

CALIFORNIA COASTAL COMMISSION

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Th14b

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-21-0739

Applicant: Michael and Michele Greer

Agent: Eric Aust, Architect

Location: 237 Canal Street, Newport Beach, Orange County
(APN: 045-055-45)

Project Description: On a canal-front residential lot, demolition of existing 2-story 4 bedroom, 3 bath, 2,340 sq. ft. single-family residence and demolition of unpermitted deck beyond rear property line; construction of a new 2-story 4 bedroom, 4.5 bath, 2,754 sq. ft. single-family residence with 421 sq. ft. 2-car garage, landscape, hardscape, and drainage improvements.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project is infill redevelopment of a residentially zoned lot on the Semeniuk Slough in the Newport Shores neighborhood. The applicants propose the demolition of all existing structures on the private parcel and demolition of an unpermitted residential deck built beyond the private property line onto a federally owned open space parcel, thus resolving the unpermitted development. The proposed demolition of the unpermitted deck occurs on and over submerged lands that are within the Commission's jurisdiction and the proposed new single-family residence occurs over land that is within the City of Newport Beach jurisdiction. Consequently, the standard of

review is Chapter 3 of the Coastal Act for the areas under Commission jurisdiction, and the certified LCP serves as the standard of review for the landside development under the City's jurisdiction. The City and the applicant have agreed to a consolidated coastal development permit application reviewed by the Commission.

The primary issues raised by the infill redevelopment of the site includes consistency with the coastal hazards, biological, and visual resource protection policies of the Coastal Act and certified Newport Beach LCP.

The proposed development has been conditioned to assure the proposed project is consistent with the public access and resource protection policies of the Coastal Act and the certified LCP. The conditions are: **1) Assumption of Risk; 2) No Future Shoreline Protective Device; 3) Removal of Unpermitted Development; 4) Construction Best Management Practices; 5) Construction Staging Plan; 6) Night Lighting Plan; 7) Landscaping; 8) Bird Strike Prevention; 9) Deed Restriction.**

Commission staff recommends **approval** of the coastal development permit as conditioned.

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EXHIBITS

- Exhibit 1 – Vicinity Map/Aerial Photo
- Exhibit 2 – Coastal Commission Boundary Determination
- Exhibit 3 – Demolition Plan
- Exhibit 4 – Project Architectural Plans
- Exhibit 5 – Preliminary Grading Plan, Erosion Control, and WQMP
- Exhibit 6 – Landscape Plan

II. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit No. 5-21-0739 pursuant to the staff recommendation.

Staff Recommendation of Approval:

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

Resolution:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of

the Coastal Act and the certified 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.

III. 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.

IV. SPECIAL CONDITIONS

1. **Assumption of Risk, Waiver of Liability and Indemnity.**
By acceptance of this permit, the permittees acknowledge and agree (i) that the site may be subject to hazards, including but not limited to from waves, erosion, storm conditions, liquefaction, flooding, many of which will worsen with future 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 coastal hazards.

2. No Future Shoreline Protective Device.

- a) By acceptance of this Permit, the permittees agree, on behalf of themselves and all successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-21-0739 including, but not limited to, the residence, foundations, patios, decks, and fences including in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, or other coastal hazards in the future, and as may be exacerbated by sea level rise. By acceptance of this Permit, the permittees hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under applicable law.

- b) By acceptance of this Permit, the permittees further agree, on behalf of themselves and all successors and assigns, that the permittee/ landowner is required to remove all or a portion of the development authorized by this permit and restore the site, if:
 - i) The City or any government agency with jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, sea level rise, or other natural hazards related to coastal processes, and that there are no feasible measures that could make the structure suitable for habitation or use without the use of bluff or shoreline protective devices;
 - ii) Essential services to the site (e.g. utilities, roads) can no longer feasibly be maintained due to the coastal hazards listed above;
 - iii) Removal is required pursuant to LCP policies for sea level rise adaptation planning; or
 - iv) The development requires new or augmented shoreline protective devices that conflict with applicable LCP or Coastal Act policies.

Approval of CDP No. 5-21-0739 does not allow encroachment onto public trust lands. Any future encroachment onto public trust lands shall be removed unless authorized by the Coastal Commission. Additionally, encroachment onto public trust lands is subject to approval by the State Lands Commission or other designated trustee agency.

- 3. Removal of Unpermitted Development.** The permittees shall undertake development in accordance with the approved final plans/proposal, subject to all the requirements of all conditions herein, for the demolition of existing development including the unpermitted over-water deck. The permittees shall remove the existing unpermitted deck within 90 days of the issuance of this permit. Any proposed change or deviation from the approved plans shall be submitted to the Executive Director to determine whether an amendment to this permit is necessary pursuant to the requirements of the Coastal Act and the California Code of Regulations. The Executive Director may grant additional time for good cause.

4. Construction Best Management Practices.

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

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

and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.

