

CALIFORNIA COASTAL COMMISSION

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F10c

Filed: 9/15/18
180th Day: 3/14/19
Staff: L. Roman-LB
Staff Report: 2/21/19
Hearing Date: 3/6/19

STAFF REPORT: REGULAR CALENDAR

Application No.: 5-18-0821

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

Agents: Shellmaker, Inc., Lisa Miller
Gaines & Stacey LLP, Sherman Stacey

Location: 4018, 4020 and 4022 Channel Place, City of Newport
Beach, (Orange County)

Project Description: Demolition of a 90-ft. long bulkhead/seawall across three contiguous residentially zoned lots and construction of a new 10.44-ft. tall precast concrete panel bulkhead/seawall with concrete coping, 42-inch tall glass railing; a concrete deck cantilevered five (5) feet over water beyond the bulkhead/seawall at 4018 and 4022 Channel Place; and reconstruction of three wood pier platforms associated with existing residential boat docks.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The subject sites are three contiguous, residentially zoned lots on Newport Island located in Lower Newport Bay in Newport Beach. The proposed project is the demolition of an existing 90-ft. long concrete bulkhead spanning across the three lots, construction of a new 10.44-ft. tall concrete bulkhead in the same location/alignment, and construction of concrete decks with a 42-inch tall glass railing cantilevered five (5) feet beyond the reconstructed bulkhead at 4018 and 4022 Channel Place; in addition, a 42-inch tall glass railing is proposed atop the seawall at 4020 Channel Place. No cantilevered deck is proposed at 4020 Channel Place. Bayward of each

bulkhead, each site is developed with a private recreational boat dock. These docks will be removed during the re-construction of bulkheads and then re-placed in the same location, the wood pier platforms associated with the docks will be demolished and reconstructed. Currently, 4018 Channel Place is the only one out of the three sites which with an existing 5' x 30' wood deck cantilevered over the water beyond the bulkhead. The proposed project is within the Commission's original permit jurisdiction (within and over the waters of Newport Bay) in the City of Newport Beach, a certified jurisdiction. The standard of review for development within the Commission's original permit jurisdiction is Chapter 3 of the Coastal Act, and the City's certified LCP may be used for guidance.

An approximately 30-foot wide by 35-foot deep portion of each of the three applicants' properties is situated bayward of the existing bulkhead on each lot. The applicants propose to construct a cantilevered deck that extends five feet beyond the existing bulkhead at two of the three subject lots, and have provided information indicating that the submerged lands under the proposed cantilevered decks are privately owned and are not public trust lands, although the lands would be subject to a navigational easement. Determinations about the public trust boundary are ultimately the jurisdiction of the State Lands Commission. Assuming this information is correct, construction of the cantilevered decks can be allowed as long as it does not prevent use of the submerged waters for navigational purposes and is otherwise consistent with Sections 30210, 30211, 3012, 30220 and 30221 of the Coastal Act and the City of Newport Beach Local Coastal Program (LCP) policies (3.1.1-1, 3.1.1-9, 3.1.1-11, and 3.1.4-3) protecting public access. Construction of the proposed cantilevered decks may hinder but would not completely obstruct the public's ability to access the water portion of the applicants' lots for navigational purposes, and, as a practical matter, is unlikely to have much additional impact on public access due to the existence of the private docks that extend farther out into the bay. Thus, the proposed cantilevered decks would not be inconsistent with a navigational easement or with Coastal Act public access policies.

All of Newport Island, including private residential development and public streets, is protected by bulkheads, and the replacement of the proposed shoreline protection is necessary to protect the existing residences and public infrastructure on the island. Section 30235 of the Coastal Act provides that shoreline protective devices "shall" be permitted when required to protect *existing* structures, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. According to a bulkhead report submitted by the applicant, the proposed bulkheads are necessary to protect existing structures in danger from erosion and thus, may be authorized as long as they are designed to eliminate or mitigate adverse impacts on shoreline sand supply. The project will not result in any new impacts to shoreline sand supply because as proposed, the new bulkheads will in the same location/configuration and will not extend bayward of the existing bulkheads. Additionally, the height of the new seawall would protect existing landside development for the next 75 years.

