

CALIFORNIA COASTAL COMMISSION

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**Th7c**

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 Staff: M. Vaughn-LB
 Staff Report: 11/22/2019
 Hearing Date: 12/12/2019

STAFF REPORT: CONSENT CALENDAR**Application No.:** 5-19-0886**Applicant:** Panic Family Trust**Agent:** Scott Hudgins, AIA
Hudgins Design Group, Inc.**Project Location:** 2104 East Balboa Blvd., Newport Beach, Orange County
(APN: 048-240-36).**Project Description:** Repair of an existing bulkhead to include installation of eight new, 36” diameter concrete caissons and tiebacks connecting the proposed caissons to the bulkhead; construction of a new, 10-inch thick, cast-in-place, concrete stemwall atop the bulkhead, raising the top of the existing bulkhead to +10.60 NAVD88; and, sealing the panel joints at the bayward face of the bulkhead. Construction of a new pool, spa, outdoor fireplace and related patio development is also proposed.**Staff Recommendation:** Approval with conditions**SUMMARY OF STAFF RECOMMENDATION**

The applicant is proposing repair of an existing bulkhead including installation of eight new, 36” diameter concrete caissons and tiebacks connecting the proposed caissons to the existing bulkhead; construction of a new, 10-inch thick, cast-in-place, concrete stemwall atop the existing bulkhead, raising the top of the existing bulkhead to +10.60 NAVD88; and, sealing the panel joints at the bayward face of the bulkhead. Staff is recommending approval of the proposed project with six special conditions regarding: 1) no future channelward encroachment of the bulkhead; 2) assumption of risk, waiver of liability and indemnity; 3) future development; 4) storage of construction materials, mechanized equipment, and removal of construction debris; and 5) public rights; and 6) a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

All work is proposed landward of the existing bulkhead, except the proposed sealing of the panel joints which will occur along the connection between the top of the existing bulkhead coping and the bottom of the proposed stem wall. No in-water work is required or proposed. The existing bulkhead is located at the U.S. Bulkhead line. No fill of coastal waters is proposed or will occur. The City of Newport Beach has a certified Local Coastal Program (LCP), but the project is located in an area identified on the LCP post-certification map as within the Commission's original permit jurisdiction. The standard of review for development within the Commission's original permit jurisdiction is Chapter 3 of the Coastal Act.

The motion and resolution to carry out the staff recommendation is found on page 4.

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EXHIBITS

Exhibit 1 – Vicinity Map and Aerial Photo

Exhibit 2 – Project Plans

Exhibit 3 – Parcel Map 1968

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.*

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

Resolution:

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

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **No Future Expansion to Existing Shoreline Protection Device, No Future New Shoreline Protection Device.** By acceptance of this Permit, the applicant agrees, on behalf of itself (or himself or herself or themselves, as applicable) and all successors and assigns, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device that is the subject of Coastal Development Permit No. 5-19-0886, shall be undertaken if such activity extends the footprint of the bulkhead channelward of the northern/channelward property line/U.S. Bulkhead Line (depicted on Exhibit 3 attached to this staff report dated 11/22/2019) in order to protect existing or proposed new landside development including, but not limited to, the residences and garages, foundations, patio, pool, and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, flooding, sea level rise or other natural coastal hazard 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 channelward encroaching shoreline protective devices that may exist under applicable law.
2. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees: (i) that the site may be subject to hazards from waves, erosion, storm conditions, liquefaction, flooding, and sea level rise; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
3. **Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-19-0886. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-19-0886. Accordingly, any future improvements to the patio, pool and bulkhead authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-19-0886 from the Commission or shall require an additional Coastal Development Permit from the Commission or from the applicable certified local government.

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

- M. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.
5. **Public Rights.** The approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.
6. **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

The applicant proposes to repair an existing bulkhead including installation of eight new, 36" diameter concrete caissons and tiebacks connecting the proposed caissons to the bulkhead; construction of a new, 10-inch thick, cast-in-place, concrete stem wall atop the bulkhead, raising the top of the bulkhead to +10.60 NAVD88; and, sealing the panel joints at the bayward face of the bulkhead. Bird safe glass is proposed to extend 1' 4" across the top of sections of the proposed stem wall. Project plans are attached as **Exhibit 2**. In addition, construction of a new pool, spa, outdoor fireplace, and related patio improvements are also proposed. All work is proposed landward of the existing bulkhead, except the proposed sealing of the panel joints which will occur along the connection between the top of the existing bulkhead coping and the bottom of the proposed stem wall. No in-water work is required or proposed. The existing bulkhead is located at the U.S. Bulkhead line. No fill of coastal waters is proposed or will occur. The proposed project is located immediately landward of the existing bulkhead, in an area identified by the LCP post-certification map as within Commission original permit jurisdiction. Thus, the applicant must obtain a Coastal Development Permit (CDP) from the Commission and the standard of review for the project is Chapter 3 of the Coastal Act.

