

**CALIFORNIA COASTAL COMMISSION**

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# W26a

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## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 5-19-0024

**Applicant:** Argent LLC

**Agent:** Jacquelyn Chung

**Location:** 1601 East Bay Avenue, Newport Beach, Orange County  
(APN 048-231-25)

**Project Description:** Demolition of a 60-ft. long wood bulkhead/seawall and construction of 60-ft. long, 22-ft. tall (6-ft. of seawall visible above dredge/mudline) precast concrete panel seawall same alignment as existing seawall, 50-ft. return wall; hardscape improvements including new pool; and a lot merger

**Staff Recommendation:** Approval with conditions

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### SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing to demolish an existing 60-ft. long bulkhead/seawall and construct a new 22-ft. tall (6-ft. of seawall visible above dredge/mudline) precast concrete panel seawall with concrete coping at elevation +9.75 MLLW in same alignment as existing seawall; hardscape improvements including new pool; and a lot merger. Due to its bay-front location, the project site may be exposed to the hazards of waves, storm conditions, sea level rise or other natural hazards. However, the project is consistent with previous Commission approvals in the area and conditions have been imposed in order to minimize potential adverse impacts from the development.

The proposed development is located on private lands and State tidelands located within the Coastal Commission's retained permit jurisdiction. Therefore, Chapter 3 of the Coastal Act is the standard of review and the certified Local Coastal Program for Newport Beach provides guidance.

Staff is recommending **approval** of the proposed project with seven (7) special conditions regarding: **1) assumption of risk, waiver of liability and indemnity; 2) no future seaward extension of shoreline protective devices; 3) future development; 4) storage of construction materials, mechanized equipment, and removal of construction debris; and 5) public rights and public trust; 6) bird strike prevention; and 7) a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.**

As conditioned, the permit can be found consistent with Chapter 3 of the Coastal Act.

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**APPENDICES**

[Appendix A](#) - Substantive File Documents

**EXHIBITS**

- Exhibit 1 – Vicinity Map
- Exhibit 2 – Lot Merger No. LM2018-006
- Exhibit 3 – Bulkhead Project Plans
- Exhibit 4 - City of Newport Beach Harbor Resources Bulkhead Approval
- Exhibit 5 – Residential Hardscape Improvements

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 5-19-0024 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 the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

## II. STANDARD CONDITIONS:

This permit is granted subject to the following standard conditions:

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

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

### III. SPECIAL CONDITIONS:

This permit is granted subject to the following special conditions:

1. **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.
2. **No Future Expansion to Existing Shoreline Protective Device.** By acceptance of this Permit, the applicant agrees, on behalf of itself (or himself or herself or themselves, as applicable) and all successors and assigns, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device that is the subject of Coastal Development Permit No. 5-19-0024, as described and depicted on an **Exhibit #3** attached to this staff report dated August 29, 2019, shall be undertaken if such activity extends the footprint seaward of the subject shoreline protective device in order to protect existing or proposed new landside development including, but not limited to, the residences and garages, foundations, patio, pool, and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, flooding, sea level rise or other natural coastal hazard in the future. By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such seaward encroaching shoreline protective devices that may exist under applicable law.
3. **Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-19-0024. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-19-0024. Accordingly, any future improvements to the patio, pool and bulkhead authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-19-0024 from the Commission or shall require an additional Coastal Development Permit from the Commission or from the applicable certified local government.

**4. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.**

The permittee shall comply with the following construction-related requirements:

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

5. **Public Rights 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. **Bird Strike Prevention.** Bayfront deck railing systems, fences, screen walls and gates subject to this permit shall use materials designed to minimize bird-strikes with the deck railing, fence, or gate. Such materials may consist, 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 shall not be installed unless appliques (e.g. stickers/decals) designed to reduce bird-strikes by reducing reflectivity and transparency are also used. Any appliques used shall be installed to provide coverage consistent with manufacturer specifications (e.g. one applique for every 3 foot by 3 foot area) and the recommendations of the Executive Director. Use of opaque or partially opaque materials is preferred to clear glass or Plexiglas and appliques. All materials and appliques shall be maintained throughout the life of the development to ensure continued effectiveness at addressing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications and as recommended by the Executive Director.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit final revised plans showing the location, design, height and materials of ocean front deck railings, fences, screen walls and gates for the review and approval of the Executive Director. Said plans shall reflect the requirements of this special condition. 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.

