

CALIFORNIA COASTAL COMMISSION

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Filed:	12/9/22
180 th Day:	6/7/23
Staff:	FSY-LB
Staff Report:	3/24/23
Hearing Date:	4/12/23

STAFF REPORT: CONSENT CALENDAR

Application No.: 5-22-0562

Applicant: Robert Bowman

Agent: Shellmaker Inc., Attention: Lisa Miller

Location: 506 38th Street, City of Newport Beach, Orange County (APN:423-065-07)

Project Description: Remove an existing 30-foot long, cast-in place bulkhead and replace it along the same alignment with a new Truline pile wall; and install two new tie-backs connecting to one new concrete deadman.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The subject property is a bayfronting lot in Newport Bay bisected by the boundary of the Coastal Commission's original permitting jurisdiction and the City's permitting jurisdiction. The portion of the site to the landside edge of the bulkhead (dry land area) is in the City's permitting jurisdiction, while the bulkhead and land and water bayward of the bulkhead are located within the Commission's original jurisdiction. The proposed two tie-backs and concrete deadman would be in the City's jurisdiction, while the bulkhead replacement would be in the Commission's jurisdiction. However, the City has not issued a coastal development permit for the work in their jurisdiction, but the City has approved the landside work and waterside work with the Approval-In-Concept dated May 25 and 26, 2022. Thus, the proposed project in its entirety is analyzed in this staff report.

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.

The major issues raised by this proposed development concern consistency with coastal 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 within the water is proposed bayward of the existing bulkhead. However, to ensure that no future work results in bayward extension of the bulkhead, and to prevent intrusion into tidelands, staff recommends the Commission impose **Special Condition No. 3**, which mandates no future bayward extension of the existing shoreline protective device.

Any potential changes to the proposed project may result in adverse impacts to coastal resources. To ensure that development on the site does not occur which could potentially result in adverse impacts to coastal resources, staff recommends the Commission impose **Special Condition No. 2**, which informs the applicant that future development within the Commission jurisdiction along the bulkhead at the site requires an amendment to Coastal Development Permit No. 5-22-0562 or a new coastal development permit.

The proposed project has potential for adverse impacts to water quality and marine resources during and after its construction. Therefore, staff recommends the Commission impose **Special Condition No. 4**, which outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris.

There is no direct public pedestrian access to the water through the private residential lot. However, public pedestrian access to these submerged lands is available approximately 100-feet east of the subject site at the end of Finley Avenue. Nevertheless, 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. 5**, which states that the approval of a coastal development permit for the project does not waive any public rights or interests that exist or may exist on the property, and that if any portion of the development approved by this permit is subsequently determined to be located on or over public trust lands, then development approved by this permit not compatible with the public trust must be removed. As conditioned, the project is consistent with the public access policies of the Coastal Act and the City's certified LCP.

5-22-0562

Bowman

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission staff recommends the Commission impose **Special Condition No. 6**, which requires the property owner record a deed restriction against the property, referencing all of the special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the property.

Commission staff is recommending **APPROVAL** of the coastal development permit application with special conditions. The motion to approve the coastal development permit application is on **Page Five**. The special conditions begin on **Page Six**.

TABLE OF CONTENTS

<u>I. MOTION AND RESOLUTION.....</u>	<u>5</u>
<u>II. STANDARD CONDITIONS.....</u>	<u>5</u>
<u>III. SPECIAL CONDITIONS</u>	<u>6</u>
<u>IV. FINDINGS AND DECLARATIONS.....</u>	<u>10</u>
<u>A. Project Description, Location and Previous Permit</u>	<u>10</u>
<u>B. Standard of Review.....</u>	<u>10</u>
<u>C. Hazards.....</u>	<u>11</u>
<u>D. Water Quality</u>	<u>15</u>
<u>E. Public Access.....</u>	<u>16</u>
<u>F. Deed Restriction.....</u>	<u>17</u>
<u>G. Local Coastal Program (LCP).....</u>	<u>17</u>
<u>H. California Environmental Quality Act (CEQA)</u>	<u>17</u>
<u>APPENDIX A – SUBSTANTIVE FILE DOCUMENTS</u>	<u>19</u>

EXHIBITS

Exhibit No. 1 – Location Map

Exhibit No. 2 – Bulkhead Site Plan and Elevation

Exhibit No. 3 – Section Plan

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve the Coastal Development Permit applications included on the consent calendar in pursuant to the staff recommendation.