- L. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity.
- M. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

5. Construction Staging Plan.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for the Executive Director's review and approval, two (2) full size sets of construction staging plans for the review and approval of the Executive Director which indicate that the construction staging area(s) and construction corridor(s) will avoid impacts to wetlands.

- (1) The plan shall demonstrate that:
 - (a) Construction equipment, materials or activity shall not occur outside the staging area and construction corridor identified on the site plan required by this condition; and
 - (b) Construction equipment, materials, or activity shall not be placed in any location which would result in impacts to wetlands.
- (2) The plan shall include, at a minimum, the following components:
 - (a) A site plan that depicts:
 - 1. limits of the staging area(s);
 - 2. construction corridor(s);
 - 3. construction site;
 - 4. location of construction fencing and temporary job trailers with respect to existing wetlands.

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

6. Night Lighting Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for review and written approval of the Executive Director, a Night Lighting Plan for all night lighting impacts associated with the proposed development. The Night Lighting Plan shall at a minimum include the following:

A. All allowed night (sundown to sunup) lighting shall be minimized, directed downward, and shielded using the best available dark skies technology and pole height and design that minimizes light spill, sky glow, and glare impacts. The only outdoor night lighting allowed on the subject site is limited to the following:

1. The minimum necessary to light walkways used for entry and exit to the structures, including parking areas on the site. This lighting shall be limited to fixtures that do not exceed three feet in height above finished grade, are shielded and directed downward, and generate the same or fewer lumens equivalent to those generated by a 60 watt incandescent bulb, unless a greater number of lumens is authorized in writing by the Executive Director.

2. Any proposed security lighting attached to the structures shall use a control device or automatic switch system or equivalent functions to minimize lighting, and is limited to same or fewer lumens equivalent to those generated by a 60 watt incandescent bulb. The control system shall include controls that automatically extinguish all outdoor lighting when sufficient daylight is available.

3. The minimum necessary to light the patio areas adjacent to the wetland with the same or fewer lumens equivalent to those generated by a 60 watt incandescent bulb. This lighting shall be shielded and directed downward. No lighting around the perimeter of the patio and no lighting for aesthetic purposes is allowed.

4. All windows shall be comprised of glass treated to minimize transmission of indoor lighting to outdoor areas.

7. Landscaping – Drought-Tolerant, Non-Invasive Plants.

A. Vegetated landscaped areas shall only consist of native plants or non-native drought-tolerant plants, which 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: <http://ucanr.edu/sites/WUCOLS/files/183488.pdf>).

B. Use of reclaimed water for irrigation is encouraged. If using potable water for irrigation, only drip or microspray irrigation systems may be used. Other water conservation measures shall be considered, such as weather-based irrigation controllers.

8. Bird Strike Prevention.

A. Waterfront deck railing systems, fences, screen walls and gates subject to this

permit shall use materials designed to minimize bird-strikes with the deck railing, fence, or gate. Such materials may consist, all or in part, of wood; wrought iron; frosted or partially-frosted glass, Plexiglas or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas shall not be installed unless it contains UV-reflective glazing that is visible to birds. All materials shall be maintained throughout the life of the development to ensure continued effectiveness at addressing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications and as recommended by the Executive Director.

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

9. **Deed Restriction.**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has executed and recorded against the residential parcel 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 residential parcel 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.

V. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION AND LOCATION

The applicants propose the demolition of an existing 2-story, 4 bedroom, 3 bath, 2,340 sq. ft. single-family residence and the demolition of an existing unpermitted deck beyond the rear property line; and the construction of a new 2-story, 4 bedroom, 4.5 bath, 2,754 sq. ft. single-family residence with a 421 sq. ft. 2-car garage, hardscape and drainage improvements and minimal landscape and irrigation. Approximately 180 cubic yards of grading (over-excavation) will be performed for purposes of site re-compaction

and will be balanced on site. Drainage will be diverted into a percolation pit and to the street's main storm drain system. The demolition plan is included as **Exhibit #3** and project plans are included as **Exhibit #4**.

The project site is located at 237 Canal Street, in the Newport Shores neighborhood of Newport Beach, Orange County (**Exhibit #1**). This is a waterfront location adjacent to the tidally influenced Semeniuk Slough located inland of Pacific Coast Highway. According to Merriam-Webster, a slough is an inlet on a river, a creek in a marsh or tide flat. Semeniuk Slough is a remnant channel of the Santa Ana River, which formed when the Santa Ana River entered Newport Bay in the vicinity of present day River Avenue. Semeniuk Slough branches off the Santa Ana River and receives water from the Banning Channel and adjacent oil fields, wetlands and upland areas. While Semeniuk Slough is tidally influenced, there is presently no open boating passage between the slough and the bay or ocean. The City's certified Land Use Plan (LUP) identifies Semeniuk Slough as a wetland and designates it as an Environmental Study Area (ESA), a unique coastal resource. It is designated as Recreational and Environmental Open Space in the LUP.

