

**CALIFORNIA COASTAL COMMISSION**

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# W8c

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Hearing Date: 5/11/2022

## STAFF REPORT: CONSENT CALENDAR

**Application No.:** 5-21-0908

**Applicant:** Jan and Nancy Schulman

**Agent:** Ryan McDaniel, Brandon Architects

**Location:** 1615 East Bay Ave., City of Newport Beach  
Orange County (APN: 048-231-39)

**Project Description:** Reinforce existing bulkhead by adding a new, approximately 1.43-ft. high stem wall atop the existing bulkhead coping, and installation of three new tiebacks inserted into the existing bulkhead coping extending to a landward deadman buried in rear yard. New firepit, fireplace and barbeque area on new patio, and new glass guardrail atop new stem wall are also proposed.

**Staff Recommendation:** Approval with conditions.

## SUMMARY OF STAFF RECOMMENDATION

The project includes rear yard work and reinforcement work to an existing bulkhead bayward of a single-family residence. The subject property is a bayfronting lot in Newport Harbor bisected by the Coastal Commission's retained permitting jurisdiction boundary and a portion of the site is within the City's permitting jurisdiction (landward of the jurisdictional boundary). The City of Newport Beach has already approved the portion of the proposed development located within its Local Coastal Plan (LCP)

permitting jurisdiction, located on the inland side of the lot. The City's LCP was effectively certified on January 13, 2017. The standard of review for development within the City's permit jurisdiction is the City's certified LCP. The standard of review for development within the Commission's original permit jurisdiction is Chapter 3 of the Coastal Act, and the City's certified LCP may provide guidance.

Commission staff is recommending **APPROVAL** of the coastal development permit application with special conditions. The major issues raised are consistency with the hazards, water quality and marine resources, and public access and recreation policies of the Coastal Act.

The proposed project is located in an area where coastal hazards exist and can adversely impact the development. Therefore, staff recommends the Commission impose **Special Condition No. 1**, requiring the applicant to assume the potential risk of injury and damage arising from coastal hazards that may threaten the development. No work is proposed bayward of the existing seawall/bulkhead, other than detaching and re-attaching the existing gangway to accommodate construction of the proposed stemwall. None of the seawall/bulkhead work will be bayward of the existing seawall/bulkhead footprint. To ensure that no future work to the seawall/bulkhead results in bayward extension of the seawall/bulkhead, and to thereby prevent intrusion into tidelands, staff recommends the Commission impose **Special Condition No. 3**, which mandates no future bayward extension of the existing seawall/bulkhead.

Any potential changes to the proposed project may result in adverse impacts to coastal resources. To ensure that development on the site does not occur which could potentially result in adverse impacts to coastal processes, staff recommends the Commission impose **Special Condition No. 2**, which informs the applicant that future development at the site requires an amendment to Coastal Development Permit No. 5-21-0908 or a new coastal development permit.

During construction and post construction, the proposed project has potential for adverse impacts to water quality and marine resources. Therefore, staff recommends the Commission impose two special conditions that address and minimize impacts to water quality and marine resources as follows: **Special Condition No. 4** outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris; and **Special Condition No. 5** requires that all vegetated landscaped areas consist only of native plants or non-native drought tolerant plants that are non-invasive.

There is no direct public pedestrian access to the water through the private residential lot. However, public access is available near the site at the ends of H Street and I Street. As conditioned, the project is consistent with the public access policies of the Coastal Act and the City's certified LCP. However, Coastal Commission approval of this project cannot waive any public rights that may exist on the property now or in the future. Therefore, staff recommends the Commission impose **Special Condition No. 6**,

which states that the approval of a coastal development permit for the project does not waive any public rights or interests that exist or may exist on the property, and that if any portion of the development approved by this project is subsequently determined to be located on or over public trust lands, then development approved by this coastal development not compatible with the public trust must be removed.

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, staff recommends the Commission impose **Special Condition No. 7**, which requires the property owner record a deed restriction against the property, referencing all of the above special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the property.