Staff is recommending **approval** of the proposed coastal development permit with **nine (9)** special conditions requiring: 1) Revised Plans Depicting Final Dock Pier Configurations; 2) No Future Seaward Expansion of Shoreline Protective Device; 3) Construction Phase BMPs; 4) Assumption of Risk, Waiver of Liability; 5) Future Development; 6) Best Management Practices (BMP) Program; 7) Payment of Application Fees; 8) Public Rights; and 9) Deed Restriction.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1 – Vicinity Map

Exhibit 2 – Record of Survey

Exhibit 3 – Project Plans

Exhibit 4 – Site Photographs

Exhibit 5 – Correspondence from Sherman Stacey

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit No. 5-18-0821 pursuant to the staff recommendation.*

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with 1) the Local Coastal Program, and the public access and recreation policies of the Coastal Act for the portion of the proposed development in the jurisdiction of the Local Coastal Program and 2) the provisions of Chapter 3 of the Coastal Act for the portion of the proposed development in the Commission's retained original jurisdiction. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

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

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Revised Construction Plans Depicting Residential Docks. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicants shall submit, for the review and approval of the Executive Director, a site plan for each of the three subject sites depicting the final size and location of the reconfigured pier platforms at each subject site.

The plan shall be prepared by a qualified professional and shall be drawn to scale and depict:

- a) the size and shape of the new reconstructed wooden pier platforms;
- b) the location of the reconstructed wooden pier platforms (e.g., whether attached to a concrete cantilevered deck or attached directly to the concrete bulkhead)
- c) the size and location of the pier platform, piles, gangway, dock float in relation to the site's property lines; and
- d) the revised plans shall provide a notation clearly identifying the specific treatment to the tempered glass screenwall proposed to address bird strike issues.

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

2. **No Future Expansion of Existing Shoreline Protective Device.** By acceptance of this permit, the applicant agrees, on behalf of itself and all successors and assigns, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device that is the subject of Coastal Development Permit No. 5-18-0821, as described and depicted on the record of survey included as **Exhibit #2** of this staff report dated 2/14/19, shall be undertaken if such activity extends the footprint of the subject shoreline protective device seaward in order to protect existing or proposed new landside development including, but not limited to, the residences and garages, foundations, patios 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 seaward encroaching shoreline protective devices that may exist under applicable law.

3. **Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.** By acceptance of this permit, the applicant agrees to 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.

4. **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.

5. **Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-18-0821. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-18-0821, including the new concrete bulkheads, concrete cantilevered decks and wood pier platforms. Accordingly, any future improvements to the development authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-18-0821 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

6. **Best Management Practices (BMPs) Program**

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

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

 - B. **Solid and Liquid Waste Management Measures:**

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

C. Petroleum Control Management Measures:

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

7. **Payment of Application Fees.** Within 30 days of Commission action, the applicant is required to submit the remaining coastal development permit application fee due of \$4,231.
8. **Public Rights and Public Trust.** The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property. If at a future date, any portion of the development approved by this permit is determined to be located on or over public trust lands, then any development approved by this coastal development permit not compatible with the public trust shall be removed.
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 LOCATION AND DESCRIPTION

PROJECT LOCATION

The project site consists of three contiguous residentially zoned bay front lots protected by a bulkhead/seawall located at 4018, 4020, and 4022 Channel Place on Newport Island within Newport Harbor, in the City of Newport Beach, Orange County (**Exhibit 1**). Newport Island is a triangle shaped public island on the west side of Lower Newport Harbor with approximately 120 residences (single family or duplexes). To the north of the project site is the approximately 100-foot wide Newport Island Channel and additional single family residential development and associated residential docks at the Balboa Coves street, single-family or 2-unit residential development characterize Newport Island.

Currently 4018 and 4022 Channel Place are each developed with a single-family residence, bulkhead and dock system (pier platform, gangway and dock float); additionally, 4018 Channel Place has an existing wood deck cantilevered 5 feet beyond the bulkhead. 4020 Channel Place is currently a vacant lot bordered by these two single-family homes on either side (the City issued the CDP for the demolition of a single-family residence and garage in August 2017). The water-side portion of the vacant lot is developed with a bulkhead and dock system (pier platform, gangway, and dock float). The City of Newport Beach LCP Coastal Zoning Map designates all three sites as R-2 (Two Unit Residential).

The harbor side property line of these three parcels extends approximately 35-feet past the existing bulkhead into bay waters adjacent to an area identified by the City as a waterway. The entire Newport Island is surrounded by a strip of water approximately 100 feet wide identified as “Waterways Dedicated or Reserved for the same” by the City, described in more detail in the findings below.

