

**CALIFORNIA COASTAL COMMISSION**

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# Th12e

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Staff Report: 7/23/20  
Hearing Date: 8/13/20

## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 5-19-1513

**Applicant:** JL Oceanfront LLC

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

**Location:** 1120 W. Bay Ave., Newport Beach, Orange County  
APN: 047-261-06

**Project Description:** Construction of a new bulkhead on a harbor front lot, at bayward edge of and within footprint of the existing patio.

**Staff Recommendation:** Approval with conditions.

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## SUMMARY OF STAFF RECOMMENDATION

The proposed project is located on the Newport Harbor side of Balboa Peninsula in the City of Newport Beach, Orange County. The proposed project includes construction of a new bulkhead on a harbor fronting lot where no bulkhead currently exists. The proposed bulkhead is necessary to protect the existing residence at the subject site (constructed in 1936) and surrounding area from flooding. The proposed bulkhead will be located within the footprint of the existing developed patio, inland of the mean high tide line, and approximately six feet inland of both the subject site's bayward property line and the location of the neighboring bulkheads. The proposed bulkhead will not result in fill of

coastal waters or loss of public beach. It will not have an adverse impact on coastal processes. If necessary due to future sea level rise, the proposed bulkhead can be heightened without bayward expansion of the approved footprint.

Staff is recommending **approval** of the proposed development **with conditions** to assure consistency with the Coastal Act and LUP policies regarding avoiding future fill of coastal waters, minimizing hazards, protection of water quality, and protection of public rights. Staff is recommending **six special conditions** which would require: 1) prohibiting future bayward expansion of the bulkhead footprint; 2) assumption of risk, waiver of liability and indemnity; 3) CDPs for future development; 4) Best Management Practices to be implemented during construction; 5) preservation of any public rights that exist or may exist at the subject site; and 6) recordation of a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

The motion to approve the project consistent with the staff recommendation is on page 4. The standard of review is Chapter 3 of the Coastal Act.

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### Exhibits:

1. Vicinity Map
2. Subject Site Topographical Survey
3. Proposed Project Plans
4. Land Vision Page

## I. MOTION AND RESOLUTION

### Motion:

I move that the Commission approve Coastal Development Permit No. 5-19-1513 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. 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 Commissioners present.

### Resolution:

The Commission hereby approves the Coastal Development Permit for the proposed project 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 would substantially lessen any significant adverse impacts of the development on the environment.

## II. 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 applicant 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 applicant to bind

all future owners and possessors of the subject property to the terms and conditions.

### **III. SPECIAL CONDITIONS**

**1. No Future Bayward Expansion of Existing Shoreline Protection Device; No Future New Shoreline Protection Device.** By acceptance of this Permit, the applicant agrees, on its own behalf and any 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. 5-19-1513, shall be undertaken if such activity extends the footprint of the bulkhead bayward (north) of the footprint approved by this CDP (depicted on [Exhibit 3](#) attached to this staff report dated 7/23/2020). By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such bayward encroaching shoreline protective devices that may exist under applicable law. Any non-bayward expansion of the shoreline protective device, including but not limited to an increase in height, shall require an amendment to Permit No. 5-19-1513 from the Commission or shall require an additional Coastal Development Permit from the Commission or from the applicable certified local government.

**2. Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees: (i) that the site may be subject to hazards from waves, erosion, storm conditions, liquefaction, flooding, and sea level rise; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

**3. Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-19-1513. Pursuant to Title 14 of the 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. 5-19-1513. Accordingly, any future improvements to the 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 of the California Code of Regulations, Sections 13252(a)-(b), shall require an amendment to Permit No. 5-19-1513 from the Commission or shall require an additional Coastal Development Permit from the Commission or from the applicable certified local government.