The residential lots adjacent to Semeniuk Slough were created in the late 1940s. The Commission and its predecessor, the California Coastal Zone Conservation Commission, have consistently approved residential development on these residentially zoned lots adjacent to Semieniuk Slough since the Commission's inception in 1972. The subject site is developed with a two-story single-family residence on an approximately 24 ft. x 84 ft. parcel of land within an existing developed residential community. There is a concrete patio along the north facing (waterfront) property line and a 20 ft. x 25 ft. wood deck encroaching into the slough beyond the private property line. The site is relatively flat and is flanked on the east and west by similar single-family residences, on the south by Canal Street, and to the north by Semeniuk Slough. The slough waterway and surrounding wetlands is federal land owned and administered by the U.S. Army Corps of Engineers (USACE). The property line is approximately 12 ft. from the bank of the slough. The previous property owner had a USACE issued license for use and maintenance of the deck constructed on USACE property. The USACE license states that the grantee shall obtain any permit or license which may be required by federal, state, or local statute in connection with the use of the premises; however, no CDP was ever applied for or otherwise obtained for the existing deck. Similar licenses have been issued by the USACE to surrounding residences and many unpermitted deck encroachments exist along the single-family residences adjacent to the Semeniuk Slough in the Newport Shores neighborhood. The current property owners propose to demolish the 20 ft. x 25 ft. unpermitted wood deck encroachment into the slough waterway and construct a concrete patio up to their waterfront property line. Vertical public access to the slough is available approximately 60 feet east at the end of Lancaster Street. Lateral public access along the slough between the slough and the adjacent residences is possible but limited because the existing residences are located within feet of the water. The City's certified Land Use Plan indicates that lateral public access along the slough is present on the far (north) side.

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 both within the permit jurisdiction of the Commission and of the City of Newport Beach. Per the findings of Commission Boundary Determination #11-2021 for 237 Canal Street, Newport Beach (**Exhibit #2**), the subject site, the landside development is within the City's permit jurisdiction and the waterside development within the Commission's jurisdiction. The proposed demolition of the unpermitted deck occurs on or over submerged lands that are within the Commission's jurisdiction and the proposed new single-family residence is within the City of Newport Beach's jurisdiction. Consequently, the standard of review is Chapter 3 of the Coastal Act for the areas under Commission jurisdiction, and the certified LCP serves as the standard of review for the landside development under the City's jurisdiction. The City and the applicant have agreed to a consolidated coastal development permit application reviewed by the Commission.

B. VISUAL RESOURCES

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

City of Newport Beach LCP Policies:

LUP Policy 4.4.1-1: Protect and, where feasible, enhance the scenic and visual qualities of the coastal zone, including public views to and along the ocean, bay, and harbor and to coastal bluffs and other scenic coastal areas.

LUP Policy 4.4.1-2: Design and site new development, including landscaping, so as to minimize impacts to public coastal views.

LUP Policy 4.4.1-5: Where feasible, require new development to restore and enhance the visual quality in visually degraded areas.

The site is visible from a trail which runs along the north side of the slough on the opposite shore from the proposed development. Development on this waterfront parcel can affect public views along the coast from the public areas. Degradation of those views would be inconsistent with Section 30251 of the Coastal Act. Degradation of views can occur when development is not consistent with the character of surrounding

development. For instance, development channelward of the line of development established for an area can interfere with views to and along the channel.

The Commission has recognized that, in a developed area, where new construction is generally infilling and is otherwise consistent with the Coastal Act policies, no part of the proposed development should be built further channelward than a line drawn between the nearest adjacent corners of either decks or structures of the immediately adjacent homes. The proposed development conforms with the stringline drawn between the flanking properties and includes the removal of an unpermitted 20 ft. x 25 ft. wood deck encroachment beyond its rear property line and into a wetland. Accordingly, the proposed development will not encroach beyond the existing line of development and will result in restoration and enhancement of visual quality of the slough by the removal of the deck encroachment. Therefore, the Commission finds that the proposed project is consistent with consistent with Section 30251 of the Coastal Act, as well as the relevant policies of the City's certified Land Use Plan.

C. HAZARDS

Section 30253 of the Coastal Act states in pertinent part:

New development shall do all of the following:

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

Section 30235 of the Coastal Act states in pertinent part:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply...

City of Newport Beach LCP Policies:

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

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

LUP Policy 2.8.6-9: 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 2.8.6-10: Site and design new structures to avoid the need for shoreline and bluff protective devices during the economic life of the structure (75 years).