PROJECT DESCRIPTION

The proposed project is the demolition of a bulkhead/seawall across three contiguous residentially zoned lots at 4018, 4020, and 4022 Channel Place and construction of a new 10.44-ft. tall precast concrete panel bulkhead/seawall in the same location and alignment as the existing bulkhead. The old seawall will be demolished and the new precast concrete panels will be jettied-in from the landside at least 8-feet below the mudline, the new concrete coping will have three (3) new 18-ft. long helical anchors tying it back. An existing 190 sq. ft. cantilevered wood deck and support piles at 4018 Channel Place is proposed to be demolished. New concrete 5-foot cantilevered decks over water beyond the bulkhead/seawall are proposed at 4018 and 4022

Channel Place with a 42-inch high glass railing. Project plans are included as **Exhibit #3**. All three subject sites have a private residential recreational boat dock bayward of the existing bulkhead. The site survey included as **Exhibit #2**, depicts the existence of residential dock system (dock float, gangway, and pier platform) at all three subject sites. The wood pier platforms are attached directly to the bulkheads at 4022 and 4020 Channel Place and attached to a cantilevered wood deck at 4018 Channel Place. The proposed project description includes demolition of the 10' x 12' wood pier platform and construction of a modified 10' x 7' wood pier platform at 4018 Channel Place; demolition and reconstruction of the 10' x 10' wood pier platform at 4020 Channel Place; and demolition of the 10' x 12.75' wood pier platform and construction of a modified 10' x 7.75' wood pier platform at 4022 Channel Place. The proposed new pier platforms at 4018 and 4022 Channel Place are smaller to accommodate proposed new cantilevered concrete decks at these two locations. The existing 10' x 10' pier platform at 4020 Channel Place would be reinstalled attached to the new reconstructed bulkhead as no cantilevered deck is proposed at this site.

The area of the bay waters over which the proposed decks would be cantilevered is a 20-foot wide by 5-foot deep portion of the applicant's property that is situated bayward of the existing bulkhead. This portion of the applicant's lot has not been officially deemed to be public tidelands because it has historically been part of the property deed for the landside lot. The applicant has provided information (**Exhibit #5**) indicating that the portion of the submerged lands on its lots below the proposed cantilevered decks was excavated from dry upland. The applicant, therefore, contends that these lands were never, and are not now, subject to the public trust. Ultimately, determinations about the public trust boundaries are the jurisdiction of the State Lands Commission, therefore for purposes of this CDP application, staff assumes that the submerged land below the proposed cantilevered decks is privately owned, submerged lands. However, as discussed below, such lands are subject to a navigational easement and the public maintains a right to access the navigable bay waters.

PREVIOUS COMMISSION ACTIONS AT THE SITES

4022 Channel Place (residence constructed in 1953, pre-Coastal Act)

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

4020 Channel Place (previous residence constructed in 1953, pre-Coastal Act)

- 5-06-403 – Administrative Permit approved March 15, 2007 for demolition of an existing boat dock, gangway, and piles and installation of a new dock system consisting of: a 10' x 10' pier platform, a 3' x 24' gangway; a 10' x 16' float with two (2) 12" diameter concrete piles.
- 5-NPB-17-0817 and Local CDP No. CD2017-045 effective August 28, 2017 for the demolition of a single family residence and garage.

4018 Channel Place (residence constructed in 1964, pre-Coastal Act)

- Staff's record search found no CDP approvals for the existing dock on file.

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 on submerged lands and is therefore within the Commission's jurisdiction and the Commission is the permit-issuing authority. The standard of review for development within the Commission's jurisdiction is Chapter 3 of the Coastal Act and the City's certified LCP may be used as guidance. (Pub. Res. Code § 30519(b).)

B. HAZARDS

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

New development shall do all of the following:

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

Section 30235 of the Coastal Act states:

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

City of Newport Beach LCP Policies

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

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

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

LUP Policy 2.8.6-5: *Permit revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls and other structures altering natural shoreline processes or retaining walls when*

required to serve coastal-dependent uses or to protect existing principal structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply, unless a waiver of future shoreline protection was required by a previous coastal development permit.