The project site is located at 2401 East Balboa Blvd, in the City of Newport Beach, Orange County (**Exhibit 1**). The subject bayfront property is roughly a long wedge-shaped lot ranging in width between approximately 35 (at the street) to 73 feet (at the channel), and in length between 261 and 249 feet. The site is bound by East Balboa Blvd. to the south, by similarly sized single family residences to the east and west, and by a bulkhead and the channel waters of Newport Harbor to the north. The lot is relatively flat, with no significant slopes on or adjacent to the site. The subject site is located at the far end of the Balboa Peninsula, near the harbor entrance.

The site is designated R-1 (Single-Unit Residential) in the City's certified Local Coastal Program and the proposed use conforms to this designation. On May 30, 2019 the City of Newport Beach approved demolition of a single family residence and construction of a new single family residence (CD2019-013; PA2019-033) at the subject site. After the City's appeal period ran with no appeals, the Coastal Commission's South Coast District office received the City's Notice of Final Action on June 21, 2019, at which time the Commission's appeal period was established. No appeals were filed within the Commission's 10 working day appeal period. On July 12, 2019, the Commission notified the applicant that the appeal period had expired with no appeals and that the City's permit was therefore final. In addition, the City approved the proposed bulkhead repair project in concept on July 23, 2019. The applicant's submittal of the subject CDP application for the portion of the project within the Commission's original permit jurisdiction was deemed complete on September 21, 2019.

Like the majority of waterfront properties in Newport Harbor, the project site is located in a residential area where the homes are located on bulkheaded lots. A pier platform and dock are

located seaward of existing bulkhead (approved via CDP 5-05-462, Panic Family Trust). No changes to the pier platform or boat dock are proposed.

The subject site fronts on the waters of Newport Harbor, near the harbor entrance. Public access to the harbor exists at the sandy, public harbor front beach approximately 400 feet southwest of the site. Vertical public access to the harbor is also available at the K Street street end, approximately 700 feet north of the subject site. The public sandy ocean beach that runs the length of the Balboa Peninsula is located approximately 1,700 feet south of the subject site.

STANDARD OF REVIEW

The City of Newport Beach Local Coastal Plan (LCP) was recently certified on January 13, 2017. The proposed project consists of development located entirely within the permit jurisdiction of the Commission. The standard of review for development within the Commission's jurisdiction is Chapter 3 of the Coastal Act. The City's certified LCP may be used as guidance. (Pub. Res. Code § 30519(b).)

B. HAZARDS

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

New development shall do all of the following:

- (a) *Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (b) *Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Section 30235 of the Coastal Act states:

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

City of Newport Beach LCP Policies

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

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

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

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

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

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

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

IP Section 21.30.15.E(3) – Bulkhead Condition Report. Where a coastal hazards report shows that an existing bulkhead on the site cannot be removed and/or an existing or replacement bulkhead is required to protect existing principal structures or public facilities, the applicant shall submit a bulkhead condition report that includes the following:

- a. A statement of the preparer's qualifications;*
- b. An analysis of the condition of any existing bulkhead including whether the top elevation meets current City standards, the condition of the sheetpiles or panels, the condition of existing tiebacks and/or deadmen or similar, and any other relevant conditions;*

- c. *Recommendations regarding the need for repair, augmentation or replacement of the bulkhead or any parts thereof;*
- d. *If augmentation or replacement is necessary, recommendations that will avoid seaward encroachment of the bulkhead;*
- e. *If replacement is necessary and the existing bulkhead is not in alignment with adjacent bulkheads, recommended alternatives that will relocate the bulkhead in as much in alignment with adjacent bulkheads, and as far landward, as possible.*