The applicant provided a Coastal Hazard Analysis prepared by GeoSoils, Inc. dated March 22, 2021 for the subject site. The study informs that the site is adjacent to the Semeniuk Slough and that the slough is exposed to limited tidal influence through a tidal culvert/gate connecting the slough to the Santa Ana River. According to the GeoSoils report, which used the North American Vertical Datum of 1988 (NAVD88) as the vertical control datum which is 4.49 feet below Mean High Water (MHW), the slough is isolated from influence by both the Pacific Ocean and the Santa Ana River by the tidal gate for water elevations greater than 6.5 feet NAVD88. The proposed development is landward of the upper limit elevation of the slough and the lowest habitable elevation of the proposed new residence is +9.5 feet NAVD88. A site inspection by GeoSoils found no signs of hydric soils or evidence of inundation or any impact of water at elevations above +6.5 feet NAVD88. Due to the tidal gate at the slough entrance, no bulkheads were constructed along any of the residential lots adjacent to the slough, including the subject site.

The report states that the typical coastal hazards to consider are shoreline erosion, flooding, and wave impacts. Regarding erosion hazards, the report states that the water flow velocities within the slough are too minimal as to cause erosion of the shoreline. There was no observable erosion over the 90+ years of historical photographs reviewed to analyze erosion in the vicinity of the subject site. Furthermore, in regard to groundwater levels, the study also concludes that at such a distance from the ocean, groundwater is not noticeably impacted by the tides or ocean water levels and that even with an increase of up to 6 feet of Sea Level Rise (SLR) which may occur within 75 years, the future maximum groundwater elevation at the site would increase by an additional 1% or 0.06 feet due to SLR.

Additionally, according to the applicant's hazards analysis, as the site is located approximately 1/4 mile from the Pacific Ocean and over 1/3 mile from the levee that controls the maximum water elevation within the slough, no ocean swells or wakes will reach the site and adversely impact the proposed new development over the next 75 years. The current potential flooding hazard as determined by FEMA is identified by maps which show the area in Zone X with little to no risk of flooding because the site area is protected by levees, berms, and a tidal gate. Future flooding potential at this site, according to the USGS CoSMoS model, shows the site vulnerable to flooding with 4.1 feet of SLR which would translate to a maximum ocean water level of 4.1 feet SLR +

7.18 feet NAVD88, or 11.3 feet NAVD88. The GeoSoils report states that the CoSMoS model's disclaimer states that *"the model simulations do not take into account many variables that could have substantial effects on flood extent and depth"* and thus CoSMoS does not always recognize rapidly changing elevations, such as a berm or levee, or tide/flood control structures like on the Semeniuk Slough that limit the water level to 6.5 feet NAVD88 in the slough. The report concludes that it is clear that with increasing SLR much of Newport Beach is vulnerable based on low lying elevations alone. The site, being in a slightly higher section of Newport Beach, would be unreachable by public roads such as Pacific Coast Highway long before the development may itself be subject to flooding, if no regional adaption plan is implemented. The report concludes that as this entire area is protected by levees and tidal/flood gate that will continue to be maintained into the future, the water elevation in the Semeniuk Slough can continue to be controlled to not exceed elevation of 6.5 feet NAVD88; thus according to the applicant's analysis, high tides and SLR will not impact the proposed new project.

The information provided by the applicant indicates that the proposed development is not expected to require shoreline protection over the life of the development. Thus, the project can be found to conform with the hazards policies of the Coastal Act. However, given that coastal processes are dynamic and structural development such as the levees and flood control gates protecting the area may fail, or new structural development may alter the natural environment, as well as the Commission's review of data indicating that the property could potentially be impacted by sea level rise at some point in the future, it is important to ensure that the risks of developing on these inland waterfront lots are borne by the applicant, not the public at large.

Section 30253 requires new development 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. LUP Policy 2.8.6-10 requires new structures be sited and designed to avoid the need for shoreline and bluff protective devices for the economic life of the structure. In this case, there is no pre-Coastal Act bulkhead and the applicants do not propose to construct a bulkhead or any other type of shoreline protective device, thus, none would be authorized by this permit; however, the applicant or a successor-in-interest could request a shoreline protection device at some point in the future should water levels in the Semeniuk Slough increase due to impacts caused by sea level rise. Therefore, it must be clear that, as new development, the entire development approved by this permit is not entitled to a shoreline protection device now or in the future. **Special Condition 2** requires the applicants to agree, on behalf of themselves and all successors and assigns, that no shoreline protective device(s) shall ever be constructed for the purpose of protecting the approved new residence or ancillary improvements (e.g., patio, fence, etc.) in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, or other coastal hazards in the future, and as may be exacerbated by sea level rise. For any type of future shoreline hazard response, alternatives to shoreline protection must be considered that will not adversely impact coastal and recreational resources including, but not limited to, scenic visual resources, recreation, and shoreline processes.

Alternatives may include but are not limited to: relocation and/or removal of all or portions of the home and ancillary improvements that are threatened, and/or other remedial measures capable of protecting the new development without shoreline stabilization devices.