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

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**EXHIBITS**

**Exhibit 1 – Vicinity Map**

**Exhibit 2 – Project Plans**

## I. MOTION AND RESOLUTION

### Motion:

I move that the Commission approve the Coastal Development Permit applications included on the consent calendar in accordance with the staff recommendations.

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

### Resolution:

The Commission hereby approves Coastal Development Permit Application No. 5-21-0908 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 of the Newport Beach LCP. 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 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 that the 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. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the permittee 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 permittee 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. **Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-21-0908. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to the development governed by Coastal Development Permit No. 5-21-0908. Accordingly, any future improvements to the development authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-21-0908 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
3. **No Future Bayward Extension of the Shoreline Protective Device.**
  - A. By acceptance of this Permit, the permittee 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. 5-21-0908, shall result in any encroachment bayward of the authorized footprint of the shoreline structure. By acceptance of this Permit, the permittee waives, on behalf of itself (or himself or herself or themselves, as applicable) and all successors and assigns, any rights to such activity that may exist under Public Resources Code Section 30235, the Newport Beach LCP, or any other relevant state law.
  - B. By acceptance of this Permit, the permittee agrees, on behalf of itself (or himself or herself, as applicable) and all successors and assigns, that no

new shoreline protective device shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-21-0908, as depicted on approved project plans, including, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, flooding, or other coastal hazards in the future, an as may be exacerbated by sea level rise. By acceptance of this Permit, the permittee hereby waives, on behalf of itself (or himself or herself, as applicable) and all successors and assigns, any rights to construct such devices that may exist under applicable law.

**4. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.** By acceptance of this permit, the permittee agrees to comply with the following construction-related requirements:

- A. No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion;
- B. No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers;
- C. Any and all debris resulting from demolition or construction activities shall be removed from the subject site within 24 hours of completion of the project;
- D. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
- E. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- F. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- G. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the Coastal Zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;
- H. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
- I. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
- J. The discharge of any hazardous materials into any receiving waters shall be prohibited;

- K. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;
  - L. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and
  - M. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.
- 5. Landscaping-Drought Tolerant, Non-Invasive Plants.** Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants that are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <https://ucanr.edu/sites/WUCOLS/files/183488.pdf> and <http://ucanr.edu/sites/WUCOLS/files/183488.pdf>)
- 6. 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 now or in the future.
- 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 Description and Location**

The proposed project on the bayfront site involves reinforcing the existing bulkhead by adding a new, 1.43-ft. high stem wall atop the existing bulkhead coping, and installation of three new tiebacks inserted into the existing bulkhead coping extending to a new, landward deadman. (The deadman is located under the rear yard within the City's CDP permitting jurisdiction, and was approved by the City under Coastal Development Permit No. CD2021-026.) The addition of the proposed stem wall will result in a new bulkhead height of 10.90 feet NAVD (11.10 feet MLLW). Also proposed are new fireplace, firepit, and barbeque areas on the new concrete patio. ([Exhibit 2](#)). The existing gangway to the existing boat dock will be detached and then re-attached to allow construction of the proposed stem wall. No steps are needed or proposed on the water side of the new stem wall. The existing bulkhead and all proposed modifications are located within the applicant's property line and within the City's bulkhead line. No bayward encroachment of the existing bulkhead footprint will occur or is proposed. Other than detaching and re-attaching the existing boat dock's gangway, no work will occur from the waterside of the bulkhead. A glass railing is proposed on top of the stem wall, and is proposed to consist of bird-safe glass to avoid bird strikes. The subject site is located at 1615 East Bay Avenue, and fronts Lower Newport Bay along the Balboa Peninsula, in the City of Newport Beach, Orange County ([Exhibit 1](#)).