IP Section 21.30.30.C(3)(j) – Bulkhead for nonresidential and residential waterfront development (as identified in Sections 21.30.015(C) and (D)). In cases where the coastal hazards report required in Section 21.30.015(E)(2) establishes that an existing bulkhead on the site cannot be removed and/or an existing or replacement bulkhead is required to protect existing principal structures and adjacent development or public facilities on the site or in the surrounding areas, the following shall apply to new development:

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

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

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

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

(b) Enlargement and Expansion of Land Areas. The construction of protective structures shall be prohibited for the purpose of enlarging or expanding areas for new development or for new development. However, this shall not preclude the expansion or encroachment into coastal waters to the minimum extent necessary to repair, maintain, or replace an existing protective device that is in general alignment with any

adjacent protective device(s). Under no circumstances shall the backfill be used to create new usable land areas.

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

- 1. Be as far landward as possible and within private property, where feasible;*
- 2. Eliminate or mitigate adverse impacts to coastal resources;*
- 3. Minimize alteration of natural shoreline processes*
- 4. Provide for public access to State Tidelands and recreational areas and facilities*
- 5. Minimize visual impacts and maximize the enjoyment of the natural shoreline environment;*
- 6. Eliminate or mitigate adverse impacts on local shoreline sand supply*
- 7. To have the smallest footprint possible; and*
- 8. Cause no reduction in public access, use or enjoyment of the natural shoreline environment and preserve or provide access to public recreational lands and facilities.*

Due to its bayfront location, the subject site is exposed to natural shoreline hazards, including from tides, erosion, storm conditions, and sea level rise. The applicant provided a Coastal Hazards Analysis Report prepared by PMA Consulting, Inc. dated 3/27/2019, revised 8/27/2019 and a Bulkhead Conditions Report prepared by PMA Consulting, Inc. dated 1/25/2019, revised 8/27/2019. The applicant's CHA Report considers whether the bulkhead at the subject site could be removed. It finds: *"Based upon our site observation, we conclude that the existing seawall is required to protect the existing and proposed principal structures on the lot, the adjacent properties, public facilities and infrastructure; thus, it can't be removed. Removal of the bulkhead will result in erosion and undermining the foundations of the structures and site walls at the subject site and both adjacent sites."*

The finished floor elevation of the recently approved residence at the site is at +11.00 NAVD88 elevation, which is approximately two feet higher than the current Base Flood Elevation established for the area by FEMA. Interpolating directly from the data on Table G-10 of Appendix G of the Commission's Sea Level Rise Guidance Policy, *Sea Level Rise Projections for 12 California Tide Gauges*, and applying the Medium – High Risk Aversion for projected sea level rise at the Los Angeles tide gauge (the nearest gauge for the subject site), the engineering consultant determined the expected sea level rise at the site for the year 2094 (75 years hence) is 6 feet. The CHA Report states: *"Based on the highest high tide of +7.88' MLLW (7.70' NAVD88) recorded in the project area, the above established Sea-Level Rise will account for bay water level of +13.70' NAVD88."* The top of the proposed stemwall (highest level of the repaired bulkhead) will be 10.6' NAVD88. The proposed height of the stemwall is consistent with current City of Newport Beach *Waterfront Projects Guidelines and Standards Harbor Design Criteria*¹, but lower than medium-high risk future SLR scenario of 13.70' NAVD88. Thus, as proposed, the repaired bulkhead will provide additional protection to the adjacent properties, public streets, and the new home, but may not be high enough to prevent flooding associated sea level rise and high tides by the year 2094.

¹ <https://www.newportbeachca.gov/home/showdocument?id=54538>

The CHA Report finds that the “*primary hazard due to flooding from ocean waters for this site, like the majority of sites located adjacent to Newport Bay, would be due to long term SLR.*” As proposed, the repaired bulkhead is expected to provide protection from flooding until approximately year 2053 (33 years from now). However, the CHA Report finds that the seawall can be raised to an elevation of 14’ NAVD88 without channelward encroachment of the bulkhead footprint, when necessary in the future to protect from SLR and flooding.

