

CALIFORNIA COASTAL COMMISSION

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Th6d

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STAFF REPORT: CONSENT CALENDAR

Application No.: 5-24-0359

Applicant: Bay House 2100, LLC

Agent: CAA Planning (Attn: Shawna Schaffner)

Location: 2100 and 2102 E. Balboa Boulevard, Newport Beach, Orange County (APNs: 048-240-35 and 048-240-38)

Project Description: Reinforcement and raising of two existing bulkheads on adjacent lots through the installation of 12 tiebacks, two 30-inch diameter caissons, two 132 sq. ft. trench drains, and a 2.2-ft. tall concrete wall atop of the existing bulkheads. Like-for-like replacement of two 20 sq. ft. wooden stairways atop of the existing bulkheads. The proposed work includes 16 cy. of cut and no fill.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

The project site encompasses two adjacent, harbor-fronting parcels: a 16,122 sq. ft. parcel at 2102 E. Balboa Boulevard, and a 15,083 sq. ft. parcel at 2100 E. Balboa Boulevard in Newport Beach, Orange County ([Exhibit 1](#)). The two parcels are legally tied and owned by a single entity, Bay House 2100, LLC. The eastern parcel (2102 E. Balboa Blvd.) is currently developed with a 7,179 sq. ft. single-family residence, while the western parcel (2100 E. Balboa Blvd.) is developed with accessory structures serving the adjacent residence. The two parcels are supported by two contiguous, 73.5-ft. long bulkheads constructed prior to 1972. Each parcel also has private floating dock system for the property-owners' recreational vessels.

The bulkheads consist of concrete walls installed below the harbor mudline and sealed against moisture with exterior concrete panels. A tieback-deadman system prevents the bulkhead from slumping forward into the harbor: one end of each metal tieback rod is anchored within the bulkhead and the other is anchored within landward concrete caissons, resulting in a subterranean, horizontal bracing system ([Exhibit 2](#)). The applicants propose the reinforcement and raising of two existing bulkheads on adjacent lots through the installation of 12 tiebacks, two 30-inch diameter caissons, two 216 cubic foot (8 cy.) trench drains, and two 2.2-ft. tall concrete walls atop the existing bulkheads. Upon completion of bulkhead alteration, the applicants also propose like-for-like replacement of two, 20 sq. ft. wooden stairways atop of the existing bulkheads. No cut or fill is proposed.

The City of Newport Beach Local Coastal Program (LCP) was certified on January 30, 2017. Most of the project site is located in the City's permitting jurisdiction, but the bulkhead and a small segment of lot landward of the bulkhead is located in the Commission's original permit jurisdiction due to the presence of current tidelands and filled tidelands. The entirety of the proposed work is located in the Commission's original permit jurisdiction. Therefore, the standard of review is Chapter 3 of the Coastal Act with the certified LCP serving as guidance.

Staff is recommending **approval** of the subject coastal development permit (CDP) with **seven (7) special conditions** requiring: 1) assumption of risk; 2) no future improvements without a CDP amendment or new CDP; 3) no future seaward encroachment; 4) protection of the public trust; 5) construction best management practices (BMPs); 6) submittal of landscaping plans; and 7) a deed restriction. The motion to approve the CDP application is on Page 4.

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APPENDIX A – SUBSTANTIVE FILES

EXHIBITS

[Exhibit 1 – Vicinity Map & Project Location](#)

[Exhibit 2 – Project Plans](#)

I. MOTION AND RESOLUTION

Motion: I move that the Commission **approve** the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.

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

II. STANDARD CONDITIONS:

This permit is granted subject to the following standard conditions:

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

III. SPECIAL CONDITIONS:

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, including but not limited to waves, storms, flooding, and earth movement, 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 hazards.

- 2. Future Development.** This permit is only for the development described in CDP No. 5-24-0359. Pursuant to Title 14 California Code of Regulations (CCR) Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code (PRC) Section 30610(b) shall not apply to the development governed by the CDP No. 5-24-0359. Accordingly, any future improvements to this structure authorized by this permit shall require an amendment to CDP No. 5-24-0359 from the Commission or shall require an additional CDP from the Commission or from the applicable certified local government. In addition thereto, an amendment to CDP No. 5-24-0359 from the Commission or an additional CDP from the Commission or from the applicable certified local government shall be required for any repair or maintenance identified as requiring a permit in PRC Section 30610(d) and Title 14 CCR Sections 13252(a)-(b).
- 3. No Future Seaward Encroachment.** By acceptance of this Permit, the applicant agrees, on behalf of itself and all successors and assigns, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline structure approved pursuant to CDP No. 5-24-0359, as described and depicted on approved, as-built plans, shall result in any encroachment seaward of the authorized footprint of the shoreline structure. By acceptance of this Permit, the applicant waives, on behalf of itself (or himself or herself, as applicable) and all successors and assigns, any rights to such activity that may exist under Public Resources Code Section 30235.
- 4. 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.

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 permittee 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 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.
6. **Landscaping-Drought Tolerant, Non-Invasive Plants.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit two (2) full-size

sets of final landscaping plans, which shall include and be consistent with the following:

- A. All landscaping shall consist of native, or non-native drought tolerant non-invasive plant species, appropriate to the habitat type. No plant species listed as problematic and/or invasive by the California Native Plant Society (<https://www.cnps.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<https://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.
- B. 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 (<https://ucanr.edu/sites/WUCOLS/files/183488.pdf>).
- C. Use of reclaimed water for irrigation is encouraged. If using potable water for irrigation, only drip or micro-spray irrigation systems may be used. Other water conservation measures shall be considered, such as weather-based irrigation controllers.

