

**CALIFORNIA COASTAL COMMISSION**

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# W27f

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## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 5-18-1156

**Applicant:** Matt Naehring

**Agent:** GB Architecture, Rick Guina

**Location:** 3406 and 3406 ½ Marcus Avenue, City of Newport Beach (Orange County)

**Project Description:** Demolition of an existing 1,527 square foot duplex built over two lots and construction of a 4,214 square foot, 29-foot high, three-story duplex with two attached single-car garages totaling 461 square feet and two carport spaces all built on a single lot. The proposed project includes a Tentative Parcel Map to consolidate two lots and allow each of the units to be sold individually as condominiums; and also repairing and reinforcing the seawall/bulkhead by raising the seawall/bulkhead cap by 3 feet, installing two new tie back supports, each affixed to a new concrete deadman, two new additional tie back supports affixed to sections of the seawall/bulkhead and another new tieback affixed to a new concrete deadman. Only the bayward portion of the project is within the Commission's original jurisdiction.

**Staff Recommendation:** Approval with conditions

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### SUMMARY OF STAFF RECOMMENDATION

The subject property is bisected by the Coastal Commission's original permitting jurisdiction boundary and a portion of the site is within the City's permitting jurisdiction (dry land area). The City of Newport Beach has already approved the portion of the proposed development

located within their LCP permitting jurisdiction, located on the inland side of the lot. The City of Newport Beach LCP was effectively certified on January 13, 2017. The standard of review for development within the City's permit jurisdiction is the City's certified Local Coastal Plan (LCP). The standard of review for development within the Commission's original permit jurisdiction is Chapter 3 of the Coastal Act, although the City's certified LCP is advisory in nature and may provide guidance.

The proposed project is the demolition of a duplex and construction of two new condominiums; there is no loss in the number of housing units. The project also includes repair and reinforcement work to an existing seawall/bulkhead constructed prior to the passage of the Coastal Act on a bayfronting lot in Newport Bay.

Commission staff is recommending **APPROVAL** of the coastal development permit application with special conditions. The major issues raised by this proposed development concern consistency with the hazards, public access and recreation and marine resource protection policies of the Coastal Act.

While the project has been designed to adequately address sea level rise under the low-risk aversion scenario, it has not been designed to address flooding concerns under the medium-high risk aversion scenario. Therefore, the Commission imposes **Special Condition No. 1**, which requires the applicant to submit revised plans that include adaptation measures to adequately address the anticipated sea level rise from the medium-high risk aversion scenario for the project site as exhibited in the OPC's State Sea-Level Rise Guidance released in April 2018.

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

Any potential changes to the proposed project may result in adverse impacts to coastal resources. To ensure that development on the site does not occur which could potentially result in adverse impacts to coastal processes, the Commission imposes **Special Condition No. 4**, which informs the applicant that future development at the site requires an amendment to Coastal Development Permit No. 5-18-1156 or a new coastal development permit.

As conditioned, the project is consistent with the public access policies of the Coastal Act and the City's certified LCP. However, Coastal Commission approval of this project cannot waive any public rights that may exist on the property. Therefore, the Commission imposes **Special Condition No. 5**, which states that the approval of a coastal development permit for the project does not waive any public rights or interests 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.

During construction and post construction, the proposed project has potential for adverse impacts to water quality and marine resources. Therefore, as a result, two special conditions address and minimize impacts to water quality and marine resources as follows: **Special Condition No. 6** outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris; and **Special Condition No. 7** requires the applicant to submit revised landscape plans that only consist of native plants or non-native drought tolerant plants, which are non-invasive.

The proposed project contains a bayfront 1<sup>st</sup> floor glass patio railing that may have adverse impacts upon birds. Therefore, the Commission imposes **Special Condition No. 8**, which requires the applicant to submit revised project plans that identify the location, design, height and materials of glass railings, fences, screen walls and gates and what materials will be used in conjunction with them to minimize bird-strikes.

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition No. 9**, which requires the property owner record a deed restriction against the property, referencing all of the above special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the property.

As conditioned, the proposed project will conform with Coastal Act Sections 30235, 30253, 30210, 30211, 30212, 30220, 30221, 30250, 30230, 30231, 30232, and 30233 of the Coastal Act and is consistent with the City's certified Local Coastal Program (LCP).