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

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

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

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

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

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

(1) Not subject to recorded waivers of future protection

(2) Threatened by natural hazards, provided that the protective structures are limited to the minimum required to protect the existing structure and located on private land, not State tidelands.

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

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

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

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

The proposed project is the demolition of a 90-foot long bulkhead/seawall across three contiguous residentially zoned lots at 4018, 4020, and 4022 Channel Place and construction of a new 10.44-ft. tall precast concrete panel bulkhead/seawall in the same location and alignment as the existing bulkhead. The applicant provided a Coastal Hazards Analysis Report prepared by William Simpson & Associates, Inc. (WSA Job #7101, 7193, and 7108) dated July 26, 2018 and a Bulkhead Condition Letter, also prepared by William Simpson & Associates, Inc. (WSA Job #7101, 7193, and 7108) dated August 14, 2018 for 4018, 4020, and 4022 Channel Place. The findings of the bulkhead condition letter indicate that the cast-in-place concrete seawalls were found in poor condition with distressed concrete, severe cracks and lateral bayward movements. The seawalls were deemed necessary to protect existing principal structures on the lots and are in need of replacement.

The Coastal Hazards Analysis identifies the highest high tide in the project area as +7.38-foot Mean Lower Low Water (MLLW). The estimated sea level rise at the site appears to be between 1.20' and 2.70' feet over the next 75 years, accounting for bay water levels rising in the range of +8.40' to +9.90' NAVD88. Additionally, the analysis concludes that due to its location within a bay, the subject site is not subject to typical ocean waves and the associated wave run-up. The existing bulkheads elevations vary from +10.27' NAVD88 at 4018 Channel Place, +9.60' NAVD88 at 4020 Channel Place, and 9.39' NAVD88 at 4022 Channel Place. The elevation of the proposed new seawall across all three lots is +10.32' NAVD88. Additionally, the finished floor elevations for the existing residential development on the landward side of the lots are all above +10' NAVD88, all above the Base Flood Elevation established for the area.

The study concludes that wave run-up and erosion will not significantly impact the property over the proposed life of the development (75 years), noting that even at accelerated shoreline erosion rates that may occur due to rapid rates of sea level rise, there will be no impact to the structures on the subject lots over their economic life. The report notes that there have been no visible indications of shoreline change or landward movement of the Mean High Tide (MHT) Line. The position of the MHT line for these lots is based on the position of the existing seawall. Erosion in

front of the seawall was found to be very small, but the report does not provide any estimates for erosion of the shoreline if the existing bulkhead were to be removed.

The applicants propose to replace the compromised and failing seawalls in their current location and alignment. As proposed, the new seawalls will not encroach bayward of the existing seawalls. The existing seawalls were most likely constructed prior to passage of the Coastal Act. According to online City records, it appears that existing development at the three subject sites was also constructed prior to passage of the Coastal Act. The existing residential structure at 4018 was constructed in 1964, the previous residential structure at the currently vacant lot at 4020 Channel Place was constructed in 1953, and the existing residential structure at 4022 Channel Place was also constructed in 1953. As previously mentioned, the elevation of the proposed new seawall across all three lots is +10.32' NAVD88. As proposed, the height of the new seawall would protect existing landside development for the next 75 years, accounting for bay water levels rising in the range of +8.40' to +9.90' NAVD88. All of Newport Island, including private residential development and public streets, is protected by bulkheads, and the replacement of the proposed shoreline protection is necessary to protect the existing residences and public infrastructure on the island.

The construction of seawalls and other shoreline protective devices is generally disfavored under the Coastal Act, as these structures interfere with natural shoreline processes, erode beaches, and have numerous, related adverse impacts on public access and visual resources. Thus, Coastal Act section 30253(b) requires that new development “neither create nor contribute significantly to erosion . . . or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.” The proposed construction of a bulkhead/seawall to protect private residences on Newport Island raises some of these concerns, especially in light of expected sea level rise.