7. **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 & DESCRIPTION**

The proposed project is located at 1601 E. Bay Avenue in the City of Newport Beach, County of Orange (**Exhibit #1**). The site is designated as R-1, Single-Unit Residential in the City of Newport Beach LCP and the proposed use conforms to this designation. Vertical public access to the bay is available immediately adjacent to the project site at the H Street street-end. Lateral access along the seaward side of the bulkhead is available during low tide.

The project site is located in a residential area where the homes fronting Newport Bay are located on lots with bulkheads. Site conditions on the bayward side of the site include an existing wood bulkhead parallel to the bay and a return wall bulkhead along the side street (H Street); a pier and dock are located seaward of bulkhead facing the bay. The applicant proposes to demolish the old wood seawall and construct a new 60-ft. long wood bulkhead/seawall and construct new 22-ft. tall (6-ft. of seawall visible above dredge/mudline) precast concrete panel seawall with concrete coping at elevation +9.75 MLLW in same alignment as existing seawall. Plans for the proposed new bulkhead are included as **Exhibit #2**. New hardscape, pool and on-site drainage system to minimize runoff from the site is proposed, plans for proposed hardscape improvements are included as **Exhibit #5**. The applicant also requests approval of a lot line adjustment/lot merger to combine three underlying legal lots as a clean-up measure of the underlying legal lot configuration under single ownership. **Exhibit #3** depicts the proposed lot merger. Demolition of the existing 974 sq. ft. dock system and construction of a new 1,184 sq. ft. dock system was recently approved in June of this year by the Commission as CDP 5-18-0976.

#### **Bulkhead Replacement**

Presently, there is a 60-foot long wood bulkhead on the bayfront side of the subject property and a 60-foot long wood bulkhead return wall along H Street, as this is a corner lot. The City of Newport Beach Harbor Resources has reviewed and approved the applicant's seawall/bulkhead plans (**Exhibit #4**). The proposed new bulkhead will be built in the same alignment as the existing bulkhead which matches to the alignment of the bulkhead on the adjacent property; no seaward encroachment of the new concrete seawall/bulkhead will occur as a result of the proposed development. At the subject site, the U.S. Bulkhead Line established by the federal government in 1917 is located approximately 45-feet seaward of the location of the existing bulkhead/seawall.

As proposed, the new concrete bulkhead will be 22-feet tall with a minimum 16-feet embedded below the mudline and a 6-foot bulkhead section above the mudline (including top of concrete coping) at elevation +9.75 feet MLLW. A 42-inch tall glass panel guardrail is proposed atop the concrete coping. No tie-backs and deadmen or anchors are proposed for the new seawall as only 6-feet of the seawall be above the mudline the lateral loads on the wall will be minimal and thus will not require tie-backs or anchors on the land side of the seawall. Bulkhead project plans are included as **Exhibit #2**.

#### **Landside Improvements**

The applicant proposes construction of accessory hardscape development consisting of patio pavers, pool/spa, gas fire pit, minimal landscaping consisting of a 220 sq. ft. sod lawn, 1,004 sq. ft. raised planters and potted plans; and 5-foot tall wrought iron side yard fencing. Proposed hardscape plans



are included as **Exhibit #5** of the staff report. As the proposed improvements are located immediately inland of the bulkhead on filled historic tidelands, they are Commission retained jurisdiction and thus require a CDP from the Commission.

### **Lot Merger**

In addition to the proposed demolition and re-construction of a seawall/bulkhead and hardscape improvements including a swimming pool and patio area landward of the bulkhead, the proposed project also includes a lot merger to combine four lots. The proposed lot merger involves submerged lands and filled former tidelands which are areas of Commission retained jurisdiction and thus require a CDP from the Commission.

The lot merger map is included as **Exhibit #3** of the staff report. The existing residence is located on Parcel 1, the backyard patio improvements are mostly located on an approximately 60' long x 30' deep E. Bay Avenue lot vacated by the City in 1957, seaward of the vacated Bay Avenue lot are Lots 1 and 2 of Block P which are two 30' long x 54' deep lots that extend into submerged land out to the U.S. Bulkhead Line, these Lots are bisected by the existing bulkhead, thus half the lot is filled former historic public trust tidelands and the other half submerged lands which historically have been a part of the landside lot with the residential structure. The lot merger would not result in a change in intensity or density of the project site, because the underlying legal Lots 1 and 2 of Block P cannot be developed separately with any dwelling units. Additionally, the lots to be merged are under common fee ownership and the potential building size of the allowable single-family residence on the site would not be altered with the approval of the lot merger, since the setbacks and associated buildable area would remain the same. The merged parcels would retain the Single-Unit Residential Detached (RSD-B) designation per the certified LCP. The requested lot merger is a City of Newport Beach requirement to clean up the underlying legal lot configuration under one ownership and would mirror similar properties along E. Bay Avenue and thus allow construction (i.e., bulkhead/seawall) over the underlying legal lot lines.