Regarding erosion, the CHA Report states: “*The beach footprint of this site is stabilized and not subject to significant long-term erosion. Review and analysis of historical aerial photographs and field measurements for seawall repairs in the area show no change in the position of the shoreline over the last several decades.*” The CHA Report indicates that future SLR may accelerate erosion. Additionally, a coastal hazards report prepared for a nearby property (1601 East Bay Avenue, approximately 1,500 feet west of the site) indicates that due to the location within a bay, the area is not subject to typical ocean waves and the associated wave run-up. Bay generated waves that may arrive at the site are very small wind waves and boat wakes and have no significant energy and runup effect. Thus, the neighboring coastal hazards analysis report concluded wave run-up and erosion would not be expected to significantly impact the nearby property over the proposed life of the development (75 years). As with the applicant’s CHA Report, the neighboring report notes that there have been no visible indications of shoreline change for many years.

The proposed bulkhead repair will occur entirely landward of the existing bulkhead. The bulkhead repair would not encroach bayward of the existing bulkhead. The existing bulkhead alignment is flush with the neighboring bulkheads on either side of the subject property. No change to this alignment will occur with the proposed bulkhead repair. No development is proposed seaward of the existing bulkhead. No fill of coastal waters will result from the proposed development. The existing bulkhead is located at the channelward property line which is coincident with the U.S. Bulkhead line².

The adequacy of the proposed bulkhead was analyzed based on the medium-high risk aversion SLR scenarios, consistent with the Coastal Commission SLR Guidance. If sea level rises in the next several decades as currently projected, regional measures to address potential flooding will need to be taken. Since the finished floor elevation of the existing residence is +11.00 NAVD88, it will be below the bay water level of +13.70’ NAVD88 that may be reached by the year 2100. However, as discussed above, the bulkhead as proposed to be repaired can accommodate increased height in the future without channelward encroachment. As proposed, the new seawall/bulkhead allows for possible future increases in height without further seaward encroachment.

² 33 USC 424. Establishment of pierhead or bulkhead lines in Newport Harbor, California. The Secretary of the Army is authorized and directed to fix and establish pierhead and bulkhead lines, either or both, at Newport Harbor, California, in accordance with plan dated United States Engineer Office, Los Angeles, California, March 25, 1913, and entitled "Newport Bay, California", showing harbor lines, beyond which no piers, wharfs, bulkheads, or other works shall be extended or deposit made, except under such regulations as shall be prescribed from time to time by the Secretary of the Army. (July 27, 1916, ch. 260, § 3, 39 Stat. 411; July 26, 1947, ch. 343, title II, § 205(a), 61 Stat. 501.) The Secretary of the Army is authorized to modify from time to time, the harbor lines at Newport Harbor, California, established in pursuance of section 424 of this title: provided, that in his opinion such modification will not injuriously affect the interests of navigation (United States of America, Sec. 424a).

Along all of the Balboa Peninsula, private residential development and public streets are protected by bulkheads. The proposed bulkhead repair is necessary to protect the subject site, neighboring sites, and public infrastructure on the peninsula. The bulkheads that connect across the east harbor-fronting side of Balboa Peninsula are maintained individually by property owners, but function as a de facto uniform structure to protect more than just the individual properties. The public infrastructure that would be threatened by flooding includes the public streets inland of the homes, as well as the municipal water and sewer lines, storm drain systems, and utility connections that typically occur in the public right-of-way.

The majority of bulkheads along Newport Bay were constructed prior to passage of the Coastal Act in order to protect development beginning around the turn of the last century. Efforts to develop the peninsula began to take off at that point. For example, the Balboa Pavilion was constructed in 1906 as a meeting room and bathhouse. Today, the Pavilion is used as a marine recreation facility, with sport fishing boats, a passenger catamaran to Catalina Island, harbor sightseeing cruises, boat (skiff) rentals, whale watching, and the Harborside Restaurant and Grand Ballroom. The Pacific Electric Red Car Line used to serve the peninsula, starting in 1906. Exposure due to access via the Red Car allowed many to discover the benefits offered by the area, increasing the desire to develop. Newport Elementary school on the Balboa Peninsula was constructed in 1894, suggesting residential development of the area dating back more than one hundred years. The school remains in use today. The Lovell Beach House, considered one of the great works of pioneering modern architect, R.M. Schindler, was built on the Balboa Peninsula in 1926. It remains in its original location. Starting from the early 1900s and before, the peninsula has continued to attract both residential and recreational development.