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

Here, the Coastal Act is the standard of review for the Commission’s review of the proposed development, although the City’s LCP, certified by the Commission in 2017, provides guidance. The project site includes three lots, with single-family residences on the two outside lots and one vacant lot in-between. The two existing homes were constructed in 1964 and 1953 and, thus, prior to adoption of the Coastal Act. The applicant’s study indicates that the structures would be threatened were it not for the existing and proposed bulkheads and that the existing bulkheads are failing. Accordingly, the proposed bulkheads are necessary to protect existing structures in danger from erosion and may be authorized as long as they are designed to eliminate or mitigate adverse impacts on shoreline sand supply. The project will not result in any new impacts to shoreline sand supply because as proposed, the new bulkheads will in the same location/configuration and will not extend bayward of the existing bulkheads. In addition, even though the vacant lot does not contain an existing structure and would not itself be entitled to

shoreline protection under section 30235, the efficacy of the proposed bulkhead to protect the two existing homes on the outside lots would be diminished if the bulkhead were not replaced across all three lots. In other words, in order to protect the two existing homes, the bulkhead must be constructed across all three lots, including the vacant lot.

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

Additionally, since coastal processes are dynamic and structural development may alter the natural environment, future development at these sites could adversely affect future shoreline conditions if not properly evaluated and potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. In order to ensure that development on the site does not occur which could potentially result in adverse impacts to coastal processes, the Commission imposes **Special Condition 5** informing the applicants and any future property owners that future development at the site requires an amendment to this Coastal Development Permit No. 5-18-0821 or a new coastal development permit.

Thus, as conditioned, the Commission finds that the proposed project is consistent with Section 30235 and Section 30253 of the Coastal Act.

C. PUBLIC ACCESS AND RECREATION

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

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

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

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

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

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

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

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

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

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

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

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

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 Land Use Plan Policy, Bay/Harbor Encroachments, 3.1.4-3 states,

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

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

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

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

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

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

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

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

Implementation Plan, Development Standards, Harbor Development Regulations, 21.30.C.050(G) states,

G. Piers.

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

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

3. Setbacks.

a. All piers and slips for residential properties shall be set back a minimum of five feet from the prolongation of the property line.

b. With the prior approval of the City, piers and slips for commercial properties may extend past the prolongation of the property line.

c. The prolongation of the property line bayward of the same bearing from the bulkhead shall generally be used in determining the allowable setbacks for piers and slips. Because there are certain physical conditions which preclude the strict application of this policy without prejudice to adjoining properties, special consideration will be given to areas where precise prolongation of the property line has not been determined and the following conditions exist:

projects. Additionally, Sections 30220 and 30221 of the Coastal Act protect coastal areas suited for water-oriented recreational activities and oceanfront land for recreational uses. Section 30250 of the Coastal Act requires new development to not have significant adverse effects, individually or cumulatively, on coastal resources.

Newport Bay, both Upper and Lower Bay, are popular for small vessel boating, kayaking, and paddle boarding recreation. Sandy shoreline areas along the bay are also used for coastal access/recreation. All three properties subject to this application have an existing private dock system including a pier platform, gangway and dock float all of which are constructed within the water portion of the lots within private property lines. The proposed project description includes temporary removal of the dock systems during demolition and construction of the new bulkhead and cantilevered decks. Once the concrete bulkhead and cantilevered decks are built, the same existing dock floats and gangways will be re-installed and wood pier platforms will be reconstructed. At 4018 Channel Place, the existing 10' x 12' wood pier platform will be demolished and a new 10' x 7' wood pier constructed. At 4022 Channel Place, the existing 10' x 12.75' wood pier platform will be demolished and a new 10' x 7.75' wood pier platform constructed. The new pier platforms at 4018 and 4022 Channel Place are smaller to accommodate proposed new cantilevered concrete decks at these two locations. The existing 10' x 10' pier platform at 4020 Channel Place will be demolished and reconstructed attached to the new bulkhead as no cantilevered deck is proposed at this site. No increase in water coverage, or increase in the size and number of existing piles, hence no increase in fill of coastal waters is will occur as part of the proposed project.

As the project plans do not clearly depict the changes to the configuration of the dock systems and pier platforms at the three subject sites, the Commission imposes **Special Condition #1** requiring submittal of revised plans for each property depicting the final size and re-configuration of the dock system at each subject site. The plan shall be prepared by a qualified professional and shall be drawn to scale and depict the location, shape, size and materials of the existing dock system (i.e., pier platform, piles, gangway, dock float) in relation to the property lines.

The City determined that the proposed cantilevered concrete decks falls under the jurisdiction of the California Coastal Commission because they project beyond the bulkhead and over the bay waters. The City issued an approval-in-concept for the new replacement seawalls and proposed cantilevered decks which are designed in compliance with the patio deck standards of the IP Section 21.30C.050(G)(5). Specifically, the decks would project a maximum of 5 feet beyond the bulkheads, maintains minimum setbacks of 5 feet from the prolongations of the side property lines, and would be located outside Tidelands Trust, which are mapped State tidelands administered by the City.