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

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### APPENDICES

[Appendix A – Substantive File Documents](#)

### EXHIBITS

[Exhibit No. 1 – Location Map](#)

[Exhibit No. 2 – Site Plan](#)

[Exhibit No. 3 – Floor Plans](#)

[Exhibit No. 4 – Elevation Plans](#)

[Exhibit No. 5 – Grading Plan](#)

[Exhibit No. 6 – Seawall/Bulkhead Plans](#)

[Exhibit No. 7 – Tentative Parcel Map](#)

[Exhibit No. 8 – Record of Survey](#)

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** Coastal Development Permit No. 5-18-1156 pursuant to the staff recommendation.*

Staff recommends a **YES** vote. Failure of the motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### Resolution:

*The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that will 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 Project Plans Depicting Additional Adaptation Measures.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review and written approval, two (2) sets of revised project plans depicting additional adaptation measures prepared by an appropriately licensed professional which demonstrates the following:

Revised architectural plans that conform with the plans submitted to the Commission prepared by GB Architecture dated January 9, 2019, except that they shall be modified as required to adequately address the anticipated sea level rise from the medium-high risk aversion scenario for the project site as exhibited in the OPC's State Sea-Level Rise Guidance released in April 2018.

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. 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. 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. 5-18-1156, as described and depicted on the record of survey included as **Exhibit No. 8** of this staff report dated 6/28/19, 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.

- 4. Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-18-1156. 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. 5-18-1156, including the repaired and reinforced seawall/bulkhead, the residence and rear yard work. 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. 5-18-1156 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
- 5. 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.
- 6. 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 subject 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.

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

- A. The plans shall demonstrate that:
  - (1) All planting shall provide 90 percent coverage within ninety (90) days and shall be repeated if necessary to provide such coverage;
  - (2) All plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan;
  - (3) All landscaping shall consist of native drought tolerant on-invasive plant species native to coastal Orange County and appropriate to the habitat type. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>); and
- B. The plan shall include, at a minimum, the following components:
  - (1) A map showing the type, size, and location of all plant materials that will be on the developed site, the irrigation system, topography of the developed site, and all other landscape features,
  - (2) a schedule for installation of plants; and



- (3) Use of reclaimed water for irrigation is encouraged. If using potable water for irrigation, only drip or microspray irrigation systems may be used.

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

- 8. Bird Strike Prevention.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, two (2) sets of revised project plans prepared by an appropriately licensed professional showing the location, design, height, and materials of oceanfront deck railing systems, fences, screen walls, gates, windows and the like for the review and written approval of the Executive Director. Said plans shall include, at a minimum, the following requirements:

Oceanfront deck railing systems, fences, screen walls, gates, and windows and the like that are subject to this permit shall use materials designed to minimize bird-strikes with the deck railing, fence, gate, window or similar feature. Such materials may consist of all or in part of wood, wrought iron, frosted or partially-frosted glass, Plexiglas or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas may be installed only if it contains UV-reflective glazing that is visible to birds or is used with appliqué (e.g. stickers/decals) designed to reduce bird-strikes by reducing reflectivity and transparency. Any appliqué used shall be installed to provide coverage consistent with manufacturer specifications (e.g. one appliqué for every 3 foot by 3 foot area). Use of opaque or partially opaque materials is preferred to clear glass or Plexiglas and appliqué. All materials and appliqué shall be maintained throughout the life of the development to ensure continued effectiveness at minimizing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications.

Within 30 days of the completion of the development authorized by coastal development permit CDP No. 5-18-1156, the applicant shall submit evidence in the form of a narrative report, for the review and written approval of the Executive Director, showing that all deck railing systems, fences, screen walls, gates, and windows, or other features covered by this condition installed subject to this permit were installed in accordance with this condition.