Since the turn of the last century, the physical features of Newport Harbor have evolved over the years. Work formally creating Newport Harbor began in December 1934, with opening celebrations held in 1936 (OCParks.com, 2008). A 1934 map of Newport Harbor showed a similar layout as exists today, but without Linda Isle, Promontory Bay, Balboa Yacht Basin, Balboa Coves, Newport Island or the Grand Canal splitting Balboa Island. By 1950 Balboa Coves, Newport Isle, the Grand Canal, Balboa Yacht Basin, and an incomplete Linda Isle had been added (Office of the District Engineer, 1950).³ These artificially created islands, as well as augmentations to Balboa Peninsula, were intended primarily for residential communities, which sprang up throughout Newport Bay beginning more than a century ago.

Although Coastal Act policies generally disfavor shoreline protective devices due to their impacts on natural landforms and shoreline processes, Section 30235 permits seawalls and other such construction that alters natural shoreline processes when required to serve coastal dependent uses or to protect existing structures or public beaches in danger from erosion. Likewise, Section 21.30.15.E(2)d of the IP states:

On sites with an existing bulkhead, a determination as to whether the existing bulkhead can be removed and/or the existing or a replacement bulkhead is required to protect existing principal structures and adjacent development or public facilities on the site or in the surrounding area.

³ <https://newportbeachca.gov/Home/ShowDocument?id=9180>

As discussed above, the applicant's engineering consultant considered whether the existing bulkhead could be removed, and determined that it could not because removal would cause erosion and undermine foundations and walls at the subject site and surrounding area. In addition, given the unique circumstances and history of development in Newport Bay that occurred prior to the Legislature's adoption of the Coastal Act, bulkhead improvements/replacements have historically been allowed along Newport Harbor as a continuous bulkhead along some sections of the bay is needed to protect these residential communities and public infrastructure, which includes pre-Coastal development and coastal-dependent uses that are entitled to shoreline protection under 30235. In this case, maintaining a continuous bulkhead at the project site is necessary to protect existing public infrastructure and homes throughout Balboa Peninsula. Thus, the proposed development can be authorized consistent with Section 30235 and Section 21.30.15.E(2)d of the IP.

However, because the proposed development is located in an area where coastal hazards can adversely impact existing development, the Commission imposes **Special Condition 2**, which requires the applicant to assume the risk of development. Furthermore, **Special Condition 1** requires the applicant to agree that no repair or maintenance, enhancement, reinforcement of the existing shoreline protective device (bulkhead) shall be undertaken if such activity extends the footprint seaward of the existing shoreline protective device (bulkhead) per IP Section 21.30.030.C.3 – Protective Structures. In this case the bulkhead as existing and as proposed to be repaired is located at what the applicant's surveyor identifies as the channelward property line, which is coincident with the U.S. Bulkhead line. Thus, **Special Condition 1** assures that no expansion of the existing bulkhead footprint is or would be allowed channelward of the current bulkhead footprint which is located at the channelward property line/U.S. Bulkhead line.

Policy 2.8.6-7 of the LUP states: *Discourage shoreline protective devices on public land to protect private property/development.* The applicant's survey and proposed plans identify all proposed development as occurring within the applicant's private property, not on public land. Additionally, the improvements to the bulkhead would allow it to remain in place for an extended period of time to protect the existing adjacent public infrastructure from erosion and flooding, until such a time that adaptation plans as required by the LCP via IP Policies 21.30.010.E(4)(d)(iv) and 21.30.060.B(3)(i) for the area are underway, per the LCP policies.

Because coastal processes are dynamic and structural development may alter the natural environment, future development at the site could adversely affect future shoreline conditions if not properly evaluated and potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. In order to ensure that development on the site does not occur which could potentially result in adverse impacts to coastal processes, the Commission imposes **Special Condition 3** informing the applicants and any future property owners that future development at the site requires an amendment to this Coastal Development Permit No. 5-19-0886 or a new coastal development permit. Thus, as conditioned, the Commission finds that the proposed project is consistent with Section 30235 and Section 30253 of the Coastal Act.

C. PUBLIC ACCESS AND RECREATION

Section 30210 of the Coastal Act, Access; recreational opportunities; states:

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

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

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

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

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

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

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

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

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

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

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

Coastal Land Use Plan Policy, Shoreline Access, 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 Policy, Shoreline Access, 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 Policy, Shoreline Access, 3.1.1-11 states,
Require new development to minimize impacts to public access to and along the shoreline.