The City issued Approval In Concept AIC 2021-010 for the proposed development on 12/21/2021. The subject site is designated as R-1, Single-Unit Residential by the certified City of Newport Beach LCP and the proposed use conforms to this designation. The subject site fronts on Newport Harbor, identified by the City as "*Tidelands & Submerged Lands in Newport Bay*" on the City's Tidelands Survey of Newport Harbor dated January 11, 2017 and it is not part of the mapped State Tidelands held in trust by the City. Pursuant to Public Resources Code section 7552.5, the submerged land is subject to a navigational easement that, in general, precludes the owner from preventing the public from using the waters for navigational purposes even if the submerged lands are not public trust lands. The proposed bulkhead reinforcement will occur on the land side of the property. The proposed development will not interfere with the navigational easement.

### **B. Standard of Review**

The subject property is bisected by the coastal permit jurisdiction boundary. A portion of the property, including some dry land behind the bulkhead, is within the CCC permit jurisdiction, while the remaining landside portion of the site is within the City's permitting jurisdiction. A portion of this project has been approved by the City of Newport Beach

because it is within the City's permit authority as designated in the certified LCP (Title 21 of the Newport Beach Municipal Code). The City Zoning Administrator approved that portion of the development through Coastal Development Permit No. CD2021-026

The remaining portion of the property on the bayward side is located within the Commission's retained jurisdiction. More specifically, the following portions of the proposed development are within the CCC permit jurisdiction: 1) reinforcing the existing seawall by utilizing two tie-backs; 2) increasing the height of the existing seawall/bulkhead to 10.9 feet NAVD88 by adding the stem wall; 3) installing new patio, fireplace, firepit and barbeque area; and 4) detaching and re-attaching the existing gangway on the water side of the bulkhead.

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

### **C. Hazards**

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

The proposed project also involves raising the height of the existing seawall/bulkhead by 1.43 feet via a new stem wall (from an elevation of +9.5 feet NAVD88 to +10.90 NAVD88), and installing three new tieback supports, each affixed to a new concrete deadman. No bayward encroachment of the seawall/bulkhead is proposed with the work.

Due to its bayfront location, the subject site is exposed to hazards including waves, erosion, storm conditions, and sea level rise. To analyze the suitability of the site for the proposed development relative to those hazards, the applicant provided a *Coastal Hazards Analysis Report* dated 6/10/2021 and a *Bulkhead Conditions Report* also dated 6/10/2021, both prepared by PMA Consulting, Inc. In addition, the applicant submitted a *Geotechnical Engineering Investigation Report* from Coast Geotechnical, Inc. (dated

4/23/2021). The findings of the seawall/bulkhead condition analysis indicate that the pre-cast concrete panels of the existing seawall/bulkhead were found to be in good condition without noticeable signs of distress. In addition, the analysis states that the existing seawall/bulkhead is required to protect the principal structure on the lot.

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

The neighborhood includes a mix of redeveloped homes and homes constructed prior to passage of the Coastal Act. Along this street, the row of homes is located between the bay and the public street. The public infrastructure that would be threatened by flooding includes the public streets inland of the homes, as well as the municipal water and sewer lines, storm drain systems, and utility connections that typically are sited in the public right-of-way. While Section 30235 prohibits the new proposed single-family residence (approved under the local CDP) from relying on the existing and improved bulkhead, the existing public infrastructure in the area and the adjacent pre-coastal homes would be protected by the improved bulkhead. Section 21.30.15.E(2)d of the IP states: *On sites with an existing bulkhead, a determination as to whether the existing bulkhead can be removed and/or the existing or a replacement bulkhead is required to protect existing principal structures and adjacent development or public facilities on the site or in the surrounding area.* In this case, the improvements to the bulkhead are allowed to protect the existing adjacent development and the public facilities, consistent with the LCP and with Section 30235 of the Coastal Act.

Policy 2.8.6-7 of the LUP states: *Discourage shoreline protective devices on public land to protect private property/development.* The bulkhead in this location is located on private property, and the improvements to the bulkhead would allow it to remain in place for an extended period of time to protect the existing adjacent public infrastructure from flooding, until such a time that adaptation plans as required by IP Policies 21.30.010.E(4)(d)(iv) and 21.30.060.B(3)(i) for the adjacent existing development are underway, per the LCP policies.