**4. Construction Responsibilities and Debris Removal.**

- (1) No demolition or construction materials, equipment, 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;
- (2) Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project;
- (3) 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;
- (4) Machinery or construction materials not essential for project improvements are prohibited at any time in the intertidal zone;
- (5) If turbid conditions are generated during construction, a silt curtain shall be utilized to control turbidity;
- (6) Floating booms shall be used to contain debris discharged into coastal waters and any debris discharged shall be removed as soon as possible but no later than the end of each day;
- (7) Non buoyant debris discharged into coastal waters shall be recovered by divers as soon as possible after loss;
- (8) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- (9) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- (10) 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;
- (11) 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;
- (12) 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;
- (13) The discharge of any hazardous materials into any receiving waters shall be prohibited;

- (14) 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;
- (15) 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
- (16) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

**5. Public Rights and Public Trust.** The 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.

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

## IV. FINDINGS AND DECLARATIONS

### A. Project Description and Location

The proposed project site is located at 1120 West Bay Avenue, in the City of Newport Beach, Orange County. The subject site fronts on Newport Harbor ([Exhibit 1](#)).

The applicant proposes construction of a new bulkhead on a harbor front lot where no bulkhead currently exists, at the bayward edge of and within the footprint of the existing brick patio ([Exhibit 2](#)). The proposed bulkhead will utilize Truline vinyl piles with a cast-in-place concrete coping<sup>1</sup> above. The Truline vinyl piles are proposed to be embedded two inches into the concrete coping. The proposed coping will be one foot, four inches thick and three feet in height, with two feet, six inches extending above the existing dredge/mud line. The proposed Truline vinyl piles will be eight inches thick and will extend nine feet, ten inches below the existing dredge/mud line. The overall height of the proposed bulkhead (including coping and piles) will be 12'10" (including the above and below grade portions). The top elevation of the proposed bulkhead structure will be 10.60 feet NAVD 88 (10.78 feet MLLW). The proposed bulkhead could accommodate an increase in height of at least three feet in the future with no bayward encroachment of the proposed bulkhead footprint, if needed to address potential future sea level rise. No railing is proposed atop the new bulkhead. In addition, a bottomless trench drain is proposed immediately inland of the proposed new bulkhead, within the area of the existing brick patio.

Single-family residences on bulkheaded lots, most often with associated private boat docks, are the typical development on harbor-fronting properties in Newport Beach. The subject site is developed with a single-family residence with a private boat dock. No work is proposed to the existing residence or boat dock. The subject site is land use designated Single Unit Residential Detached (RSD-C) and zoned Single Unit Residential (R-1). The proposed project received Approval in Concept from the City of Newport Beach on February 20, 2020.

#### Standard of Review

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

### B. Shoreline Protection

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

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<sup>1</sup> Concrete coping is a concrete cap atop the vertical bulkhead.



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.

City of Newport Beach LCP Policies:

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

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

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

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

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

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

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

certification of the LCP, unless a waiver of future shoreline protection was required by a previous coastal development permit.

**LUP Policy 3.1.4-7.** Design and site bulkheads to protect the character of the existing shoreline profiles and avoid encroachment onto public tidelands.

**LUP Policy 3.1.4-8.** Limit bulkhead expansion or encroachment into coastal waters to the minimum extent necessary to repair, maintain, or replace an existing bulkhead and do not allow the backfill to create new usable residential land areas.

**IP Section 21.30.030 - Natural Landform and Shoreline Protection.**

A. Purpose. This section provides regulations for the protection of natural landforms and shoreline features. The intent is to ensure that development is sited and designed to minimize hazards to life and property; to ensure the structural integrity of bluffs and canyons; to neither create nor contribute to erosion or adverse impacts on shoreline sand supply and the shoreline; to maintain a system of harbor bulkheads that are essential to the continued operation of Newport Harbor and to protect public access, public views, and scenic qualities of the coastal zone; and to implement policies of the Coastal Land Use Plan. [Emphasis added.]

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

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

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

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

...

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

1. Be as far landward as possible and within private property, where feasible;
2. Eliminate or mitigate adverse impacts to coastal resources;
3. Minimize alteration of natural shoreline processes
4. Provide for public access to State Tidelands and recreational areas and facilities

5. Minimize visual impacts and maximize the enjoyment of the natural shoreline environment;
6. Eliminate or mitigate adverse impacts on local shoreline sand supply
7. To have the smallest footprint possible; and
8. Cause no reduction in public access, use or enjoyment of the natural shoreline environment and preserve or provide access to public recreational lands and facilities.