The Commission must also find that the project assures stability and structural integrity and minimizes “risks to life and property” in an area of high flood hazard without a shoreline protective device. Here, it is important to note that the site is not currently threatened by coastal hazards and has been designed to be stable and structurally sound under current conditions, as acknowledged by the applicant. However, taking into consideration future coastal hazards

Special Condition 1 places the applicants and subsequent owners on notice that this is a hazard area and that by acceptance of CDP No. 5-21-0739, the applicant acknowledges the risks, such as erosion, storm conditions, liquefaction, flooding, many of which will worsen with future sea level rise that are associated with development sited adjacent to a waterway.

Only as conditioned does the Commission find the proposed development consistent with Sections 30253 and 30235 of the Coastal Act, and with the relevant policies of the City’s certified LCP.

D. BIOLOGICAL RESOURCES

Section 30240 of the Coastal Act states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Newport Beach LUP Policies:

Policy 4.1.1-4 Protect ESHAs against any significant disruption of habitat values.

Policy 4.1.1-6 Require development in areas adjacent to environmentally sensitive habitat areas to be sited and designed to prevent impacts that would significantly degrade those areas, and to be compatible with the continuance of those habitat areas.

Policy 4.1.1-7 Limit uses within ESHAs to only those uses that are dependent on such resources.

Policy 4.1.1-10 Require buffer areas of sufficient size to ensure the biological integrity and preservation of the habitat they are designed to protect. Terrestrial ESHA shall

have a minimum buffer width of 50 feet wherever possible. Smaller ESHA buffers may be allowed only where it can be demonstrated that 1) a 50-foot buffer is not possible due to site-specific constraints, and 2) the proposed narrower buffer would be amply protective of the biological integrity of the ESHA given the site-specific characteristics of the resource and of the type and intensity of disturbance.

Policy 4.2.2-3 Require buffer areas around wetlands of a sufficient size to ensure the biological integrity and preservation of the wetland that they are designed to protect. Wetlands shall have a minimum buffer width of 100-feet wherever possible. Smaller wetland buffers may be allowed only where it can be demonstrated that 1) a 100-foot buffer is not possible due to site-specific constraints, and 2) the proposed narrower buffer would be amply protective of the biological integrity of the wetland given the site-specific characteristics of the resource and of the type and intensity of disturbance.

Policy 4.1.1.-13 Shield and direct exterior lighting away from ESHAs to minimize impacts to wildlife.

Policy 4.1.3-1 Utilize the following mitigation measures to reduce the potential for adverse impacts to ESA natural habitats from sources including, but not limited to, those identified in Table 4.1.1:

- A. Require removal of unauthorized bulkheads, docks and patios or other structures that impact wetlands or other sensitive habitat areas.
- B. Where pedestrian access is permitted, avoid adverse impacts to sensitive areas from pedestrian traffic through the use of well-defined footpaths, boardwalks, protective fencing, signage, and similar methods.
- C. Prohibit the planting of non-native plant species and require the removal of non-natives in conjunction with landscaping or revegetation projects in natural habitat areas.
- D. Strictly control encroachments into natural habitats to prevent impacts that would significantly degrade the habitat.
- E. Limit encroachment into wetlands to development that is consistent with Section 30233 of the Coastal Act and Policy 4.2.3-1 of the LUP.

Policy 4.1.3-10 Remove unauthorized structures that encroach into Semeniuk Slough, the Upper Newport Bay Marine Park, or other wetland areas. Prohibit future encroachment of structures into these areas unless structures are absolutely necessary for public well being. Minimize any necessary encroachment into wetland habitats to the extent feasible and permanent loss of wetlands habitat shall be mitigated.

The City's certified Land Use Plan (LUP) designates the Semeniuk Slough as a 103-acre Environmental Study Area (ESA), which includes the main slough channel immediately north of Newport Shores residential neighborhood and is characterized by open estuarine, southern coastal salt marsh to the north of the channel, flanked by the Santa Ana River on the west and Banning Ranch parcel on the east. Several smaller interconnected channels and inundated depressions are located throughout the salt marsh habitat. Southern coastal salt marsh is dominated by pickleweed (*Salicornia* sp.) vegetation and salt grass. The endangered Belding's savannah sparrow, the California least tern, and the Western snowy plover have been observed foraging in the slough.

The California brackish water snail (*Tryonia imitator*), a federal species of concern, has been collected in substantial numbers in the channels of the slough. The slough is considered wetlands under the Commission's single parameter definition of wetlands (Public Resource Code Section 13577(b)). Wetlands maintain important ecological functions including providing critical habitat, nesting sites, and foraging areas for threatened or endangered species. Wetlands also serve as migratory resting spots on the Pacific Flyway a north-south flight corridor extending from Canada to Mexico used by migratory bird species. Wetlands serve as natural filtering mechanisms to help remove pollutants from stormwater run-off before entering into streams and rivers leading to the ocean. Further, wetlands serve as natural flood retention areas. Moreover, preserving, expanding, and enhancing Southern California's remaining wetlands is particularly critical because of their scarcity. As much as 75% of coastal wetlands in southern California have been lost, and, statewide up to 91% of coastal wetlands have been lost.