- 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

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property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

## IV. FINDINGS AND DECLARATIONS

### A. PROJECT DESCRIPTION AND LOCATION AND PRIOR COMMISSION ACTION AT SUBJECT SITE

#### 1. Project Description and Location

The proposed project on the site involves demolition of an existing 1,527 square foot duplex built over two lots and construction of a 4,214 square foot, 29-foot high, three-story, duplex with two attached single-car garages totaling 461 square feet and two carport spaces, supported by a mat foundation all built over a single lot. Additionally, hardscape, drainage, and landscape improvements are proposed. Grading will consist of 6 cubic yards of cut, 150 cubic yards of fill and 144 cubic yards of import. The proposed project also includes a Tentative Parcel Map to consolidate two lots and allow each of the units to be sold individually as condominiums; and also repairing and reinforcing the seawall/bulkhead by raising the seawall/bulkhead cap by 3 feet, installing 2 new tie back supports, each affixed to a new concrete deadman, 2 new additional tie back supports affixed to sections of the seawall/bulkhead and another new tieback affixed to a new concrete deadman. A portion of this project has been approved by the City of Newport Beach, because it is within the City's permit authority as designated in the certified LCP (Title 21 of the Newport Beach Municipal Code); and the City Zoning Administrator approved that portion of the development through Resolution No. ZA2018-131 (Coastal Development Permit No. CDP2018-061 and Tentative Parcel Map No. NP2018-018) dated November 29, 2018.

The remaining portion of the property on the bayward side is located within the Commission's original jurisdiction. The subject property is bisected by the coastal permit jurisdiction boundary resulting in a portion of the property (an approximate 42-foot wide x 34-foot deep area) including dry land and submerged land area within the CCC permit jurisdiction that consists of approximately a one-third bayside portion of the lot, while the remaining landside portion of the site is with the City's permitting jurisdiction ([Exhibit No. 2](#)). More specifically, the following portions of the proposed development are within the CCC permit jurisdiction: 1) demolition of the bayside portion of the existing duplex; 2) construction of a portion of the new condominium structure to include: 229 square feet of the proposed first floor, 266 square feet of the proposed second floor and 102 square feet of the proposed roof deck; 3) the entire rear yard landscape and hardscape work; 4) sump pump and area drains that are part of the post construction water quality protection measures; 5) approval of a Tentative Parcel Map that will allow for each of the units to be sold individually as a condominium; and 6) a portion of the two new tiebacks that would be installed in the Commission's jurisdiction, two new additional tie back supports affixed to sections of the seawall and another new tieback affixed to a new concrete deadman ([Exhibits No. 3-7](#)).

The subject site is located at 3406 and 3406 ½ Marcus Avenue on the Balboa Peninsula in Newport Bay in the City of Newport Beach, Orange County ([Exhibit No. 1](#)). Currently, an existing 1,527 square foot duplex constructed in 1950 occupies the subject site. The lot size is 4,288 square feet and is designated as R-2, Two-Unit Residential by the certified City of Newport Beach LCP and the proposed use conforms to this designation. To the north of the subject site is Newport Bay, more specifically the Rivo Alto waterway, which is an area

identified by the City as “*Waterways Dedicated or Reserved for the same*” on the City’s Tidelands Survey of Newport Harbor, dated January 11, 2017. It should be noted that in addition to the waterway bayward of the subject site, an approximate 42-foot wide by 34-foot deep portion of the applicant’s bayfront property is also identified by the City as “*Waterways Dedicated or Reserved for the same.*” It is this portion of the private property that is identified as CCC permit jurisdiction (to be discussed later in the staff report). To the south of the project is Marcus Avenue (a public street) and to the east and west are existing single-family residences.

The subject property is bisected by the coastal permit jurisdiction boundary resulting in a portion of the site within the City’s permitting jurisdiction (dry land area) and another portion within the CCC Permit jurisdiction (dry land and submerged land area). The City of Newport Beach LCP was effectively certified on January 13, 2017. The standard of review for development within the City’s permit jurisdiction is the City’s certified LCP. The standard of review for development within the Commission’s original permit jurisdiction is Chapter 3 of the Coastal Act, although the City’s certified LCP is advisory in nature and may provide guidance.

## **2. Prior Commission Action at Subject Site**

On December 12, 2018, the Commission approved Coastal Development Permit (CDP) No. 5-18-0703 (Naehring) for the removal of a 220 square foot dock float and 3 foot x 24 foot gangway and replacement with a re-orientated 220 square foot dock float and 3 foot x 24 foot gangway, and relocate two 12-inch square piles. Five Special Conditions were imposed regarding: 1) Water quality; 2) Pre-and Post-Construction Eelgrass Survey(s); 3) Pre-Construction *Caulerpa Taxifolia* Survey; 4) Acknowledgement of public rights; and 5) Compliance with Resource Agencies’ requirements. Both the existing duplex and the existing bulkhead were constructed prior to the passage of the Coastal Act.