An approximately 30-foot wide by 35-foot deep portion of each of the applicant's properties is situated bayward of the existing bulkhead on each lot (see **Exhibit #2**). This water area is identified as "Waterways Dedicated or Reserved for the same" and is not part of the mapped State Tidelands held in trust by the City, thus, these portions of the applicants property have not been officially deemed to be public tidelands.

Although the proposed bulkheads, cantilevered decks and the existing private boat dock systems do not appear to be located on State Tidelands administered by the City of Newport Beach pursuant to a Tidelands Grant, because the property seaward of the bulkhead at all three sites is fully submerged bay waters at all times, the question of the Public Trust doctrine arises. The Public Trust provides that tide and submerged lands and the beds of lakes, streams and other navigable waterways are to be held in trust by the State for the benefit of the people of California for uses including the right to swim, boat and engage in other forms of water recreation. However, the applicants have provided information indicating that the submerged lands at issue were dredged from uplands that were not previously subject to the public trust. As such, the applicant contends that public trust lands are not affected by the proposed cantilevered decks and that the decks may be authorized because they are consistent with LCP policies related to decks over Harbor waters. Specifically, IP Section 21.30C.050(G)(5) prohibits patios to extend over waters of Newport Harbor “unless the waters are adjacent to the upland property *and outside the areas described in the tidelands trust,*” and comply with other conditions, including a limit on the maximum encroachments of five feet.

Determinations about the public trust boundary are ultimately the jurisdiction of the State Lands Commission. However, assuming the applicant’s information concerning the history of the submerged portion of its property is correct, pursuant to Public Resources Code section 7552.5, the submerged waters are nevertheless subject to a navigational easement that, in general, precludes the owner from preventing the public from using the waters for navigational purposes even if the submerged lands are not public trust lands.¹

In addition, the standard of review for this project is Chapter 3 of the Coastal Act, and the City’s LCP may provide guidance but is not binding on the Commission. 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. Although not binding on the Commission, the City’s certified LCP includes provisions relating to construction of decks and patios over Newport Harbor waters. Specifically, IP Section 21.30C.050(G)(5) prohibits cantilevered decks *within* Tidelands Trust areas, but allows them to extend over bay waters *outside* of the Tidelands Trust when certain conditions are met.

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

¹ The public’s right to access navigable waters regardless of the title to the underlying lands has been recognized by numerous court cases. See *Hitchings v. Del Rio Woods Recreation and Parks Dist.*, 55 Cal. App. 3d 560, 571 (1976) (“The ownership of the bed is not determinative of public navigational rights, nor vice-versa.”); *Bohn v. Albertson*, 107 Cal.App.2d 738, 749 (1951) (public has right to access navigable waters regardless of the title to the underlying lands unless and until the lands are reclaimed).

three residences extend out in front (bayward) of the area where the cantilevered decks would be constructed and likely limit public use of the waters immediately adjacent to the bulkheads.

The proposed project involves the construction of two 20-foot by 5-foot concrete decks cantilevered over Newport Bay associated with two single-family residences on bay fronting lots. As discussed above, the area of land over which the proposed decks would cantilever is part of the applicant's property that is situated bayward of the existing bulkhead, and is not within the State Tidelands area administered by the City of Newport Beach. Applying the City's LCP as guidance, the proposed decks are consistent with IP Section 21.30C.050(G)(5), which prohibits cantilevered decks *within* Tidelands Trust areas, but allows them to extend over bay waters *outside* of the Tidelands Trust when certain conditions are met. The proposed project satisfies this IP requirement as the proposed cantilevered decks are outside of the Tidelines Trust areas of Newport Harbor, do not exceed the maximum 5-foot cantilevered projection, and meets the minimum 5-foot side property line setback requirement.

In addition, construction of the proposed cantilevered decks may hinder but would not completely obstruct the public's ability to access the water portion of the applicants' lots for navigational purposes, and, as a practical matter, is unlikely to have much additional impact on public access due to the existence of the private docks that extend farther out into the bay. Thus, the proposed cantilevered decks would not be inconsistent with a navigational easement or with Coastal Act public access policies.