The proposed development is the complete redevelopment of the site. The applicant proposes the demolition of all existing development including an unpermitted 20-ft. x 25 ft. wood deck constructed entirely outside of the northern private property line and encroaching beyond the bank of the Semeniuk Slough into a portion of the waterway (**Exhibit #3**). The slough is on a publicly owned parcel of land owned by the USACE. The deck was constructed by a previous property owner under an USACE license for use beginning November 1, 2000 and ending October 31, 2025. No CDP was ever applied for or issued; therefore, the deck is unpermitted development. Demolition of the deck encroachment into the wetland is necessary for compliance with the Coastal Act and City of Newport Beach LUP policies for the protection of environmentally sensitive habitat areas, specifically Policy 4.1.3-10 requiring removal of unauthorized structures that encroach into Semeniuk Slough. With the deck structure removed, as proposed by the applicant, natural recruitment of salt marsh vegetation may occur along the south bank of the slough and the area opened up for possible foraging by shorebirds.

Development, including grading and the construction of residential structures, could cause impacts upon adjacent wetlands by discharging silt to the wetlands. In addition, occupation and use of residential structures adjacent to wetlands can cause disturbances to the biological resources in the wetlands. Section 30240(b) of the Coastal Act and City of Newport Beach LUP Policy 4.1.1-6 requires that development in areas adjacent to environmentally sensitive habitat areas, such as wetlands, must be sited and designed to prevent impacts, which would significantly degrade those areas. City of Newport Beach LUP Policy 4.1.1-10 and Policy 4.2.2-3 specifically call for buffer areas of sufficient size to ensure the biological integrity and preservation of the habitat they are designed to protect, with a minimum buffer width of 50 feet from ESHA and 100 feet from a wetland wherever possible and allows for smaller buffers only where it can be demonstrated that the standard buffer is not possible due to site-specific constraints, and that the proposed narrower buffer would be amply protective of the biological integrity of the ESHA given the site-specific characteristics of the resource and of the type and intensity of disturbance. Buffer areas are undeveloped lands surrounding wetlands. Buffer areas serve to protect wetlands from the direct effects of nearby disturbance, can provide habitat for organisms that spend only a portion of their life in

the wetland such as amphibians, reptiles, birds, and mammals. Buffers also provide visual screening between wetland species that are sensitive to human impacts, such as lighting and can also reduce noise disturbances to wetland species from human development. The proposed single-family residence will be set back approximately 24-feet from the Semeniuk Slough mean high tide line in accordance with a stringline setback. This setback provides a much smaller buffer than the 100-foot buffer normally required by the Commission for development adjacent to wetlands, or the minimum 50-foot required by LUP Policy 4.1.1-10. However, since the subject lot is only approximately 85-feet deep, and a front setback is also required, either a 50-foot or 100-foot buffer would preclude the construction of any residential development on the lot. LUP Policy 4.1.1-10 includes provisions for cases where the minimum 50-foot buffer is not possible due to site-specific constraints such as at the subject site, and also in this case, the proposed narrower buffer would be amply protective of the biological integrity of the ESHA given the site-specific characteristics of the resource and of the type and intensity of disturbance.

The subject lot pre-dates the Coastal Act. This lot was part of a larger residential subdivision, which, like this lot, were developed with residential structures, which are similar to the proposed development in square footage, dimension, and setback. The proposed development is in-fill development. Any significant impacts upon Semeniuk Slough related to light, noise and other disturbance related impacts have already been caused by the presence of the existing pre-Coastal Act development in the vicinity of this site. The proposed development, setback according to both structural and patio/deck stringline would not cause any significant encroachment upon the wetlands. Also, as further conditioned (see discussion below) the additional light, noise and related impacts caused by the proposed development would not be significant compared with the pre-existing development.

Water Quality

Controls are necessary during the construction phase of the project to ensure the protection of the adjacent wetlands. The applicant submitted an acceptable Construction Pollution Prevention Plan included in **Exhibit #5**. However, if construction equipment and staging is not appropriately managed, adverse impacts upon the Semeniuk Slough could occur. For instance, soil stockpiles could erode causing sedimentation of wetlands. In addition, if not sited appropriately, construction equipment and activity could cause trampling of the wetlands. Thus, **Special Condition 5** requires a construction staging plan demonstrating that construction equipment or activity shall not occur outside a designated staging area and identified construction corridor and that construction equipment and activity shall not be placed in any location, which would result in impacts to wetlands. The plan must include, at a minimum, the following components: a site plan that depicts the limits of the staging area(s); construction corridor(s); construction site; the location of construction fencing and temporary job trailers with respect to existing wetlands. In addition, in order to ensure that construction and materials are managed in a manner which avoids impacts to adjacent wetlands, the Commission imposes **Special Condition 4** which requires that construction materials, debris, or waste be placed or stored where it will not enter storm drains or be subject to tidal erosion and dispersion; removal of debris within 24 hours of

completion of construction; implementation of Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed such that construction debris and sediment are properly contained and secured on site and to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking.