Coastal Act Section 30210 and Coastal Act Section 30211 mandate that maximum public access and recreational opportunities be provided consistent with private property rights, and that development not interfere with the public's right to access the coast. Section 30212(a) of the Coastal Act provides that adequate public access to the sea be provided in new development projects. Additionally, Sections 30220 and 30221 of the Coastal Act protect coastal areas suited for water-oriented recreational activities and oceanfront land for recreational uses. Section 30250 of the Coastal Act requires new development to not have significant adverse effects, individually or cumulatively, on coastal resources. The City's certified LCP, used as guidance, also includes numerous similar policies regarding public access and recreation.

Newport Harbor waters are popular for fishing, kayaking, and paddle boarding types recreational activities. Sandy shoreline areas along the harbor also provide coastal access/recreational opportunities. The subject property has an existing private dock system including a pier platform, gangway and dock float constructed channelward of the existing bulkhead (pursuant to CDP 5-05-462, Panic Family Trust). The proposed project involves repair of the existing bulkhead associated with a single-family residence on a harborfront lot, hardscape improvements including a swimming pool, spa, outdoor fireplace, and related patio improvements landward of the bulkhead.

The area seaward of the bulkhead is water area; no exposed sandy area is present. All proposed development is inland of the bulkhead, on dry land behind the bulkhead. The lot has historically been privately owned. The parcel map for the subject site indicates the lot was created in 1968 from previously created lots, with the channelward property line remaining at the U.S. Bulkhead Line (**Exhibit 3**). The lot is not part of the mapped State Tidelands held in trust by the City. The area north (channelward) of the U.S. Bulkhead Line as established by the federal government in 1917 is State Tidelands administered by the City of Newport Beach pursuant to a 1929 Tidelands Grant.

There is no direct public pedestrian access to the harbor waters through the subject private residential lot. Public access to the harbor exists at the sandy, public harbor front beach approximately 400 feet southeast of the site. Vertical public access to harbor waters is also available at the K Street street end, approximately 700 feet west of the subject site. From these access points, members of the public may access the waters of Newport Harbor and, for example, fish or launch a kayak or standup paddle board. In addition, the wide sandy public ocean beach that runs the length of the Balboa Peninsula is located approximately 1,700 feet

south of the subject site. Furthermore, Coastal Commission approval of this project cannot waive any public rights that may exist on the property. Thus, **Special Condition 5** is imposed stating that the approval of a coastal development permit for the project does not waive any public rights or interest that exist or may exist on the property.

Section 30210 of the Coastal Act encourages maximum public access, while also respecting private property rights, and section 30211 requires that development not interfere with the public's right of access to the sea. The proposed bulkhead repair will occur landward of the existing bulkhead and would not encroach channelward into harbor waters or tidelands recognized in the City's tidelands grant and therefore would not be inconsistent with Coastal Act public access policies. As conditioned, the project is consistent with the public access policies of the Coastal Act.

D. WATER QUALITY

The proposed work will be occurring on, within, or adjacent to coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect on the marine environment. As proposed, all construction work will occur from the land. In addition, to reduce the potential for construction related impacts on water quality, the Commission imposes **Special Condition 4** requiring, but not limited to, the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. To reduce the potential for post-construction impacts to water quality the Commission requires the continued use and maintenance of post construction BMPs. As conditioned, the Commission finds that the development conforms to Sections 30230 and 30231 of the Coastal Act.

E. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, **Special Condition 6** requires that the applicant/property owner record a deed restriction against the property, referencing all of the above special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the property. Thus, as conditioned, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

F. LOCAL COASTAL PROGRAM (LCP)

On January 13, 2017, the Commission effectively certified the City of Newport Beach LCP. The proposed project will occur on potential historic filled former tidelands that are within the Commission's jurisdiction. Consequently, the standard of review is Chapter 3 of the Coastal Act, and the certified LCP serves as guidance. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City of Newport Beach is the lead agency responsible for certifying that the proposed project is in conformance with the California Environmentally Quality Act (CEQA). On

7/23/2019 the City determined that in accordance with CEQA, the project is Categorical Exempt development from Provisions of CEQA for new construction. Section 13096(a) of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

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

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

Appendix A - Substantive File Documents

Coastal Hazards Analysis Report prepared by PMA Consulting, Inc. (PMA Job #24818) dated 3/27/2019; Revised 8/27/2019

Bulkhead Conditions Report prepared by PMA Consulting, Inc. (PMA Job #24818) dated 1/25/2019; Revised 8/27/2019