Thus, work is necessary to repair and maintain the seawall/bulkhead and, once completed, no additional repair or replacement of the seawall/bulkhead is anticipated in the next 75 years (at least until 2096) with the exception of a bulkhead extension (a height increase) in the future to address rising sea levels to protect existing development in the surrounding area. The applicant's analysis concludes that if found not adequate to address sea level rise over the next 75 years, the seawall/bulkhead height could be increased in height without any further bayward encroachment, which would require another CDP.

The Coastal Hazards Analysis identifies the highest high tide in the project area as +7.7 feet NAVD88. The submitted Coastal Hazards Analysis did include an analysis of a medium-high risk aversion with high emissions over the project's design life of 75 years (spanning until 2097); Commission staff also conducted its own similar analysis. The City in its review of the project conducted an analysis of a low risk aversion with high emissions over the project's design life of 75 years (2097).

In November 2018, the Commission adopted a science update to its CCC Sea Level Rise Policy Guidance in response to evolving science on sea level rise and specifically to new statewide guidance from the Ocean Protection Council (OPC) based on two reports: *Rising Seas in California: An Update on Sea-Level Rise* released in April 2017 and an update to the OPC's State Sea-Level Rise Guidance released in April 2018. According to the guidance document, sea level rise analysis of residential development should include low-risk and medium-high risk aversion scenarios. For a low risk aversion scenario, the City conducted its own analysis and used the OPC guidance document that sea levels may rise between 2.9 feet in 2094 (High Emissions) to 3.2 feet in 2100 (High Emissions) by the end of the project's estimated 75-year design life in 2097. For a medium-high risk aversion scenario, the submitted analysis and 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 2097.

Based on the City's analysis of the low-risk scenario by 2094, if there were to be a 3-foot rise, a high tide still water level of +10.7 feet NAVD88 (+7.7 feet NAVD88 + 3 feet = +10.7 feet NAVD88) is anticipated. This +10.7 feet NAVD88 would be 3.86 feet above the existing seawall/bulkhead cap elevation of +6.84 feet NAVD88. Based on the City's analysis of the low-risk scenario by 2100, if there were to be a 3.2-foot rise, a high tide still water level of +10.9 feet NAVD88 (+7.7 feet NAVD88 +3.2 feet = +10.9 feet NAVD88) is anticipated. This +10.9 feet NAVD88, which is the proposed height of the seawall/bulkhead cap elevation, would be 4.2 feet above the existing seawall/bulkhead cap elevation of +6.7 feet NAVD88.

However, based on submitted analysis and Commission's staff analysis of the medium-high risk scenario following the Commission's Sea Level Rise Guidance, if there were to be a 6.00-foot rise (the average range for a medium risk aversion scenario for the site), a high tide still water level of +13.7 feet NAVD88 (+7.7 feet NAVD88 + 6.00 feet = +13.7 feet NAVD88) is anticipated. This +13.7 feet NAVD88 would be 6.96 feet above the existing seawall/bulkhead cap elevation of +6.74 feet NAVD88 and would be 2.8 feet above the proposed seawall/bulkhead cap elevation of +10.9 feet NAVD88.

While the project has been designed to adequately address the low risk aversion scenario, the proposed development has not been designed to address the flooding from the medium risk aversion scenario resulting in 6.0 feet of sea level rise by the end of the project's 75-year design life in 2097. However, in order to mitigate future potential sea level rise impacts, the applicant has stated that the seawall/bulkhead cap could be

raised to an elevation of +14.4 feet NAVD88 without extending bayward. Thus, the project has been designed so that the bulkhead could be raised to address flooding impacts associated with the high emissions medium-high risk aversion scenario, and the seawall/bulkhead height could be increased to this height without any further bayward encroachment.