Landscaping

In order to mitigate impacts to water quality of the adjacent wetlands during the post-construction phase of the project, the applicant submitted a Water Quality Management Plan (**Exhibit #5**) depicting how drainage on site will be collected and filtered onsite into a bottomless trench drain along the driveway. The measures proposed by the applicant are acceptable. Minimal plantings within two small planter areas along the property side yard are proposed with a drip irrigation system, thus minimizing water use and water runoff from the subject site. Landscape plan is included as **Exhibit #6** to the staff report. The placement of any vegetation on this site that is considered to be invasive which could supplant native vegetation shall not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society (www.CNPS.org) in their publications. Furthermore, any plants in the drainage and run-off control plan should be drought tolerant to minimize the use of water (and preferably native to coastal Orange County). The term drought tolerant is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>. Thus, the Commission imposes **Special Condition 7**, which requires only vegetation consisting of native drought tolerant non-invasive plant species appropriate to habitat type.

Lighting

An additional concern is the impact lighting may have upon the wetland habitat. Thus, **Special Condition 6** requires that all new lighting within the development be directed and shielded so that light is directed toward the ground and away from the wetlands to avoid and minimize disturbance to sensitive biological resources.

Plexiglas or Glass Wind Screens

The proposed development includes new glass railings around the decks/patios on the slough-facing side of the project site. Glass railing systems, walls or wind screens are known to have adverse impacts upon a variety of bird species. Birds are known to strike these glass walls causing their death or stunning them, which exposes them to predation. To ensure bird strike prevention, **Special Condition 8** requires that the applicant use a material for the glass railing that is designed to prevent creation of a bird strike hazard.

Only as conditioned does the Commission find the proposed development consistent with Section 30240 of the Coastal Act and with the relevant policies of the City's certified LCP.

E. MARINE RESOURCES AND WATER QUALITY

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

Newport Beach Land Use Plan Policies:

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

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

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

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

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

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

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

Section 30230 of the Coastal Act requires that marine resources including biological productivity be protected. Section 30231 of the Coastal Act requires that the biological productivity of coastal waters be maintained, and where feasible, restored. In addition, City's LUP polices require that the quality of coastal waters be maintained and protected from adverse impacts.

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 could result in adverse impacts upon the marine environment that could 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 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. Additionally, **Special Condition 5** requires submittal of a construction staging plan to ensure the adjacent wetlands are protected during the project's construction phase.

Post-Construction Impacts to Water Quality

The proposed development 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 with these post construction water quality impacts, the applicant has included drainage improvements on the re-compacted and re-graded subject lot. To minimize any impacts to water quality the proposed project may have after construction; onsite water runoff on along the waterfront side of the lot will be directed to a new bottomless trench drain, per the detail on the Preliminary Grading Plan included in the plans (**Exhibit #5**). Thus, as conditioned, the Commission finds that the proposed project is consistent with the Coastal Act and LCP policies regarding the protection and improvement of water quality.

The existing development minimizes possible adverse impacts to coastal waters to such an extent that it will not have a significant impact on marine resources, biological productivity or coastal water quality. Therefore, the Commission finds that the development conforms to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to protect marine resources, promote the biological productivity of coastal waters and to protect human health.

F. 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.

Section 30211 of the Coastal Act states:

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

Newport Beach Land Use Plan Policies:

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.

Policy 3.1.1-4 Identify and remove all unauthorized structures, including signs and fences, which inhibit public access.

Policy 3.1.1-11 Require new development to minimize impacts to public access to and along the shoreline.

Policy 3.1.1-12 Implement building design and siting regulations to protect public access through setback and other property development regulations of the Zoning Code that control building placement.

Policy 2.7-1 Continue to maintain appropriate setbacks and density, floor area, and height limits for residential development to protect the character of established neighborhoods and to protect coastal access and coastal resources.

The subject site is located in the Newport Shores Neighborhood of Newport Beach, adjacent to the Semeniuk Slough and coastal salt marsh wetlands. The City's certified Land Use Plan indicates that vertical public access to the Slough is available at nine (9) street-ends in Newport Shores and the Newport Shores View Park. Lateral public access along the slough is present on the far bank (north) side of the slough and the nearest street-end providing public access to the waterway is available at the Lancaster

Street street-end approximately 60 feet East of the project site. Thus, adequate public access to slough is available in the vicinity of the proposed development.

Regarding the proposed new development shoreline setbacks, the proposed project is setback according to a stringline setback consistent with that of the surrounding residences within the Newport Shores neighborhood. Furthermore, the applicant proposes removal of an unpermitted wood deck beyond the waterfront property line encroaching into the slough. Removal of the unpermitted development and an appropriate development setback provides an area that may accommodate future lateral public access efforts along the south bank of the slough.