The subject site fronts Newport Harbor. The majority of harbor-fronting properties are bulkheaded. However, the subject site is not. Due to its bayfront location, the subject site is exposed to natural shoreline hazards, including tides, erosion, storm conditions, and sea level rise. The Coastal Act generally discourages the construction of shoreline protection devices because of the adverse impacts they can have on coastal resources. Adverse effects of shoreline protection devices can include impacts to shoreline processes, including sand supply, public access, scenic views, and natural landforms. Coastal Act Section 30253 specifically prohibits development that could "...create [or] 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." Because shoreline protection devices such as the bulkhead at issue here can create adverse impacts on coastal processes, this proposal must be carefully considered in light of Section 30253. The City's certified LCP LUP Policy 2.8.1-4 echoes Coastal Act Section 30253.

#### Shoreline Protection

The proposed bulkhead is intended to protect an existing single family residence at the subject site. The existing residence was constructed in 1936 ([Exhibit 4](#)). Thus, the existing on-site structure is an "existing structure", in that it pre-exists establishment of the Coastal Act. A Coastal Hazards and Sea Level Rise Discussion (Report) was prepared to assess the need for a protective device at the site (GeoSoils, 10/4/2019 and 2/10/2020). The Report states:

"The finished floor elevation of the residence is about 9 feet NAVD88. The proposed vinyl pile bulkhead is designed with a concrete cap up to elevation +10.6 feet NAVD88. This is the minimum elevation recommended by the City of Newport Beach. The site is fronted by a patio to about elevation 8.0 feet NAVD88, a narrow beach, a boat dock, adjacent to a navigation channel in Newport Bay. The proposed bulkhead will be located at the bayward edge of the patio. The addition of the bulkhead will provide protection for the existing structure, the adjacent homes, and public street (West Bay Avenue) from flooding through the subject site."

The Report determined, based upon historic highest ocean water elevations at the Los Angeles Harbor Tide station, that the historic highest ocean water elevation at the site is 7.7 feet NAVD88. The existing patio at the site is at 8 feet NAVD and subject to flooding from wind and wake wave runup during extreme high tides. The finished floor elevation of the existing residence is 9 feet NAVD88. Thus, the patio may flood with 0.3 feet of increased water level, and the residence may flood with 1.3 feet of increased water level. Regarding potential flooding impacts to the surrounding area the Report states:

“The bulkhead is not solely necessary to prevent flooding of the site and residence. The bulkhead will be essential for preventing flooding of the public streets and adjacent properties. Sea Level rise (SLR) will only make the area need for the bulkhead even more critical. There are bulkheads along the majority of Newport Bay south of Pacific Coast Highway. Currently the elevation of the patio on the bay side of the property is only 0.3 feet above the highest historical bay water elevation. West Bay Avenue is only about 0.5 feet above the highest historical water. However, very near West Bay Avenue is Balboa Boulevard which is at about elevation +7 feet NAVD88, and further east it is at elevation +6.5 feet NAVD88. These elevation[s] are below the highest bay water of 7.7 feet NAVD88. Balboa Boulevard is already subject to flooding during time of king tides and rainfall. Allowing for flooding of these public roads will result in the isolation (cutting off) of two miles of the Balboa Peninsula to the southeast, and thousands of homes in that area. The proposed bulkhead is currently needed and will be critically needed over time as sea level rises regardless of the development on the site.”