Previous Commission actions including but not limited to 5-07-307 (Binder, 1903 E. Bay Ave.), 5-08-036 (Pasquale, 900 E. Balboa Ave.), 5-09-005 (Bacich, 1100-1104 E. Balboa Blvd.) approved similar lot mergers along E. Balboa Ave. and E. Bay Avenue combining bayfront lots with the City's 1957 abandoned Bay Avenue right-of-way and the water lots from lettered blocks.

### **STANDARD OF REVIEW**

The City of Newport Beach Local Coastal Plan (LCP) was recently certified on January 13, 2017. The proposed project consists of development located entirely within the permit jurisdiction of the Commission. The standard of review for development within the Commission's jurisdiction is Chapter 3 of the Coastal Act 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 2.8.6-5: *Permit revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls and other structures altering natural shoreline processes or retaining walls when required to serve coastal-dependent uses or to protect existing principal structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply, unless a waiver of future shoreline protection was required by a previous coastal development permit.*

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

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

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

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

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

- a. A statement of the preparer’s qualifications;*
- b. An analysis of the condition of any existing bulkhead including whether the top elevation meets current City standards, the condition of the sheetpiles or panels, the condition of existing tiebacks and/or deadmen or similar, and any other relevant conditions;*
- c. Recommendations regarding the need for repair, augmentation or replacement of the bulkhead or any parts thereof;*
- d. If augmentation or replacement is necessary, recommendations that will avoid seaward encroachment of the bulkhead;*
- e. If replacement is necessary and the existing bulkhead is not in alignment with adjacent bulkheads, recommended alternatives that will relocate the bulkhead in as much in alignment with adjacent bulkheads, and as far landward, as possible.*

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

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

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

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

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

*(b) Enlargement and Expansion of Land Areas. The construction of protective structures shall be prohibited for the purpose of enlarging or expanding areas for new development or for new development. However, this shall not preclude the expansion or encroachment into coastal waters to the minimum extent necessary to repair, maintain, or replace an existing protective device that is in general alignment with any adjacent protective device(s). Under no circumstances shall the backfill be used to create new usable land areas.*

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

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

Due to its bayfront location, the subject site is exposed to natural shoreline hazards from tides, erosion, storm conditions, sea level rise and such natural hazards. The applicant provided a Coastal Hazards Analysis Report prepared by William Simpson & Associates, Inc. (WSA Job #7244) dated May 5, 2018 and a Revised Bulkhead Conditions Report for Coastal development Permit Application, also prepared by William Simpson & Associates, Inc. (WSA Job #7244) dated March 7, 2019. The findings of the bulkhead condition letter indicate that the wood bulkhead at the site was found in poor condition with a sagged wood wailer and concluded that failure of the existing seawall would cause erosion that in the long run can undermine the foundation of the existing single family structure, and thus deemed necessary to protect the single family residence on the lot and is also necessary to protect the existing adjacent residences and public infrastructure.

The Coastal Hazards Analysis identifies the finished floor elevation for the existing residential development on the landward side of the lot at 9.04-foot MLLW, which follows the current Base Flood Elevation established for the area. The highest high tide recorded 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 1.25' and 5.00' feet over the next 75 years, accounting for bay water levels rising in the range of +8.45' to +12.2' NAVD88. The elevation of the proposed new seawall is +10.00-foot MLLW. 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. Bay generated waves that may arrive at the