Additionally, private development must also provide adequate on-site parking to minimize adverse impacts to public access to coastal resources. When a private development does not provide adequate on-site parking, on-street public parking is occupied, parking spaces that otherwise could be utilized by visitors to the coastal zone. The Commission has consistently found that two parking spaces are adequate to satisfy the parking demand generated by a single-family residential unit and the local government parking requirement in this case is for an enclosed 2-car garage. The proposed project includes construction of a 2-car garage, in compliance with the City's parking requirement.

Section 30210 of the Coastal Act encourages maximum public access, while also respecting private property rights, and section 30211 requires that development not interfere with the public's right of access to the sea. The proposed demolition of the existing wood deck encroaching into the slough is necessary for consistency with Coastal Act public access policies. As proposed, the Commission finds adequate access is available nearby, sufficient parking is provided on site and thus, the proposed development is consistent with Sections 30210 and 30211 of the Coastal Act.

G. UNPERMITTED DEVELOPMENT

Development has occurred on the subject site without benefit of the required coastal development permit, including construction of a 20 ft. x 25 ft. wood deck covering wetland areas. All work occurred adjacent and into the Semeniuk Slough, a wetland waterway. Consequently, even if it were considered to be the sort of work that is normally associated with a single-family residence, the work that was undertaken constitutes development that requires a coastal development permit application. The unpermitted deck was constructed by previous property owners. The current owner/applicants propose complete redevelopment of the site including demolition/removal of the unpermitted deck encroaching beyond their private property and over the Semeniuk Slough as part of this CDP application. The Slough is on a publicly owned parcel of land owned by the USACE. The deck was constructed by a previous property owner under an USACE license for use beginning November 1, 2000 and ending October 31, 2025. Demolition of the deck encroachment into the wetland is necessary for compliance with the Coastal Act and City of Newport Beach LUP policies for the protection of environmentally sensitive habitat areas. To ensure that the unpermitted deck is removed in a timely manner, **Special Condition 3** requires that the

applicant remove the unpermitted deck within 90 days of issuance of the permit. The Executive Director may grant additional time for good cause.

Although development has taken place prior to submission of this permit application, consideration of the permit application by the Commission has been based solely on the consistency of the proposed development with the policies of the certified LCP. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit. Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent compliance with all terms and conditions of the permit will result in resolution of the above-described violations going forward.

H. DEED RESTRICTION

LUP Policy 2.8.6-9 requires 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 subject to coastal hazards. 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 9**, which requires the property owner to record a deed restriction against the property, referencing all of the above special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the property. Thus, as conditioned, 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.

I. LOCAL COASTAL PROGRAM

On January 13, 2017, the Commission effectively certified the City of Newport Beach LCP. Per the findings of Commission Boundary Determination #11-2021 for 237 Canal Street, Newport Beach, the proposed demolition of the unpermitted deck occurs on or over submerged lands that are within the Commission's jurisdiction and the proposed new single-family residence occur over land that is within the City of Newport Beach jurisdiction. Consequently, the standard of review is Chapter 3 of the Coastal Act for the areas under Commission jurisdiction, and the certified LCP serves as the standard of review for the landside development under the City's jurisdiction. The City has agreed to a consolidated permit issued by the Commission. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and the City's certified LCP.

J. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City of Newport Beach is the lead agency responsible for certifying that the proposed project is in conformance with the California Environmentally Quality Act (CEQA). The City determined that in accordance with CEQA, the project is Categorically

Exempt development from provisions of CEQA relying on the Class 3 (New Construction) guideline section. Section 13096(a) of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Under Section 15251(c) of Title 14 of the California Code of Regulations, the Commission's CDP regulatory process has been certified as the functional equivalent to the CEQA process. The proposed project is located in an urban area. Infrastructure necessary to serve the project exists in the area. As conditioned, the proposed project has been found consistent with the public access and resource protection policies of the Coastal Act and the LCP, as applicable, and there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect, which 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

1. CDP 5-04-328 (Sloman); CDP 5-05-263 (Olson); 5-06-456 (Clark); 5-06-027 (Crenshaw); and associated materials
2. Coastal Commission Boundary Determination 11-2021
3. Department of the Army License DACW093-01-0014
4. Coastal Hazards Analysis, 237 Canal Street, Newport Beach, Orange County, CA by GeoSoils, Inc. dated March 22, 2021
5. Geotechnical Investigation, Proposed Residential Construction, Tract 772, Lot 18, 237 Canal Street, Newport Shores, Newport Beach, California, Report No: R1-8467 by R McCarthy Consulting Inc. dated March 8, 2021
6. Preliminary Water Quality and Hydrology Plan (PWQHP), Greer Residence, 237 Canal Street, Newport Beach, CA 92663 prepared by Toal Engineering, Inc. Dated 04/05/21