Based on the information provided by the applicant’s coastal engineer as reflected in the Coastal Hazards and Sea Level Rise Discussion (10/4/2019 & 2/10/2020), the proposed bulkhead is a shoreline protection device that is necessary to protect existing development. In past actions, the Commission has authorized shoreline protection to protect principal structures (like this home) and essential public infrastructure (like streets that cannot feasibly be relocated) – but has generally not approved shoreline protection for accessory development like patios. As stated in the applicant’s studies, the subject shoreline protection is necessary to protect the existing home and the public streets in a built out neighborhood; thus those features are entitled to protection pursuant to LUP Policy 2.8.6-5. The patio is not entitled to shoreline protection, and part of it will be removed so that the bulkhead can be constructed. The remaining portion of patio will be protected by the bulkhead because it is between the bulkhead and the home. It is not necessary to remove the remainder of the patio because the bulkhead has been proposed landward of the applicant’s property line and landward of the neighboring properties’ bulkheads.

#### No Fill of Coastal Waters & No Loss of Public Beach Area

A concern often associated with construction of a shoreline protection device is the potential for fill of coastal waters and/or loss of public beach area. However, in this case, the proposed bulkhead will be placed within the existing developed footprint of the brick patio. Based on the topographical survey of the subject site ([Exhibit 2](#)), prepared by RdM Surveying, Inc. (6/12/2019), the existing brick patio extends 24’4.5” bayward from the bayward face of the existing residence at the site. Based on the proposed project plans ([Exhibit 3](#)), the bayward face of the proposed bulkhead will be located 24’3” from the bayward face of the existing residence. In addition, the coastal engineer determined that the “highest tide shoreline is located essentially just bayward of the patio.” The proposed bulkhead will be located within existing developed area, bayward of the high tide line. In addition, the proposed bulkhead will be located approximately six feet landward of the neighboring bulkhead on each side of the subject property, which is

also approximately six feet landward of the subject site's bayward property line. The proposed bulkhead will be located at the bayward edge of, and just inland of, the existing brick patio. The bulkhead is proposed on developed area, inland of the highest tide shoreline. Thus, the proposed bulkhead will not result in fill of coastal waters or loss of public beach area.

#### Shoreline Processes

Another concern typically raised by construction of a shoreline protection device is its impact on natural shoreline processes. In Newport Harbor, including at the subject site, as necessary to maintain depths suitable for the berthing of boats, the City periodically dredges the area beneath the private boat docks and places the dredge materials at the base of the bulkhead (or in the case of the subject site, at the landward sandy edge nearest the developed lot). This process occurs at the subject site now and would continue with or without the proposed bulkhead. This dredging operation is allowed pursuant to the USACE Regional General Permit 54, CDP 5-14-0200, and Consistency Certification-0002-15. The construction of the proposed bulkhead, which will be located landward of the high tide line and on existing developed property, will have no effect on this system of dredging and placement of dredge materials. Describing this process, the Coastal Hazards and Sea Level Rise Discussion report (10/4/2019 & 2/10/2020) states:

“There is a small beach at the site. The beach is subject to erosion when the sand is transported bayward and down slope into the artificially deepened boat slips. Over time the berthing areas fill up with sand. To mitigate this infilling, the area is periodically dredged and the sand is placed back on the beach. However, between the dredging cycles the patio can flood, which jeopardizes the existing residences (including the adjacent residences), and public streets.”

The proposed bulkhead will not impact this process and therefore, will not impact shoreline processes at the site.

#### No Future Bayward Encroachment

Even when the lower risk SLR scenario range of 1.3 to 3.2 feet of SLR by year 2100 is applied, the potential SLR impact at the site would result in water elevations to 9.0 feet NAVD88 and 11.7 feet NAVD88. The top elevation of the proposed bulkhead will be +10.9 feet NAVD88. The finished floor elevation of the existing residence is at 9 feet NAVD88 and the existing patio is at elevation 8.0 feet NAVD88. Thus, it does not appear that the proposed bulkhead is adequate to protect existing site development through the year 2100 even under these lower risk SLR scenarios. It is clear that, should the medium-high risk SLR scenario of 6.0 feet occur, it would lead to overtopping of the proposed wall and flooding of the lower floor of the residence and patio, as well as public infrastructure such as roads. However, the project coastal engineering consultant states that the proposed bulkhead can be raised in height to at least elevation +13.7 feet NAVD88 with no bayward encroachment of the bulkhead footprint. **Special Condition 1** requires the applicant to agree that no repair or maintenance, enhancement, or reinforcement of the bulkhead shall be undertaken if such activity

extends the footprint bayward (north) of the shoreline protective device (bulkhead) approved herein, per IP Section 21.30.030.C.