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. 5-22-0562 for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that 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 applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, erosion, storm conditions, liquefaction, flooding, and sea level rise; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (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; (v) that sea level rise could render it difficult or impossible to provide services to the site (e.g., maintenance of roadways, utilities, sewage or water systems), thereby constraining allowed uses of the site or rendering it uninhabitable; (vi) that the boundary between public land (tidelands) and private land may shift with rising seas, the development may eventually be located on public trust lands, and the development approval does not permit encroachment onto public trust land; (vii) any future encroachment must be removed unless the Coastal Commission determines that the encroachment is legally permissible pursuant to the Coastal Act and authorizes it to remain, and any future encroachment would also be subject to the State Lands Commission's (or other trustee agency's) leasing approval; and (viii) that the development may be required to be removed or relocated and the site restored if it becomes unsafe or if removal is required pursuant to the Coastal Act.
- 2. Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-22-0562. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-22-0562. 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. 5-22-0562 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 applicant agrees, on behalf of itself (or himself or herself or themselves, as applicable) and all successors and

assigns, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device that is the subject of Coastal Development Permit No. 5-22-0562, , shall result in any encroachment bayward of the authorized footprint of the shoreline structure. By acceptance of this Permit, the applicant 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, other state law, or related provisions of the certified Newport Beach LCP.

- B. By acceptance of this Permit, the applicant 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. 5-2-0562, 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 and as may be exacerbated by sea level rise. By acceptance of this Permit, the applicant 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. Water Quality

A. Construction Responsibilities and Debris Removal

- (1) No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion and dispersion;
- (2) Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project;
- (3) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
- (4) Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone;
- (5) If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity;

- (6) Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day;
- (7) Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss;
- (8) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- (9) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- (10) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;
- (11) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
- (12) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
- (13) The discharge of any hazardous materials into any receiving waters shall be prohibited;
- (14) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;
- (15) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and

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

5. Public Rights and Public Trust. The 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.

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

IV. FINDINGS AND DECLARATIONS

A. Project Description, Location and Previous Permit

The proposed project is the removal of an existing 30-foot long, cast-in place bulkhead at a height of +3.55 feet NAVD88 and replacement along the same alignment with a new Truline pile wall with a cast-in-place concrete coping above at an elevation of +10.90 feet NAVD88; and installation of two new tie-backs connecting to one new concrete deadman, all associated with an existing single-family residence ([Exhibits No. 2-3](#)). The existing bulkhead is not located in the same location as the neighboring bulkheads, as it is setback approximately 1-foot, 8-inches landward from either adjacent bulkhead to the east and west of the subject site. The proposed new bulkhead will have the same 1-foot, 8-inches setback as the existing bulkhead on site, resulting in no further encroachment into the water area.

Based on information provided by the applicant, the existing bulkhead has been at its existing location since approximately 1959. An existing private dock system associated with the landside single-family residence is located onsite adjacent to the existing bulkhead, but no work to it is proposed.

The subject site is located at 506 38th Street in the City of Newport Beach, Orange County ([Exhibit No. 1](#)). Currently, an existing 1,879 square foot, two-story single-family residence with an attached two-car garage occupies the subject site. The lot size is 3,000 square feet and is designated as R-2, Two-Unit Residential, by the certified City of Newport Beach LCP and the proposed use conforms to this designation. To the south of the subject site is 38th Street, to the east and west are existing single-family residences, and to the north is Newport Bay, more specifically the Rialto Canal, which is an area identified by the City as “*Waterways Dedicated or Reserved for the same*” on the city’s Tidelands Survey of Newport Harbor, dated January 11, 2017.

On April 15, 1993, the Commission approved De Minimis Waiver 5-93-106 (Bowman) for the subject site involving the demolition of an existing single-family residence and construction of a new 1,879 square foot , two-story, 25-foot high, single-family residence with an attached two-car garage.

B. Standard of Review

The subject property is bisected by the coastal permit jurisdiction boundary, with the landside portion of the site to the landside edge of the bulkhead (dry land area) in the City’s permitting jurisdiction ([Exhibit No. 2](#)). The landside portion of this project consisting of the installation of two new tie-backs connecting to one new concrete deadman is within the City’s jurisdiction, but the City has not yet issued a coastal development permit for this work. However, the City has approved the landside work along with the waterside work, that is within the Commission’s original jurisdiction as discussed below, with the Approval-In-Concept dated May 25 and 26, 2022.