site are very small wind waves and boat wakes and have no significant energy and runup effect. 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 rapid rates of sea level rise, there will be no impact to the principal structure 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 seawall in its current location and alignment. The new seawall would not encroachment bayward of the existing seawall. The elevation at the top of the new seawall coping is +9.75 MLLW (or +10.00' NAVD88). As proposed, the height of the new seawall would protect existing landside development for the next 75 years. The Coastal Hazards Analysis Report provided by the applicant is dated May 5, 2018, prior to the November 2018 Commission adopted a Sea Level Rise Science Update to the 2015 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, 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 Commission's staff analysis, 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 + 2.85 feet = +10.05 feet NAVD88) is anticipated. 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. The +13.2 feet NAVD88 elevation would be 4.16 feet above the finished floor elevation of +9.04 NAVD88 finished floor elevation of the residence and 3.45 feet above the proposed seawall cap of +9.75 NAVD88. If sea level rises in the next several decades as currently projected, regional measures to mitigate the potential flooding hazard will need to be taken. Since the finished floor elevation of the existing residence is +9.04 MLLW. It will remain below the High Tide until approximately the year 2100 based on low sea level rise projections. Therefore, the seawall would have to be raised to accommodate actual sea levels at that time. As proposed, the new seawall/bulkhead allows for possible future increases in height without further seaward encroachment.

Along all of Balboa Peninsula, private residential development and public streets are protected by bulkheads, the replacement of the proposed shoreline protection is necessary to protect the existing residence and public infrastructure on the peninsula. The bulkheads that connect across the east bayfronting side of Balboa Peninsula are maintained individually by property owners, but function

as a uniform structure to protect more than just the individual properties. The public infrastructure that would be threatened by flooding includes the public streets inland of the homes, as well as the municipal water and sewer lines, storm drain systems, and utility connections that typically occur in the public right-of-way. Section 30235 permits seawalls and other such construction that alters natural shoreline processes when required to serve coastal dependent uses or to protect existing structures or public beaches in danger from erosion. In this case, the single-family residence was constructed circa 2004 and thus not an existing, pre-coastal structure, that will rely on the new bulkhead/seawall for continuing protection, as will all of the existing public infrastructure and pre-coastal homes in the area that 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.*

The majority of bulkheads along Newport Bay were constructed prior to passage of the Coastal Act. Bulkhead improvements/replacements have historically been allowed along Newport Bay as a continuous bulkhead along the bay is needed to protect the interior development, which includes pre-Coastal development and coastal-dependent uses that may be entitled to shoreline protection under 30235. In Newport Bay, improvements/replacement bulkheads are allowed to protect the existing adjacent development and the public facilities, consistent with the LCP and with Section 30235 of the Coastal Act. Regardless, as the proposed development is located in an area where coastal hazards exist and can adversely impact existing development, the Commission imposes **Special Condition 1**, which requires the applicant to assume the risk of development. Furthermore, **Special Condition 2** requires the applicant to agree that no repair or maintenance, enhancement, reinforcement of the existing shoreline protective device shall be undertaken if such activity extends the footprint seaward of the existing shoreline protective device as depicted on **Exhibit #3** per IP Section 21.30.030.C.3 – Protective Structures.

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.

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 3** informing the applicants and any future property owners that future development at the site requires an amendment to this Coastal Development Permit No. 5-19-0024 or a new coastal development permit. Thus, as conditioned, the Commission finds that the proposed project is consistent with Section 30235 and Section 30253 of the Coastal Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-1 states,

*Protect, and where feasible, expand and enhance public access to and along the shoreline and to beaches, coastal waters, tidelands, coastal parks, and trails.*

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-9 states,

*Protect, expand, and enhance a system of public coastal access that achieves the following:*

*Maximizes public access to and along the shoreline;*

Coastal Land Use Plan Policy, Shoreline Access, 3.1.1-11 states,

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

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

Newport 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. The subject property has an existing private dock system including a pier platform, gangway and dock float constructed seaward of the existing bulkhead. The proposed project involves the demolition and re-construction of a seawall/bulkhead associated with a single-family residence on a bayfronting lot, hardscape improvements including a swimming pool and patio area landward of the bulkhead, and a lot merger to combine four lots. The lot merger map is included as **Exhibit 3** of the staff report, it depicts the existing residence located on Parcel 1, the backyard patio improvements are mostly located on an approximately 60' long x 30' deep Bay Avenue lot vacated by the City in 1957, then seaward of the abandoned Bay Ave. are Lot 1 and Lot 2, two 30' long x 54' deep lots that extend out to the U.S. Government Bulkhead Line.