Furthermore, Coastal Commission approval of this project cannot waive any public rights that may exist on the property. Thus, **Special Condition 8** 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, and that if any portion of the development approved by this project is subsequently determined to be located on or over public trust lands, then development approved by this coastal development not compatible with the public trust must be removed.

D. BIOLOGICAL RESOURCES AND WATER QUALITY

Relevant Coastal Act Policies

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water

flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30231 of the Coastal Act states:

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

Section 30232 of the Coastal Act states:

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

Section 30233 of the Coastal Act states:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(6) Restoration purposes.

(7) Nature study, aquaculture, or similar resource dependent activities.

Relevant City of Newport Beach LCP Policies

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

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

Policy 4.3.2-8: *To the maximum extent practicable, runoff should be retained on private property to prevent the transport of bacteria, pesticides, fertilizers, pet waste, oil, engine coolant, gasoline, hydrocarbons, brake dust, tire residue, and other pollutants into recreational waters.*

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

Fill of Coastal Waters

Under Section 30233(a) of the Coastal Act, fill of coastal waters is limited to certain, allowable uses, must be the least environmentally damaging alternative, and must include feasible mitigation measures to minimize adverse environmental effects. Here, the project involves the demolition of existing bulkheads for three bayfront properties and replacement with three new bulkheads in the same location as the existing bulkheads. Installation of the new bulkheads will result in fill of coastal waters under Section 30233 of the Coastal Act. However, construction of seawalls to protect private residences is not an allowable use under Section 30233(a). Thus, the proposed development could not be found consistent with Section 30233 of the Coastal Act.

However, as discussed above, Section 30235 of the Coastal Act provides that seawalls and other construction that alters natural shoreline processes “shall be permitted” when required to protect existing structures in danger of erosion, and the proposed seawalls in this case are necessary to protect two residential structures considered “existing” for purposes of Section 30235. Therefore, the Commission may approve the proposed seawalls even if they do not meet the allowable use test in Section 30233(a) because Section 30235, as the more specific provision, controls, as long as the development otherwise satisfies Section 30233(a) with respect to the least environmentally damaging alternative and feasible mitigation measures to minimize adverse environmental effects.

Here, the proposed bulkheads will be installed in the same location as the existing bulkheads and will not extend any further bayward. In addition, the applicant’s Coastal Hazards Analysis indicates that the proposed bulkheads are necessary to protect the existing residences from coastal hazards and sea level rise. Because the proposed bulkheads will not extend any further bayward than the existing bulkheads, there is no increase in fill of coastal waters and, therefore,

no additional impacts to mitigate. Furthermore, minor changes to the existing residential dock system will not result in an increase in water coverage, or an increase in the size and number of existing piles, hence no increase in fill of coastal waters is will occur as part of the proposed project. Moreover, the project includes removal of a wooden deck at 4018 Channel Place, including support piles, and therefore will result in an overall reduction of fill of coastal waters at the project site. Therefore, the project can be found consistent with Section 30233(a) of the Coastal Act relating to fill of coastal waters.

Bird Strike Hazards

The proposed project includes the installation of a tempered glass railing/screenwall. Due to the coastal bayfront location of the proposed tempered glass railing/screenwall spanning across three contiguous lots, there is a substantial risk of bird strikes to the screenwall. Glass walls are known to have adverse impacts upon a variety of bird species. Birds are known to strike glass walls causing their death or stunning them which exposes them to predation. Some authors report that such bird strikes cause between 100 million to 1 billion bird deaths per year in North America alone. Birds strike the glass because they either do not see the glass, or there is some type of reflection in the glass which attracts them (such as the reflection of bushes or trees that the bird might use for habitat). Some type of boundary treatment is typically required where the backyards of residences abut coastal waters. The proposed plans indicate a “min ½’ thick tempered monolithic bird strike prevention glass panels” along the edge of the proposed cantilevered decks at 4018 and 4022 Channel Place and atop the seawall concrete coping at 4020 Channel Place. However, there is no detail provided on the plans describing exactly what safeguards the glass from bird strikes, or at least minimizes the hazard.

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

To ensure coastal avian species are adequately protected, **Special Condition 1** requires the applicant to submit revised plans that, among other things, clearly specifies the treatment to the tempered glass screenwall used to address bird strike issues, necessary to protect against significant disruption of habitat values.