The bulkhead and land and water bayward of it are located within the Commission's original jurisdiction. The portion of the proposed development involving the removal of and replacement of the existing bulkhead with a new bulkhead in the same alignment is located within the Commission's original jurisdiction ([Exhibits No. 2-3](#)). The City has issued an Approval-In Concept dated May 25 and 26, 2022 for this component of the project, along with the landside work described above.

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

1. No bayward development

The proposed project includes the removal of an existing 30-foot long, cast-in place bulkhead at a height of +3.55 feet NAVD88 and replacement along the same alignment with a new Truline pile wall with a cast-in-place concrete coping above at an elevation of +10.90 feet NAVD88. The existing bulkhead is not located in the same location as the neighboring bulkheads, as it is setback approximately 1-foot, 8-inches landward from either adjacent bulkhead to the east and west of the subject site. The proposed new bulkhead will have the same 1-foot, 8-inches setback bulkhead as the existing. Thus, the proposed bulkhead will remain in the same location as the existing bulkhead and not encroach bayward, resulting in no further encroachment into the water area.

2. Existing bulkhead stability/future repair timelines

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

suitability of the site for the proposed development relative to those hazards, the applicant provided a *Coastal Hazards Analysis Report (PMA Job #423211)* prepared by PMA Consulting, Inc. dated March 28, 2022, and a *Bulkhead Conditions Report (PMA Job #42321)* prepared by PMA Consulting, Inc. dated March 28, 2022 and an updated version dated March 7, 2023. The findings of the bulkhead condition analyses indicate that the cast-in-place bulkhead was found to be in very poor condition and non-compliant with City requirements. In addition, the analyses states that the existing bulkhead is required to protect the principal structures on the site, as well as, the adjacent homes, streets and utilities.

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

The neighborhood includes a mix of redeveloped homes and homes constructed prior to passage of the Coastal Act. While Section 30253(b) prohibits the new proposed single-family residence from relying on the existing and improved bulkhead, the existing home and adjacent pre-coastal homes, streets, and utilities would be protected by the improved bulkhead. Section 21.30.15.E(2)d of the IP states: *Coastal development permit applications for development proposed in shoreline areas subject to current or expected future erosion, flooding/inundation, wave runup, or wave impacts, including those resulting from sea level rise shall include a coastal hazards report. The coastal hazards report shall use the methodology in Appendix A and include the following:... 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 removal of the existing bulkhead and replacement in the same location is allowed to protect the existing onsite development and adjacent development. Thus, since the proposed development protects existing adjacent development, it is consistent with Section 30235 of the Coastal Act and the City's certified LCP. It should be noted that standard of review for development within the Commission's original permit jurisdiction is Chapter 3 of the Coastal Act, and that the City's certified LCP only serves as guidance. To be clear, the adaptation strategy of this area of Newport Bay being armored with bulkheads is specific to this area and not expected to be replicated elsewhere in the City or the state. Section 30253(b) of the Coastal Act requires that new proposed development (for example, single-family residences) should not rely on existing and improved bulkheads.

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 replacement of the bulkhead would allow it to remain in place for an extended period of time to protect the existing onsite development and adjacent

pre-coastal homes, streets, and utilities from flooding, until such a time that adaptation plans as required by the LCP via IP Policies 21.30.010.E(4)(d)(iv) and 21.30.060.B(3)(i) for the adjacent existing development are underway, per the LCP policies.

Thus, work is necessary to replace the existing bulkhead in the same location and once completed, no additional repair or replacement of the bulkhead is anticipated in the next 75 years (at least until 2098) with the exception of a potential bulkhead height increase to address rising sea levels to protect existing development in the surrounding area. The applicant's analysis concludes that the bulkhead height could be increased in height to +14.4 feet NAVD88 without any further bayward encroachment.

3. Sea level rise

The submitted Coastal Hazards Analysis identifies the highest high tide in the project area as +7.7 feet NAVD88. The submitted Coastal Hazards Analysis included an analysis of a low-risk and medium-high risk aversion with high emissions over the project's design life of 75 years (spanning until 2098); however, the Commission also conducts its own analysis.

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 submitted analysis says they used the OPC guidance document data for High Emissions 2090 and 2100 and determined that sea levels may rise 3.05 feet, by the end of the project's estimated 75-year design life in 2098.

Applying a low risk aversion scenario, the OPC guidance document provides that sea levels may rise to 3.2 feet in 2100 (High Emissions), by the end of the project's estimated 75-year design life in 2098.