## **B. HAZARDS**

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.*

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.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Implementation Plan, Property Development Standards, General Site Planning and Development Standards, 21.30.015.E(2)(d) states,

*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.*

Implementation Plan, Property Development Standards, General Site Planning and Development Standards, 21.30.015.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, Property Development Standards, Natural Landform and Shoreline Protection, 21.30.030.C(3) states,

*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:*

- (i) Not subject to recorded waivers of future protection*
- (ii) 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:*

- i. Be as far landward as possible and within private property, where feasible;*
- ii. Eliminate or mitigate adverse impacts to coastal resources;*
- iii. Minimize alteration of natural shoreline processes*
- iv. Provide for public access to State Tidelands and recreational areas and facilities*
- v. Minimize visual impacts and maximize the enjoyment of the natural shoreline environment;*
- vi. Eliminate or mitigate adverse impacts on local shoreline sand supply*
- vii. To have the smallest footprint possible; and*
- viii. 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.*

Implementation Plan, Property Development Standards, Natural Landform and Shoreline Protection, 21.30.030.C(3)(i) 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, Property Development Standards, Height Limits and Exceptions, 21.30.060.B(3)(i) states,

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

Coastal Act Sections 30253 requires that new development minimize risks to life and property in areas of flood hazard, and shall not significantly contribute to erosion, destruction of the site, or the construction of protective devices that substantially alter natural landforms along bluffs and cliffs. Coastal Act Sections 30235 states that seawalls/bulkheads shall be permitted when required to protect coastal dependent uses or to protect existing structures. The City's certified LCP also includes a number of similar policies regarding new development and hazards and protective devices, such as Coastal Land Use Plan (CLUP) Policy 2.8.1-2 that states that new development will be designed and sited to avoid hazardous areas and minimize risks to life and property from coastal and other hazards; and CLUP Policy 2.8.6-5 that states that seawalls are permitted when required to serve coastal-dependent uses or to protect existing principal structures.

Besides demolition of an existing duplex and construction of two new condominiums, the proposed project also involves repair and reinforcement work on the existing seawall/bulkhead consisting overall of raising the seawall/bulkhead cap by 3 feet from an elevation of +6.71 NAVD88 to +10.05 NAVD88, installing 2 new tie back supports, each affixed to a new concrete deadman and installing 2 new additional tie back supports affixed to sections of the seawall/bulkhead. No bayward encroachment of the seawall/bulkhead is proposed with the repair work. As stated previously, the subject site is bisected by the coastal permit jurisdiction boundary and only a portion, be it a significant portion, of the work on the seawall/bulkhead is within the CCC permit jurisdiction, which consists of the following: portions of two new tiebacks, 2 new additional tie back supports affixed to sections of the seawall/bulkhead and another new tieback affixed to a new concrete deadman.

Due to its bayfront location, the subject site is exposed to the hazard of waves, erosion, storm conditions, sea level rise or other natural hazards. To analyze the suitability of the site for the



proposed development relative to those hazards, the applicant provided a *Coastal Hazards Analysis Report – Response to Notice of Incomplete Filing (WSA #7195)* prepared by William Simpsons & Associates, Inc. dated October 15, 2018 and a *Bulkhead Conditions Report for Coastal Development Permit (WSA #7195)* prepared by William Simpsons & Associates, Inc. dated May 9, 2018. The findings of the seawall/bulkhead condition analysis indicate that the cast-in-place concrete seawall/bulkhead is generally in good condition; however, the concrete coping (cap) of the seawall/bulkhead exhibits some major cracks and is disintegrating on the bayside face of the seawall/bulkhead. The seawall/bulkhead was, according the report, deemed necessary to protect the existing principal structures on the lot and is also necessary to protect the existing adjacent residences and public infrastructure.

The bulkheads that surround the islands and channels of Newport Beach are maintained individually by property owners, but function as a uniform structure to protect more than just the individual properties. For example, if the average height of the bulkheads on a residential island is +10 NAVD88 and the water level is +9 NAVD88, any property with a bulkhead height of less than +10 NAVD88 would be at risk of flooding, but also would expose the neighboring properties and the infrastructure of the island to flooding as well.

