission could not conclude that the proposed development will not in any way "require the construction of protective devices that would substantially alter natural landforms along bluffs

and cliffs.” The proposed development appears to be safe from erosion on the basis of available information and is therefore consistent with Coastal Land Use Plan Policy 2.8.1-4. Nonetheless, the project would perpetuate exposure to threats from erosion by increasing the amount of development close to the bluff. The record of coastal development permit applications and Commission actions has also shown that geologic conditions change over time and that predictions based upon the geologic sciences are inexact. Even though there is evidence that geologic conditions change, the Commission must rely upon, and hold the applicant to the geotechnical analysis they submitted, which states that the site is safe for development without the need for protective devices. To minimize the project’s potential future impact on shoreline processes, **Special Condition No. 2** prohibits construction of any future bluff or shoreline protective device(s) such as revetments, seawalls, cliff retaining walls, shotcrete walls, and other such construction that armors or otherwise substantially alters the bluff face to protect the proposed new development if approved pursuant to this CDP in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, sea level rise or other natural coastal hazards in the future. Thus, as conditioned, the project conforms to Coastal Land Use Plan Policy 2.8.1-4.

Development on coastal bluff sites is inherently dangerous; therefore, the Commission imposes **Special Condition No. 3**, which requires the applicant to assume the risk of development. By this means, the applicant is notified that the proposed development is built in an area that is potentially subject to bluff and slope instability, sea level rise, erosion, landslides and wave uprush or other tidal induced erosion that can damage the applicant’s property. The applicant is also notified that the Commission is not liable for such damage as a result of approving the permit for development. Finally, the condition requires the applicant to waive claims against the Commission and indemnify the Commission for third-party claims.

4. Drainage

Coastal Land Use Plan Policy 2.8.1-4 requires, in part, new development to neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area. The applicant is proposing drainage improvements to minimize erosion associated with a large structure and large amounts of impervious surfaces, in compliance with Coastal Land Use Plan Policy 2.8.1-4. Regarding drainage on the site, the geotechnical report concludes that the proposed development should improve site drainage. The applicant has indicated that all water from the project site will be directed onto permeable areas located at the base of the bluff slope, the lowest point of the site, along Way Lane. While the applicant has indicated how drainage will operate on the site, a specific Water Quality and Hydrology Plan ("WQHP") as required by the City’s certified LCP has not yet been submitted. Therefore, the Commission imposes **Special Condition No. 6**, which requires the applicant to a Water Quality and Hydrology Plan. The applicant is proposing a roof top deck pool and in order to prevent possible slope instability caused by water saturated slopes, **Special Condition No. 4** requires a pool leak prevention and detection system. Such pool leak prevention and detection systems are typically required where new pools are proposed in conjunction with development on a slope.

5. Future Development

The proposed 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 concern

that future development at the project site potentially may result in a development which is not consistent with the City's LCP. In order to ensure that development on the site does not occur which could potentially adversely impact the geologic stability concerns expressed in this staff report, the Commission imposes **Special Condition No. 8**. This condition informs the applicant that future development at the site requires an amendment to this permit (A-5-NPB-18-0006) or a new coastal development permit. Future development includes, but is not limited to, structural additions, accessory structures, landscaping, and fencing.

Conclusion

As conditioned, the Commission finds that the proposed project is consistent the hazards policies of the City's LCP.

F. MARINE RESOURCES/WATER QUALITY

Coastal Land Use Plan, Water Quality, NPDES, Policy 4.3.2-1 states,

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.

Coastal Land Use Plan, Water Quality, NPDES, Policy 4.3.2-6 states,

Implement and improve upon best management practices (BMPs) for residences, businesses, new development and significant redevelopment, and City operations.

Coastal Land Use Plan, Water Quality, NPDES, Policy 4.3.2-7 states,

Incorporate BMPs into the project design in the following progression:

Site Design BMPs.

Source Control BMPs.

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.

Coastal Land Use Plan, Water Quality, NPDES, Policy 4.3.2-8 states,

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.

Implementation Plan, Water Quality Control, Water Quality and Hydrology Plan, Section 21.30.050 states,

A Water Quality and Hydrology Plan (WQHP) shall be required for developments of water quality concern (see subsection (A) of this section), which are specified categories of development that have a greater potential for adverse water quality and hydrologic

impacts due to the development size, type of land use, and/or proximity to coastal waters. The WQHP shall be prepared by a qualified licensed professional, and shall include a polluted runoff and hydrologic site characterization, a sizing standard for BMPs, use of an LID approach to retain the design storm runoff volume on site, and documentation of the expected effectiveness of the proposed BMPs. Additional plan components that may be required include an alternatives analysis, and a description of the treatment control and/or runoff control BMPs the development will implement to minimize potential post-development water quality and hydrologic impacts.