Lots 1 and 2 are bisected by the existing bulkhead, thus the inland half of the lot is filled former tidelands and the seaward half is an ambulatory property line which is subject to the public trust depending on the location of the mean high tide. This portion of the property is currently developed with the existing bulkhead/seawall, a new bulkhead is proposed in the same alignment and new pool is proposed inland of the bulkhead on dry land that is retained by a bulkhead. Lots 1 and 2 have historically been owned in part with the landside lot with the residential structure. This area is not part of the mapped State Tidelands held in trust by the City. The area north (seaward) of the U.S. Bulkhead Line as established by the federal government in 1917 is State Tidelands administered by the City of Newport Beach pursuant to a 1929 Tidelands Grant. The area south of the U.S. Bulkhead Line (Lots 1 and 2) are private property. The private property seaward of the bulkhead is at times inundated by bay waters and is therefore subject to the Public Trust doctrine as submerged lands. 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. Determinations about the public trust boundary are ultimately the jurisdiction of the State Lands Commission. However, pursuant to Public Resources Code section 7552.5, the submerged privately-owned 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.<sup>1</sup>

Applying these principals to the proposed project, there is no direct public pedestrian access to the water through the subject private residential lot. Public pedestrian access to these submerged lands is available immediately adjacent to the project site at the H St. street end (**Exhibit #1**). From this access point, members of the public may access the Newport Bay and, for example, launch a kayak or standup paddle board. However, the existing dock associated with the residence extends out in front (bayward) of the bulkhead and likely limits public use of the waters immediately adjacent to the bulkhead but would not completely obstruct the public's ability to access the water portion of the applicants' lots for navigational purposes. The proposed bulkhead/seawall will not encroach further bayward and therefore, the proposed project would not be inconsistent with the navigational easement. Thus, the proposed project 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.

Section 30210 of the Coastal Act encourages maximum public access, while also respecting private property rights, and section 30211 requires that development not interfere with the public's right of access to the sea. The portions of the project site which include public trust lands are coastal areas suitable for boating and other water-oriented recreation activities. The proposed bulkhead demolition and re-construction in the same alignment would not encroach into bay waters and therefore would not be inconsistent with Coastal Act public access policies. As conditioned, the project is consistent with the public access policies of the Coastal Act.

#### **D. BIOLOGICAL RESOURCES**

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, the proposed development, as conditioned, conforms to the City of Newport Beach certified LCP polices and requirements regarding public access and the public access and recreation policies of the Coastal Act.

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*

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<sup>1</sup> 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).

*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.*

### Bird Strike Hazards

The proposed project includes the installation of a tempered glass railing/screenwall atop the new concrete bulkhead coping. 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 birds strikes cause between 100 million to 1 billion bird deaths per year in North America alone. 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). 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," atop the seawall concrete coping. However, there is no detail provided on the plans describing exactly what safeguards the glass from bird strikes, or at least minimizes the hazard. To provide ensure coastal avian species are adequately protected, **Special Condition 6** requires the applicant submit revised plans that clearly specifies the treatment to the tempered glass screenwall used to address bird strike issues, necessary to protect against significant disruption of habitat values.

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, appliqué (e.g.) stickers can be affixed to the glass that have a pattern that is visible to birds. Some appliqué incorporate features that allow humans to see through the glass, but which are visible birds. Usually appliqué 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 appliqué because of the lower maintenance and less frequent replacement that is required.

### Eelgrass

Seawalls and docks/dock piles 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. The National Marine Fisheries Service Eelgrass Mitigation Policy (October 2014) states the following about eelgrass:

*Eelgrass species (Zostera marina L. and Z. pacifica) are seagrasses that occur in the temperate unconsolidated substrate of shallow coastal environments, enclosed bays, and estuaries. Eelgrass is a highly productive species and is considered to be a "foundation" or habitat forming species. Eelgrass contributes to ecosystem functions at multiple levels as a primary and secondary producer, as a habitat structuring element, as a substrate for epiphytes and epifauna, and as sediment stabilizer and nutrient cycling facilitator. Eelgrass provides important foraging areas and shelter to young fish and invertebrates, food for migratory waterfowl and sea turtles, and spawning surfaces for invertebrates and fish such as the Pacific herring. Eelgrass also provides a significant source of carbon to the detrital pool which provides important organic matter in sometimes food-limited environments (e.g., submarine canyons). In addition, eelgrass has the capacity to sequester carbon in the underlying sediments and may help offset carbon emissions. Given the significance and diversity of the functions and services provided by seagrass, Costanza et al. (2007) determined seagrass ecosystems to be one of Earth's most valuable ecosystems.*

Thus, 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.