Eelgrass

Seawalls and bulkheads are known to adversely impact marine resources if the structures are placed on actual marine resources, resulting in fill and shading resulting in the loss of surrounding marine habitat areas. Newport Harbor contains eelgrass beds, which are important nursery habitats for many fish species that maintain the populations of open ocean fish species, many of which are fished commercially and recreationally. Eelgrass beds are the kind of habitat

area that, pursuant to Section 30230 of the Coastal Act, deserves special protection as an area of special biological significance.

Eelgrass surveys performed by the City in 2016 did not identify eelgrass beds in the channel offshore of the subject site. More recent project site-specific eelgrass surveys conducted on March 12, 2018 also did not find eelgrass at all three of the subject sites. However, Coastal Act Section 30230 states that marine resources shall be maintained and enhanced, and Coastal Act Section 30231 states that the biological productivity of coastal waters shall be maintained. Construction of a bulkhead or seawall that encroaches further on submerged soft bottom habitat than the existing bulkheads would likely not be consistent with the Coastal Act's biological resource protection policies.

Here, the proposed replacement of the bulkheads will not expand the footprint of the bulkheads bayward. In addition, any disturbance of soft bottom intertidal sediment or water turbidity will be minimized as the majority of the work is proposed to be conducted from the landside and outside of coastal waters.

Additionally, to minimize potential marine resource impacts in the future, **Special Condition 2** requires that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the proposed bulkheads that are the subject of this CDP, shall be undertaken if such activity extends the footprint of the subject bulkheads seaward in order to protect existing or proposed new landside development. In addition, **Special Condition 5** requires the applicant to obtain a permit amendment or a new permit for any repair or maintenance of the proposed bulkheads. In sum, expanding the proposed bulkheads to protect existing or proposed development would cause significant impacts to coastal resources including marine habitats. Thus, as conditioned, the Commission finds that the proposed bulkhead location and configuration is consistent with the Coastal Act's marine resource protection policies.

Construction Impacts to Water Quality

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

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species' ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources, the Commission imposes **Special Condition 3**, which outlines construction-related best management practices to provide for the safe storage of construction materials and the safe disposal of construction debris. This condition requires, among other things, the applicant to remove any

and all debris resulting from construction activities within 24 hours of completion of the project. In addition, all construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

Post-Construction Impacts to Water Quality

The proposed project is considered development and there is an opportunity to improve water quality. Much of the pollutants entering the ocean come from 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 address with these post construction water quality impacts, the applicant has included drainage improvements on the re-compacted and re-graded landward side of the new seawall on each of the three subject lots. To minimize any impacts to water quality the proposed project may have after construction; onsite water runoff on the bayward side of each lot will be directed to a new bottomless trench drain, per the detail on Sheet SW-2 on each of the proposed project plans for all three subject sites, as depicted on **Exhibit 3**.

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

E. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, **Special Condition 9** 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, this permit ensures that any prospective future owner will receive notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

F. LOCAL COASTAL PROGRAM (LCP)

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

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City of Newport Beach is the lead agency responsible for certifying that the proposed project is in conformance with the California Environmentally Quality Act (CEQA). The City determined that in accordance with CEQA, the project is 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 has been conditioned in order to be found consistent with the public access and resource protection policies of the Coastal Act and the LCP, as applicable. As conditioned, the proposed project has been found consistent with the hazards, water quality, biological resources, and public access policies of the Coastal Act and the LCP, as applicable.

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

APPENDIX A - SUBSTANTIVE FILE DOCUMENTS

City of Newport Beach Certified LCP

Letter from Law Offices of Gaines & Stacey LLP, dated January 8, 2018, Re: CDP Application No. 5-18-0821 (Foster) with Exhibits A-E: Exhibit A - Swamp and Overflowed Land Patent 3089, May 16, 1892; Exhibit B - Copy of Finley Survey, May 11, 1889; Exhibit C - Subdivision Map Book 4, Page 98, March 20, 1907; Exhibit D - E-mail to Liliana Roman, CCC from Chris Miller, Newport Beach Harbor Resources Manager dated October 19, 2018; Exhibit E - Judgement in Orange County Superior Court Case No. 23686, August 22, 1927

City of Newport Beach Harbor Resources Division Harbor Permit/Approval in Concept, Plan Check #0619-2018 for 4018 Channel Place dated April 9, 2018

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

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

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

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

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

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

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