Because the existing residence was built in 1936, it will likely reach the end of its useful life before the year 2100. Thus, the bulkhead may only need to protect the home through a medium-risk SLR scenario time frame, and accommodating approximately 2.5 feet of sea level rise (plus the incidences of a king tide) may be adequate to protect the existing development. If the site is redeveloped in the future, a subsequent hazards analysis will be required to evaluate the necessity of the bulkhead and the appropriate foundation/ finished floor elevation of new development.

#### Public Access & Visual Impacts

Questions regarding impacts to public access and to scenic views are also raised by construction of shoreline protection devices. In this case, because the bulkhead will be constructed on existing developed area, inland of the small, sandy beach area, there will be no change to existing public access at the site and vicinity. In addition, the proposed bulkhead will be infill between existing bulkheads; the entire block and indeed the vast majority of properties fronting on Newport Harbor are bulkheaded lots. Also, most of the properties in Newport Harbor also include private boats docks associated with residential development, as is the case at the subject site and surrounding area. Thus, the proposed bulkhead will be consistent with existing views in the area, with no impact to the scenic quality of the area.

#### Conclusion

The City's certified LCP recognizes the need to maintain a system of harbor bulkheads as essential to the continued operation of Newport Harbor, while also recognizing the need to protect public access, public views, and shoreline processes. Due to the existing and pre-Coastal Act pattern of development on the islands and along the shoreline of Newport Harbor, there are a number of areas where the existing infrastructure and development is reliant on bulkheads for protection from wave-runup, storm surge and flooding. This need for a barrier between development and the Bay/Harbor will only increase as sea level rises. Protection of the public tidelands seaward of the bulkheads for public use is a primary concern recognized in the City's certified LCP. The certified LCP includes a number of policies and standards for addressing the existing pattern of development along Newport Harbor, while maintaining the public tidelands for public use. These LCP requirements implement Coastal Act policies within Newport Beach. Both these LCP requirements and the Chapter 3 policies of the Coastal Act require that protective devices be sited and designed to minimize impacts on coastal resources, minimize alteration of natural shoreline processes, provide for coastal access, and protect public views. They also require that protection devices be the minimum size required to protect existing development and that they not be used to enlarge or expand areas for new development.

Along all of the Balboa Peninsula, private residential development and public streets are protected by bulkheads. The proposed bulkhead is necessary to protect the subject site,

neighboring sites, and public infrastructure on the peninsula. The bulkheads that connect across the east harbor-fronting side of Balboa Peninsula are maintained individually by property owners, but function as a de facto uniform structure to protect more than just each individual property. The public infrastructure that would be threatened by flooding includes the public streets inland of the homes, the municipal water and sewer lines, storm drain systems, and utility connections that typically line the public right-of-way.

However, because the proposed development is located in an area where coastal hazards can adversely impact existing development, the Commission imposes **Special Condition 2**, which requires the applicant to assume the risk of development. Furthermore, **Special Condition 1** requires the applicant to agree that no repair or maintenance, enhancement, or reinforcement of the bulkhead shall be undertaken if such activity extends the footprint bayward (north) of the shoreline protective device (bulkhead) approved herein, per IP Section 21.30.030.C. In this case the proposed bulkhead will be located landward of the property line, and landward of the high tide line (highest shoreline per the project coastal engineer). **Special Condition 1** assures that no expansion of the bulkhead footprint is or would be allowed bayward of the bulkhead footprint approved herein.

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

Because coastal processes are dynamic and structural development may alter the natural environment, future development at the site could adversely affect future shoreline conditions if not properly evaluated and potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. In order to ensure that development on the site does not occur which could potentially result in adverse impacts to coastal processes, the Commission imposes **Special Condition 3** informing the applicants and any future property owners that future development at the site requires an amendment to this Coastal Development Permit No. 5-19-1513 or a new coastal development permit. Thus, as conditioned, the Commission finds that the proposed project is consistent with Section 30253 of the Coastal Act.