To ensure the applicant accepts the responsibility for all hazards associated with the coastal development, the Commission imposes **Special Condition No. 1**, which requires the applicant to agree to assume the risk that the development is susceptible to hazards, especially those exacerbated by sea level rise.

Since coastal processes are dynamic and structural development may alter the natural environment, future development at the project 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. The Commission imposes **Special Condition No. 2**, which informs the applicant that future development at the site requires an amendment to Coastal Development Permit No. 5-21-0908 or a new coastal development permit.

The construction of seawalls/bulkheads and other shoreline protective devices is generally disfavored under the Coastal Act, as these structures interfere with natural shoreline processes, erode beaches, and have numerous related adverse impacts on public access and visual resources. Thus, Coastal Act section 30253(b) requires that new development “*neither create nor contribute significantly to erosion . . . or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*” The existing bulkhead and the improvements proposed to the bulkhead will not contribute to erosion (because there is no public beach here and no direct wave action) or destruction of the site (because the bulkhead already exists and the improvements will not cause destruction) and the site is not located along a bluff or cliff. The project is consistent with Section 30253(b) as proposed. The project, only as conditioned, can be found consistent with Section 30253(a), as discussed above.

Section 30235 of the Coastal Act provides that shoreline protective devices *shall* be permitted when required to protect *existing* structures, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. The City’s recently adopted LCP also includes policies that specifically address bulkheads and shoreline protective devices, including LUP Policy 2.8.6-8, which states that the protective devices shall be limited to the minimum required to protect existing development and prohibit their use to expand areas for new development.

Here, the Coastal Act is the standard of review for the Commission’s review of the proposed development, although the City’s LCP, certified by the Commission in 2017, provides guidance. The subject site includes a single lot with an existing single-family residence onsite that will be demolished and replaced with a new single-family residence (per the City’s approval of local coastal development permit CD2021-026)

surrounded by existing residential lots on either side of the subject site and a public road, East Bay Avenue, inland of the site. The applicant's seawall/bulkhead condition analysis indicates that the adjacent residential structures and public infrastructure would be threatened were it not for the existing seawall/bulkhead which is generally in good condition. Accordingly, the proposed seawall/bulkhead repairs are necessary to protect existing adjacent residential structures and public infrastructure in danger from flooding and may be authorized as long as adverse impacts on shoreline sand supply are eliminated or mitigated. The project will not result in any new impacts to shoreline sand supply because as proposed, the repaired seawall/bulkhead will be in the same location/configuration and will not extend bayward of the existing bulkhead. **Special Condition No. 3** requires no future bayward extension of the existing shoreline protective device.

## CONCLUSION

As conditioned, the Commission finds that the proposed project is consistent with the Sections 30235 and 30253 of the Coastal Act and the City's certified LCP coastal hazards policies.

## **D. Water Quality**

Coastal Act Sections 30230, 30231 and 30232 require protection of marine resources and, where feasible, the restoration of marine resources, as well as the maintenance of the biological productivity of coastal waters. Coastal Act Section 30250 requires that new residential development be located where it will not have significant individual or cumulative adverse effects on coastal resources. The City's certified LCP also includes a number of similar policies that protect marine resources and water quality, such as CLUP Policy 4.3.2-1 that states that pollution prevention and elimination methods will be promoted to minimize the introduction of pollutants into coastal waters; and CLUP Policy 4.3.2-22 that requires waterfront development to incorporate BMPs designed to prevent or minimize polluted runoff to coastal waters.

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

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species' ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources, the Commission imposes **Special Condition No. 4**, which outlines construction-related best management practices to provide for the safe storage of construction materials and the safe disposal of construction debris. This condition requires, among other things, the applicant to remove any and all debris resulting from construction activities within 24

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

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

The proposed project is considered development and provides 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 these post-construction water quality impacts, the applicant has included drainage improvements on the landward side of the reinforced seawall/bulkhead that include collecting site drainage and directing it landward to an infiltration trench located across the subject site's driveway to retain run-off on site. Thus, the project addresses post-construction water quality impacts.