The neighborhood in this area is a mix of redeveloped and pre-coastal homes. Along this street, the row of homes is located between the channel and the public street. 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. While Section 30235 prohibits the new proposed condominiums from relying on the existing and improved bulkhead, the existing public infrastructure in the area and the adjacent pre-coastal homes would be protected by the improved bulkhead. 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.* In this case, the improvements to the bulkhead are allowed to protect the existing adjacent development and the public facilities, consistent with the LCP and with Section 30235 of the Coastal Act.

Policy 2.8.6-7 of the LUP states: *Discourage shoreline protective devices on public land to protect private property/development.* The bulkhead in this location is located on private property, and 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 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 adjacent existing development are underway, per the LCP policies.

Thus, repair work is necessary to repair and maintain the seawall/bulkhead and once completed no additional repair or replacement of the seawall/bulkhead is anticipated in the next 75 years (2094) with the exception of a bulkhead extension (a height increase) in the future to address rising sea levels to protect existing development in the surrounding area. The analysis concludes that if found not adequate to address sea level rise over the next 75 years, the seawall/bulkhead height could be increased in height without any further bayward encroachment.

The Coastal Hazards Analysis identifies the highest high tide in the project area as +7.20 feet NAVD88. The proposed finished floor elevation of the proposed residence is +9.00 NAVD88, which complies with the City's minimum elevation standard. While the applicant did provide a Coastal Hazards Analysis, it did not include an analysis of a medium-high risk aversion scenario in addition to a low risk aversion scenario. Thus, Commission staff also analyzed the subject site under a medium-high risk scenario over the project's design life of 75 years (2094).

In November 2018, the Commission adopted a science update to their CCC Sea Level Rise Policy Guidance in response to evolving science on sea level rise and specifically to new statewide guidance from the Ocean Protection Council (OPC) based on two reports: *Rising Seas in California: An Update on Sea-Level Rise* released in April 2017 and an update to the OPC's State Sea-Level Rise Guidance released in April 2018. According to the guidance document, sea level rise analysis of residential development should include low-risk and medium-high risk aversion scenarios. Using the OPC guidance document, the applicant's Coastal Hazards Analysis states that based on direct interpolation of the data for High Emissions in 2090 & 2100 and low risk aversion over the project's design life of 75 years (2094), 2.85 feet of sea level rise is anticipated. For a medium-high risk aversion scenario, Commission staff used the OPC guidance document that sea levels may rise between 5.3 feet in 2090 (High Emissions) to 6.7 feet in 2100 (High Emissions) resulting in an average sea level rise of 6.00 feet by the end of the project's estimated 75-year design life in 2094.

Based on the applicant's Coastal Hazard Analysis of the low-risk scenario, if there were to be a 2.85-foot rise, a likely high tide still water level of +10.05 feet NAVD88 (+7.2 feet NAVD88 + 2.95 feet = +10.05 feet NAVD88) is anticipated. This +10.05 feet NAVD88 would be 1.05 feet above the proposed finished floor elevation of +9.00 NAVD88, but would be located at the same height of the proposed seawall/bulkhead cap elevation of +10.05 NAVD88. However, based on Commission's staff analysis of the medium-high risk scenario following the Commission's Sea Level Rise Guidance, if there were to be a 6.00-foot rise (the average range for a medium risk aversion scenario for the site), a likely high tide still water level of +13.2 feet NAVD88 (+7.2 feet NAVD88 + 6.00 feet = +13.2 feet NAVD88) is anticipated. This +13.2 feet NAVD88 would be 4.2 feet above the proposed finished floor elevation of +9.00 NAVD88 and 3.15 feet above the proposed seawall cap of +10.05 NAVD88.