The NMFS October 2014 eelgrass policy also reports the following adverse effects of human development on eelgrass beds like those in front of the subject site:

*Seagrass habitat has been lost from temperate estuaries worldwide (Duarte 2002, Lotze et al. 2006, Orth et al. 2006). While both natural and human-induced mechanisms have contributed to these losses, impacts from human population expansion and associated pollution and upland development is the primary cause (Short and Wyllie-Echeverria 1996). Human activities that affect eelgrass habitat distribution and abundance, including, but not limited to, urban development, harbor development, aquaculture, agricultural runoff, effluent discharges, and upland land use associated sediment discharge (Duarte 2008) occur throughout California. For example, dredging and filling; shading and alteration of circulation patterns; and watershed inputs of sediment, nutrients, and unnaturally concentrated or directed freshwater flows can directly and indirectly destroy eelgrass habitats.*

Recent project site specific eelgrass surveys conducted in August 2018 as part of a previous dock replacement project identified eelgrass within the subject site in shallow water areas more than 15-feet away from the existing bulkhead. The proposed seawall/bulkhead replacement would not directly or indirectly impact eelgrass in the vicinity. 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, so construction of a future bulkhead or seawall that encroaches on submerged soft bottom habitat would be inconsistent with these policies.

Furthermore, on a shoreline without a fixed back beach marine habitats would have the opportunity to move inland along with rising sea levels. However, where there is a back beach fixed by a structure, like a seawall, that inland migration of habitat would be stopped at the face of the wall. As seas continue to rise, the habitat in front of the wall will convert to deep water habitat type.

Eelgrass thrives in shallow water areas of the harbor. As the area converts to deeper water it becomes less suitable to the growth of eelgrass and subsequent loss of eelgrass beds. The construction of a future bulkhead or seawall would not maintain, enhance, or lead to restoration of eelgrass beds which are areas of special biological significance and would not sustain the biological productivity of coastal waters. As such, the proposed seawall replacement in the same location and alignment as the existing seawall may be considered the feasible alternative that avoids marine resource impacts because the maintenance activities themselves did not expand the footprint of the seawall seaward, did not result in disturbance of soft bottom intertidal sediment or water turbidity as all the work is proposed to be conducted from the landside and outside of coastal waters and thus would not result in direct or indirect impacts to marine biological resources.

Additionally, to ensure that marine resource impacts identified above are avoided in the future, **Special Condition 2** requires that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the new seawall that is the subject of this CDP, 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. In sum, expanding or building a future new seawall 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 seawall location and configuration is consistent with the cited Coastal Act policies.

## **E. WATER QUALITY**

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 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.*

## City of Newport Beach LCP Policies

LUP Policy 4.3.1-6: *Require grading/erosion control plans to include soil stabilization on graded or disturbed areas.*

Policy 4.3.1-7: *Require measures be taken during construction to limit land disturbance activities such as clearing and grading, limiting cut-and-fill to reduce erosion and sediment loss, and avoiding steep slopes, unstable areas, and erosive soils. Require construction to minimize disturbance of natural vegetation, including significant trees, native vegetation, root structures, and other physical or biological features important for preventing erosion or sedimentation.*

Policy 4.3.2-2: *Require that development not result in the degradation of coastal waters (including the ocean, estuaries and lakes) caused by changes to the hydrologic landscape.*

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.*

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.

### **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 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 plans for all three subject sites, included as part of **Exhibit 2**.

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

### **F. DEED RESTRICTION**

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, **Special Condition 7** requires the applicant/property owner record a deed restriction against the property, referencing all of the above special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the property. Thus, as conditioned, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

### **G. LOCAL COASTAL PROGRAM (LCP)**

On January 13, 2017, the Commission effectively certified the City of Newport Beach LCP. The proposed bulkhead occurs on or over submerged lands that are within the Commission's jurisdiction and the proposed pool/spa and patio hardscape occur over privately-owned filled former tidelands that are within the Commission's jurisdiction. Consequently, the standard of review is Chapter 3 of the Coastal Act, and the certified LCP serves as guidance. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act.

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

Under Section 15251(c) of Title 14 of the California Code of Regulations, the Commission's CDP regulatory process has been certified as the functional equivalent to the CEQA process. The proposed project is located in an urban area. Infrastructure necessary to serve the project exists in the area. The proposed project has been conditioned in order to be found consistent with the 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 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**

Coastal Hazards Analysis Report prepared by William Simpson & Associates, Inc. (WSA Job #7244) dated May 5, 2018

Revised Bulkhead Conditions Report for Coastal development Permit Application, also prepared by William Simpson & Associates, Inc. (WSA Job #7244) dated March 7, 2019