All plants used in proposed planters must be non-invasive and drought tolerant. The placement of vegetation that is considered to be invasive which could supplant native vegetation is not permitted. Invasive plants have the potential to overcome native plants and spread quickly. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.caleppc.org/>) and the California Native Plant Society ([www.CNPS.org](http://www.CNPS.org)) in their publications. Furthermore, any plants in the proposed planters should be drought tolerant to minimize the use of water. The term 'drought tolerant' is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>. To ensure that all landscaping will be drought tolerant and non-invasive, the Commission imposes **Special Condition No. 5**.

## **CONCLUSION**

Thus, as conditioned, the Commission finds that the proposed project is consistent with the Sections 30230, 30231, 30232 and 30250 of the Coastal Act and the City's certified LCP marine resources and water quality policies.

## **E. Public Access**

Coastal Act Section 30210 mandates that maximum public access to the coast and recreational opportunities be provided consistent with private property rights. Section 30212(a) of the Coastal Act provides that adequate public access to the sea be provided in new development projects, except where adequate access exists nearby. Additionally, Sections 30220 and 30221 of the Coastal Act protect coastal areas suited for water-oriented recreational activities and oceanfront land for recreational uses.

Section 30250 of the Coastal Act requires new development to not have significant adverse effects, individually or cumulatively, on coastal resources. The City's certified LCP also includes a number of similar policies regarding public access and recreation, such as CLUP Policy 3.1.1-1 that states that public access shall be protected and where feasible expanded and enhanced to and along the shoreline and to beaches, coastal waters, tidelands, costal parks and trails; and CLUP Policy 3.1.1-11 that require new development to minimize impacts to public access to and along the shoreline.

The subject site fronts on Newport Harbor, identified by the City as "*Tidelands & Submerged Lands in Newport Bay*" on the City's Tidelands Survey of Newport Harbor dated January 11, 2017 and it is not part of the mapped State Tidelands held in trust by the City. Pursuant to Public Resources Code section 7552.5, the submerged land is subject to a navigational easement that, in general, precludes the owner from preventing the public from using the waters for navigational purposes even if the submerged lands are not public trust lands. The proposed bulkhead reinforcement will occur on the land side of the property. The proposed project includes detaching and re-attaching the existing boat dock gangway on the seaward side of the existing bulkhead, with no change to the existing boat dock. No work is proposed to the seawall/bulkhead or on the submerged lands that would encroach bayward and into Newport Harbor that would result in interference with navigation through the channel. Thus, the proposed project would not be inconsistent with the navigational easement.

There is no direct public pedestrian access to the water through the private residential lots. Public pedestrian access to these submerged lands is available at the ends of H Street and I Street. Therefore, the proposed project does not result in adverse impacts to public access. However, Coastal Commission approval of this project cannot waive any public rights that may exist on the property. In order to preserve and maintain access to the public Tidelands if development patterns change in the future or if there is an effort to expand public access within the canals, **Special Condition No. 6** is imposed stating that the approval of a coastal development permit for the project does not waive any public rights or interests that exist or may exist on the property.

## CONCLUSION

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

## **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, the Commission imposes **Special Condition No. 7**, which requires the property owner to 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, as conditioned, any prospective future owner will receive actual 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.

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

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

## **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 the project is Categorically Exempt pursuant to Title 14 of the California Code of Regulations, Section 15303, Article 19 of Chapter 3, Guidelines for Implementation of CEQA under Class 3 (New construction or Conversion of Small Structures) because the project has no potential to have a significant effect on the environment. Section 13096(a) of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

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

Therefore, as conditioned, the Commission finds that there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified

impacts, is the least environmentally damaging feasible alternative and consistent with the requirements of the Coastal Act and CEQA.

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

City of Newport Beach Planning Department Approval-In-Concept dated December 12, 2021.

City of Newport Beach Coastal Development Permit No. CD2021-026

Coastal Development Permit Application No. 5-21-0908 file.