1. 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 No. 5**, 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.

2. 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 land-based development. 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 incremental increases in impervious surface associated with additional development. In order to deal with these post construction water quality impacts, the applicant has indicated that all water from the project site will be directed onto permeable areas located at the base of the bluff slope, the lowest point of the site, along Way Lane. While the applicant has indicated how drainage will operate on the site, a specific Water Quality and Hydrology Plan ("WQHP") as required by the City's certified LCP has not yet been submitted. Therefore, the Commission imposes **Special Condition No. 6**, which requires the applicant to a Water Quality and Hydrology Plan.

The applicant has stated that landscaping is proposed, and plans have been submitted. The placement of any vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society (www.CNPS.org) in their publications. Furthermore, any plants in the landscape plan should only be drought tolerant to minimize the use of water (and preferably native to coastal Orange County). The term drought tolerant is equivalent to the terms 'low water use' and 'ultra-low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California"

prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>).

Commission staff has reviewed the submitted landscape plan, but it is unclear if the landscaping proposed consists of drought tolerant species and does not include invasive species. Therefore in order to minimize the use of water and the spread of invasive vegetation, the Commission imposes **Special Condition No. 7**, which requires the applicant to submit revised landscaping plans, which consists of native plants or non-native drought tolerant plants, which are non-invasive and that use of reclaimed water for irrigation is encouraged, but if potable water is used that only drip or microspray irrigation systems may be used.

Conclusion

As conditioned, the Commission finds that the proposed project is consistent with the marine resources/water quality policies of the City's LCP.

G. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition No. 9**, 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. Thus, as conditioned, any prospective future owner will receive 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.

H. LOCAL COASTAL PROGRAM (LCP)

On January 13, 2017, the City of Newport Beach Local Coastal Program (LCP) was effectively certified. The LCP was amended on December 12, 2018 to include the variance procedure which the Commission relies in its finding that the specific dimensions and topography of the lot justify approval of a development which is not consistent with the setback and FAR development standards of the LCP. In this case, the finding can be made that the proposed project, as conditioned, is consistent with the scenic and visual resources, public access, geologic stability, hazards, marine resources, and water quality policies of the City's certified LCP and the public access and public recreation policies of the Coastal Act. Therefore, the Commission approves the Coastal Development Permit.

I. 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 is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Newport Beach made a determination that the proposed development is Categorically Exempt pursuant to Section 15303 (Class 3 - New Construction or Conversion of Small Structures). As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the City's certified Local Coastal Program and the public access and public recreation 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

City of Newport Beach Local Coastal Program; City of Newport Beach Planning Commission Resolution No. 2075, Variance No. VA2016-005, and Coastal Development Permit No. CD2017-080; Geotechnical Investigation, Proposed Single-Family Residence, 2607 Ocean Boulevard, Corona Del Mar Area, Newport Beach, CA, Nicholson Construction (J.N. 17-125) prepared by Petra Geosciences dated July 20, 2017; Letter from John Ramirez to Commission staff dated February 5, 2018; Letter from the City of Newport Beach to Commission dated February 22, 2018; Letter from John Ramirez to Commission staff dated March 22, 2018; Letter from the City of Newport Beach to Commission staff dated March 22, 2018; Foundation Plan Narrative – 2607 Ocean Boulevard, Newport Beach prepared by John Ramirez dated November 21, 2019; Foundation Plan Narrative – 2607 Ocean Boulevard, Newport Beach prepared by John Ramirez dated November 21, 2019; Letter from the City of Newport Beach to Commission staff dated October 4, 2019; Letter from Venture LLP to Commission staff dated October 23, 2019; and CDP No. 5-15-0413-(239 Carnation NB, LLC).



Photo No. 1. Existing view from the seaward side of the Ocean Blvd.



Photo No. 2. Proposed view from the seaward side of the Ocean Blvd.

Photo No. 1 and **No. 2** both show that visual impacts are minimized, if not completely avoided, since the views the proposed structure obscures are primarily of existing buildings and streets. The tallest structural elements located on the eastern (right) side of the building on both pictures are roof top deck glass guardrail screens made of transparent materials.

In addition to the still pictures, the applicant provided a video taken from a car traveling along Ocean Boulevard passing the project site with the story poles still in place and showing the views through the project site. Commission staff has provided stills from the video below. **Photo No. 3** shows coastal views from the western section of the project site and **Photo No. 4** shows coastal views from the eastern section of the project site. The top of the story poles shown in both pictures represent the highest point of the proposed roof top transparent guardrail screens.