For a medium-high risk aversion scenario, the submitted analysis and the Commission apply the OPC guidance document that provides sea levels may rise 6.7 feet in 2100 (High Emissions) by the end of the project's estimated 75-year design life in 2098.

Based on the low-risk aversion scenario by 2098 following the Commission's Sea Level Rise Guidance, 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 would be 7.35 feet above the existing bulkhead elevation of +3.55 feet NAVD88 and would be equal to the proposed bulkhead elevation of +10.9 feet NAVD88.

Based on the medium-high risk aversion scenario by 2098 following the Commission's Sea Level Rise Guidance, if there were to be a 6.7-foot, a high tide still water level of +14.4 feet NAVD88 (+7.7 feet NAVD88 + 6.7 feet = +14.4 feet NAVD88) is anticipated. This +14.4 feet NAVD88 would be 10.85 feet above the existing bulkhead elevation of +3.55 feet NAVD88 and would be 3.5 feet above the proposed bulkhead 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 6.7 feet of sea level rise by the end of the project's 75-year design life in 2098. However, to mitigate future potential sea level rise impacts, the applicant stated that the bulkhead could be raised to an elevation of +14.4 feet NAVD88 without extending bayward. Thus, the project has been designed to be raised to address potential flooding impacts associated with the high emissions medium-high risk aversion scenario.

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

Since coastal processes are dynamic and structural development may alter the natural environment, future development at the subject 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. 5-22-0562 or a new coastal development permit.

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

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 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 size required to protect existing development and prohibit their use to expand areas for new development.

4. No future bayward extension of the proposed shoreline protective device

The subject site includes a single lot with an existing single-family residence onsite surrounded by existing residential lots to the east and west of the subject site and a public (38th Street), to the south of the site. The applicant's bulkhead condition analysis indicates that the onsite residential structures and adjacent development would be threatened were it not for the existing bulkhead which is in very poor condition. Accordingly, the proposed bulkhead replacement in the same location is necessary to protect existing adjacent residential structures, as well as the adjacent development, consisting of streets, utilities, etc., 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 replaced bulkhead will be in the same location/configuration and will not extend bayward of the existing bulkhead. **Special Condition No. 3** prohibits future bayward extension of the proposed 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.

There is potential for the discharge of demolition or construction debris into coastal waters at the subject site during construction. This could result in adverse effects on the marine environment. The proposed development includes protective measures to ensure that coastal waters and marine resources will not be adversely affected during construction. To ensure that all impacts (pre- and post- construction) to water quality are minimized, and to reduce the potential for construction related impacts on water quality, the Commission imposes **Special Condition No. 4**, which requires, but is not

limited to, the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. As conditioned, the proposed project minimizes impacts to biological resources consistent with Sections 30230 and 30231 of the Coastal Act.

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.

North of the subject site is Newport Bay, more specifically the Rialto Canal ([Exhibit No. 1](#)). This is water area identified by the City as "*Waterways Dedicated or Reserved for the same*" on the City's Tidelands Survey of Newport Harbor dated January 11, 2017, and it is not part of the mapped State Tidelands held in trust by the City. The water adjacent to the bulkhead is a boating channel, known as the Rialto Canal. The Rialto Canal was created from uplands that were dredged and now consist of submerged lands. This area is not part of the mapped State Tidelands held in trust by the City and is not subject to the historic public trust lands.

Pursuant to Public Resources Code section 7552.5, the submerged land is subject to a navigational easement that, in general, precludes the owner from preventing the public from using the waters for navigational purposes even if the submerged lands are not public trust lands. The existing bulkhead will be replaced in the same location and as such, the bulkhead will not bayward and into the Rialto Canal resulting 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 lot. However, public pedestrian access to these submerged lands is available

approximately 100-feet east of the subject site at the end of Finley Avenue. 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. 5** is imposed stating that the approval of a coastal development permit for the project does not waive any public rights or interest that exist or may exist on the property.

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. 6**, requiring that the property owner record a deed restriction against the property, referencing all of the special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the property. Thus, any prospective future owner will receive notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability. Therefore, the Commission finds that the proposed development, as conditioned, conforms to the Coastal Act by ensuring that any successors-in-interest have notice, recorded against the subject parcel, of the proposed development's required mitigation measures that mitigate the development's impacts on coastal resources.

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, while the City's certified LCP 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 only a ministerial approval was needed and that the project was not subject to CEQA. 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.

5-22-0562

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APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

City of Newport Beach Planning Department Approval-In-Concept dated May 25 and 26, 2022.