To address the 2.85 feet of sea level rise anticipated under the low risk aversion scenario, the applicant has proposed to install a 12 inch tall waterproof concrete curb around the perimeter of the residence that would protect against flooding up to an elevation of +10.05 feet NAVD88, the same height of the proposed seawall/bulkhead cap, so in effect, the new proposed development would not rely on the improved bulkhead and would be protected from flooding under the low risk SLR scenario. The proposed flood-proofed perimeter wall would adequately address anticipated sea level rise of 2.85 feet under the low risk aversion scenario. However in addition to the waterproof concrete curb, the applicant has also proposed to implement "soft protection" measures like flood shields (such as sand bags or other methods) that can be deployed across door openings to prevent flooding of the structure, should a flooding event occur. While the project has been designed to adequately address the low risk aversion scenario, the proposed development has not been designed to address the flooding from the medium risk aversion scenario resulting in 6.0 feet of sea level rise by the end of the project's 75-year design life in 2094. Six (6.0) feet of overtopping would significantly flood the first floor unit of the proposed

condominium and would make it inaccessible or livable. The 6.0 feet of overtopping under the medium-high risk aversion scenario in 2094 at the end of the building's design life is significant and has adverse impacts, but also significant is that by the year 2080 (61 years from now) the proposed seawall/bulkhead cap would be earlier overtopped by 4.3 feet of flooding under the medium-high risk aversion scenario. Thus, the project should be designed to take into account not only the anticipated flooding impacts from the low-risk aversion scenario, but also the medium-high risk aversion scenario as well. In order to find consistency with 30253(a) to minimize risk to life and property in areas of high flood hazards, the development must be designed to withstand flooding to the maximum extent feasible. As such, the Commission imposes **Special Condition No. 1**, which requires additional adaptation plans to address the flood protection methods for the first floor condominium, such as increasing the height of the waterproofing, etc.

To ensure the applicant accepts the responsibility for all hazards associated with the coastal development, the Commission imposes **Special Condition No. 2**, which requires the applicant to agree to assume the risk that the development is susceptible to hazards.

Since coastal processes are dynamic and structural development may alter the natural environment, future development adjacent to the site could adversely affect future shoreline conditions if not properly evaluated and potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. In order to ensure that development on the site does not occur which could potentially result in adverse impacts to coastal processes, the Commission imposes **Special Condition No. 4**, which informs the applicant that future development at the site requires an amendment to Coastal Development Permit No. 5-18-1156 or a new coastal development permit.

The construction of seawalls/bulkheads 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 existing bulkhead was constructed prior to the passage of the Coastal Act and the improvements proposed to the bulkhead will not contribute to erosion (because there is no public beach here and no direct wave action) or destruction of the site (because the bulkhead already exists and the improvements will not cause destruction) and the site is not located along a bluff or cliff. The project is consistent with Section 30253(b) as proposed. The project, only as conditioned, can be found consistent with Section 30253(a), as discussed above.

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 2.8.6-8, which states that the protective devices shall be limited to the minimum required to protect existing development and prohibit their use to expand areas for new development.

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 subject site includes a single lot with an existing duplex onsite that will be demolished and replaced with two condos surrounded by existing residential lots to the east and west of the subject site and a public road, Marcus Avenue, to the south of the site. The applicant's seawall/bulkhead condition analysis indicates that the adjacent residential structures and public infrastructure would be threatened were it not for the existing seawall/bulkhead which is generally in good condition except for the cap that needs repairs. Accordingly, the proposed seawall/bulkhead repairs are necessary to protect existing adjacent residential structures and public infrastructure in danger from flooding 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 repaired and reinforced seawall/bulkhead will be in the same location/configuration and will not extend bayward of the existing bulkheads. **Special Condition No. 3** requires no future bayward extension of the existing shoreline protective device.

### CONCLUSION

Thus, as conditioned, the Commission finds that the proposed project is consistent with the Sections 30235 and 30253 of the Coastal Act and the City's certified LCP and with regard to hazards.

### **C. PUBLIC ACCESS AND RECREATION**

Article X, Section 4 of the California Constitution provides:

*No individual, partnership, or corporation claiming or possessing the frontage or tidal lands of a harbor, bay inlet, estuary, or other navigable water in this state shall be permitted to exclude the right of way to such water whenever it is required for any public purpose... and the Legislature shall enact such law as will give the most liberal construction to this provision so that access to the navigable waters of this state shall always be attainable for the people thereof.*

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, Public Access and Recreation, Shoreline and Bluff Top 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, Public Access and Recreation, Shoreline and Bluff Top 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, Public Access and Recreation, Shoreline and Bluff Top 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 also includes a number of similar policies regarding public access and recreation, such as CLUP Policy 3.1.1-1 that states that public access shall be protected and where feasible expanded and enhanced to and along the shoreline and to beaches, coastal waters, tidelands, coastal parks and trails; and CLUP Policy 3.1.1-11 that require new development to minimize impacts to public access to and along the shoreline.