### **C. 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 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.

The City of Newport Beach certified LCP Land Use Plan contains the following 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.

The proposed work will occur adjacent to coastal waters. The proposed development has the potential for the construction-related discharge of polluted runoff from the project site into coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters could result in an adverse effect on the marine environment. The proposed development includes construction of a trench drain just inland of the proposed bulkhead. The trench drain will be lined with crushed rock and filter fabric. This will allow for site drainage that does reach the Bay to be filtered and infiltrated prior to entering the waters of the Bay.

To assure protection of water quality, the Commission imposes **Special Condition No. 4**, which identifies construction-related measures to be incorporated into the project during construction including, but not limited to, appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. By incorporating these water quality protection measures into the proposed development, as conditioned, the project minimizes the effect of construction and post-construction activities on the marine environment. Therefore, the Commission finds that the proposed development, as conditioned, conforms to Sections 30230, 30231, and 30232 of the Coastal Act, and related LCP policies regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.



## D. Public Access and Recreation

Section 30210 of the Coastal Act 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.

The City of Newport Beach certified LCP Land Use Plan contains the following policy:

- 3.1.1-1** 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 Act Section 30210 requires that maximum public access and recreational opportunities be provided, and that development not interfere with the public's right to access the coast. The City's certified LCP also includes a number of similar policies that protect public access. The proposed project includes construction of a new bulkhead within existing developed area, landward of the high tide line. In this case, because the bulkhead will be constructed on existing developed area, inland of the small, sandy beach area, there will be no change to existing public access at the site and vicinity.

Vertical public access to the waters of Newport Harbor is available approximately one half block east and one half block west of the subject site at the public street ends at 11<sup>th</sup> Street and 12<sup>th</sup> Street. Public access to Newport Bay is also available approximately one and a half blocks to the east, at the harbor fronting public beach known as 10<sup>th</sup> Street Beach. From these access points members of the public may access bay waters and, among other recreational activities, launch a kayak or standup paddle board. At 10<sup>th</sup> Street Beach the public may swim, sunbathe or play beach games on the sand. In addition, approximately 2½ blocks south of the subject site is the wide, sandy public ocean beach that runs the length of the Balboa Peninsula. Thus, the proposed project does not create adverse impacts to public access or recreation. In order to preserve and maintain access to the public tidelands, **Special Condition No. 5** makes clear 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.

## 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, the Commission imposes **Special Condition 6**, requiring that the property owner record a deed restriction against the property, referencing all of the special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the property. Thus any prospective future owner will receive notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability. Therefore, the Commission finds that

the proposed development, as conditioned, conforms to the Coastal Act by ensuring that any successors-in-interest have notice, recorded against the subject parcel, of the proposed development's required mitigation measures that mitigate the development's impacts on coastal resources.

#### **F. Local Coastal Program (LCP)**

On January 13, 2017, the City of Newport Beach Local Coastal Program (LCP) was effectively certified. The subject site is located within the Commission retained permit jurisdiction. 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 the Chapter 3 policies of the Coastal Act.

#### **G. CEQA**

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by findings showing the approval, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The Commission's regulatory program for reviewing and granting CDPs has been certified by the Resources Secretary to be the functional equivalent of CEQA. (14 CCR § 15251(c).)

In this case, the City of Newport Beach (Planning Department) is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Newport Beach determined that the proposed development is ministerially exempt from CEQA on February 20, 2020.

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 resource protection policies of the Coastal Act. As conditioned, the proposed project has been found consistent with the hazard, water quality, and public access and recreation policies of the Coastal Act. 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 is consistent with the requirements of the Coastal Act and CEQA.

5-19-1513 (JL Oceanfront LLC)

## **APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

Coastal Development Permit Application No. 5-19-1513 and associated file documents.

City of Newport Beach Certified Local Coastal Program.

Coastal Hazard and Sea Level Rise Discussion (GeoSoils, Inc. 10/4/2019; 2/20/2020)