North of the subject site is Newport Bay, more specifically the Rivo Alto ([Exhibit No. 1](#)). This is water area identified by the City as "*Waterways Dedicated or Reserved for the same*" on the City's Tidelands Survey of Newport Harbor dated January 11, 2017 and it is not part of the mapped State Tidelands held in trust by the City. Also, an approximately 42-foot wide by 34-foot deep portion of the applicant's private property is also identified as "*Waterways Dedicated or Reserved for the same.*" This portion of the property currently contains rear yard improvements on dry land that is retained by a bulkhead. The water adjacent to the bulkhead is a boating channel, known as the Rivo Alto Channel. The Rivo Alto was created from uplands that were dredged and now consist of submerged lands. This area is not part of the mapped State Tidelands held in trust by the City and is not subject to the historic public trust lands.

Pursuant to Public Resources Code section 7552.5, the submerged land is 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. No work is proposed to the seawall/bulkhead or on the submerged lands that would encroach bayward and into the Rivo Alto resulting in interference with navigation through the channel. Thus, the proposed project would not be inconsistent with the navigational easement.

The Commission has consistently found that two parking spaces are adequate to satisfy the parking demand generated by one individual residential unit. The proposed development provides one garage parking space and one covered parking space for each unit, for a total of four parking spaces. Therefore, as currently designed, the development provides adequate parking.

There is no direct public pedestrian access to the water through the private residential lots. Public pedestrian access to these submerged lands is available approximately 80 feet east of the subject site at the 34<sup>th</sup> Street, street end and available approximately 90 feet west the subject site at the 35<sup>th</sup> Street, street end. Public access to the bay also exists approximately 700 feet to the west across the Rialto Channel on Newport Island at various street ends. Therefore, the proposed project does not result in adverse impacts to public access. However, Coastal Commission approval of this project cannot waive any public rights that may exist on the property. Thus, **Special Condition No. 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, 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.

## CONCLUSION

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30210, 30211, 30212, 30220, 30221 and 30250 of the Coastal Act and the City's certified LCP with regard to public access and recreation

### **D. MARINE RESOURCES/WATER QUALITY**

Section 30230 of the Coastal Act, Marine Resources; maintenance, 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, Biological productivity, water quality, 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 waterflow, 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, Oil and hazardous substance spills, 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 in part:

*(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:*

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

*(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.*

*(6) Restoration purposes.*

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

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

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

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

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

*Incorporate BMPs into the project design in the following progression:*

*Site Design BMPs.*

*Source Control BMPs.*

*Treatment Control BMPs.*

*Include site design and source control BMPs in all developments. When the combination of site design and source control BMPs are not sufficient to protect water quality as required by the LCP or Coastal Act, structural treatment BMPs will be implemented along with site design and source control measures.*

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

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

Coastal Land Use Plan, Water Quality, NPDES, Policy 4.3.2-22 states,

*Require beachfront and waterfront development to incorporate BMPs designed to prevent or minimize polluted runoff to beach and coastal waters.*

Coastal Act Sections 30230 and 30231 require protection of marine resources and, where feasible, the restoration of marine resources, as well as the maintenance of the biological productivity of coastal waters. Coastal Act Section 30233 limits the allowable fill of open coastal waters, wetlands, estuaries to certain uses only. Coastal Act Section 30250 requires that new residential development be located where it will not have significant individual or cumulative adverse effects on coastal resources. The City's certified LCP also includes a number of similar policies that protect marine resources and water quality, such as CLUP Policy 4.3.2-1 that states that pollution prevention and elimination methods will be promoted to minimize the introduction of pollutants into coastal waters; and CLUP Policy 4.3.2-22 that



requires waterfront development to incorporate BMPs designed to prevent or minimize polluted runoff to coastal waters.

### **1. Construction Impacts to Water Quality**

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species' ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources, the Commission imposes **Special Condition No. 6**, which outlines construction-related best management practices to provide for the safe storage of construction materials and the safe disposal of construction debris. This condition requires, among other things, the applicant to remove any and all debris resulting from construction activities within 24 hours of completion of the project. In addition, all construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

### **2. Post-Construction Impacts to Water Quality**

The proposed project is considered development and there is an opportunity to improve water quality. Much of the pollutants entering the ocean come from land-based development. The Commission finds that it is necessary to minimize to the extent feasible within its jurisdiction the cumulative adverse impacts on water quality resulting from incremental increases in impervious surface associated with additional development. In order to address with these post construction water quality impacts, the applicant has included drainage improvements on the landward side of the repaired and reinforced seawall/bulkhead that includes drainage and percolation features designed to retain dry weather and minor rain event run-off onsite. Thus, the project addresses post construction water quality impacts.

The applicant has stated that landscaping is proposed and plans have been submitted. The placement of any vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society ([www.CNPS.org](http://www.CNPS.org)) in their publications. Furthermore, any plants in the landscape plan should only be drought tolerant to minimize the use of water (and preferably native to coastal Orange County). The term drought tolerant is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>).

Commission staff has reviewed the submitted Landscaping Plan and determined that an invasive plant has been found: *Cordyline Australis* (*Red Sensation*). In addition, non-drought tolerant plants have been found as well: *Chamaerops Humilis* (*Mediterranean Fan Palm*), *Equisetum Hymale* (*Horsetail*), *Thymus Pseudolanuginosus* (*Woody Thymes*) and *Festuca Glauca* (*Elijah Blue*). Therefore in order to minimize the use of water and the spread of invasive vegetation, the

Commission imposes **Special Condition No. 7**, which requires the applicant to submit revised landscaping plans, which consists of native plants or non-native drought tolerant plants, which are non-invasive and that use of reclaimed water for irrigation is encouraged, but if potable water is used that only drip or microspray irrigation systems may be used.

Due to the bayfront location of the proposed development and frequent bird activity in the area, there is a substantial risk of bird strikes. Clear 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. Birds strike the glass because they either don't see the glass, or there is some type of reflection in the glass which attracts them (such as the reflection of bushes or trees that the bird might use for habitat.). The proposed project contains a bayfront 1<sup>st</sup> floor glass patio railing that may have adverse impacts upon birds. Therefore in order to minimize adverse impacts to birds, the Commission imposes **Special Condition No. 8**, which requires the applicant to submit revised project plans that identify the location, design, height and materials of glass railings, fences, screen walls and gates and what materials will be used in conjunction with them to minimize bird-strikes.

## CONCLUSION

Thus, as conditioned, the Commission finds that the proposed project is consistent with the Sections 30230, 30231, 30232 and 30233 of the Coastal Act and the City's certified LCP with regard to protection of marine resources and 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 No. 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)**

The subject property is bisected by the coastal permit jurisdiction boundary resulting in a portion of the site within the City's permitting jurisdiction (dry land area) and another portion within the CCC Permit jurisdiction (dry land and submerged land area). The City of Newport Beach LCP was effectively certified on January 13, 2017. The standard of review for development within the City's permit jurisdiction is the City's certified LCP. The standard of review for development within the Commission's original permit jurisdiction is Chapter 3 of the Coastal Act, although the City's certified LCP is advisory in nature and may provide guidance.

## **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 and minor land divisions. 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, public access and recreation and marine resource protection 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**

CDP No. 5-18-0703-(Naehring); City of Newport Beach Planning Department Approval-In-Concept dated November 7, 2018; Zoning Administrator Resolution No. ZA2018-131 (Coastal Development Permit No. CDP2018-061 and Tentative Parcel Map No. NP2018-018) dated November 29, 2018; Letter from Commission staff to GB Architecture dated December 18, 2018; Letter from GB Architecture to Commission staff dated January 10, 2019; Geotechnical Engineering Investigation for Proposed New Residence at 3406 Marcus Avenue, Newport Beach, California by Coast Geotechnical, Inc. (W.O. 550918-01) dated April 24, 2018; *Coastal Hazards Analysis Report – Response to Notice of Incomplete Filing (WSA #7195)* prepared by William Simpsons & Associates, Inc. dated October 15, 2018; and *Bulkhead Conditions Report for Coastal Development Permit (WSA #7195)* prepared by William Simpsons & Associates, Inc. dated May 9, 2018.