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

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

IV. FINDINGS AND DECLARATIONS:

A. PROJECT LOCATION & DESCRIPTION

The project site encompasses two adjacent, harbor-fronting parcels: a 16,122 sq. ft. parcel at 2102 E. Balboa Boulevard and a 15,083 sq. ft. parcel at 2100 E. Balboa Boulevard in Newport Beach, Orange County ([Exhibit 1](#)). The subject site is located near the eastern tip of the Balboa Peninsula in a built-out neighborhood characterized by single-family residences and private recreational docks. Both of the subject parcels are zoned R-1, 'Single-Unit Residential' and RSD-B, 'Single Unit Residential Detached' in the certified Newport Beach Implementation Plan (IP) and Land Use Plan (LUP), respectively.

The two parcels are legally tied and owned by a single entity, Bay House 2100, LLC. The eastern parcel (2102 E. Balboa Blvd.) is currently developed with a 7,179 sq. ft. single-family residence, while the western parcel (2100 E. Balboa Blvd.) is developed with accessory structures serving the adjacent residence. The two parcels are supported by two contiguous, 73.5-ft. long bulkheads constructed prior to 1972. Each parcel also has private floating dock system for the property-owners' recreational vessels.

The bulkheads consist of concrete walls installed below the harbor mudline and sealed against moisture with exterior concrete panels. A tieback-deadman system prevents the bulkhead from slumping forward into the harbor: one end of each metal tieback rod is anchored within the bulkhead and the other is anchored within landward concrete caissons, resulting in a subterranean, horizontal bracing system ([Exhibit 2](#)).

The applicant' submitted two engineering reports for the two bulkheads conducted by PMA Consulting Inc., dated March 18, 2024. The reports document weathering and minor cracks in the two existing bulkheads at 2100 and 2102 E. Balboa Boulevard, allowing seawater to corrode the supporting tiebacks. Consistent with the consulting engineer's recommendations, the applicants propose to install six new tiebacks, a new concrete grade beam, and 30-inch diameter caissons within and landward of each bulkhead. This would result in 12 new tiebacks, 12 new caissons, and two new grade beams installed up to 45-ft. below grade on the project site, cumulatively. The five-foot horizontal expanse between the bulkheads and caissons would be covered with new 367.5 sq. ft. planter boxes.

The applicant's consulting engineer also recommends new drainage to limit corrosion from unchecked runoff infiltration on the landward side of the bulkheads. The applicants thus propose the installation of new 71-foot long, 216 cubic foot (8 cy.) trench drains immediately landward of the new caissons. Each of the two new trench drains would be lined with filter cloth, filled with 169 cubic ft. (6 cy.) of crushed rock fill, and topped with 47 cubic ft. (2 cy.) of the soils excavated to make the trench. The additional 169 cubic ft. (6 cy.) of displaced soils would be placed in the proposed planter boxes. Overall, the proposed work would require 16 cumulative cy. of cut and 8 cumulative cy. of fill.

As mean sea level rises, the Newport Harbor waters will gradually overtop existing bulkheads and flood landward development unless the bulkheads are augmented with additional protections. The applicant proposes the installation of a 72-ft. long, 2.2-ft. tall

concrete wall atop each of the existing bulkheads. This would raise each bulkhead's maximum height from +8.90 ft. NAVD88 to +11.10 ft. NAVD88, thus improving its ability to withstand sea level rise. The proposed bulkhead alterations will require the demolition of two existing, 20.5 sq. ft. wooden staircases that provide access to the two private dock piers onsite. The applicant propose like-for-like replacement of the two 20.5 sq. ft. wooden staircases upon completion of all other project components. Other than the subject staircases, no work is proposed over water.

Coastal Act Section 30253 and several certified LCP policies require new development to minimize risks to life and property. The City's uncertified 'Harbor Design Criteria' for bulkheads and docks requires a minimum +10.9 ft. NAVD88 elevation for the top of bulkheads permitted between 2021 and 2025.¹ It also requires bulkheads to be designed for potential future height raises to a minimum +14.4 ft. NAVD88 elevation. (While these design standards were not certified by the Commission, they serve as useful guidelines in assessing development for safety with future sea level rise.) The applicant's consulting engineer has confirmed that the new 2.2-ft. tall bulkhead walls could feasibly be raised by an additional 3.5 ft. to achieve the +14.4 ft. NAVD88 elevation that may be required by the uncertified Harbor Design Criteria in the future. Regardless, the applicant is proposing work in an inherently hazardous location. **Special Condition 1** thus requires the applicant to assume all risks and liability of and for the proposed work.

Coastal Act Section 30235 allows the maintenance of bulkheads if required to protect existing structures constructed prior to 1977 and designed to minimize adverse effects on natural shoreline processes. The certified LCP further requires applications for bulkhead alteration to consider whether the subject bulkheads are located on public trust lands and able to be removed or relocated further landward. The applicant's consulting engineer confirmed that the two subject bulkheads are necessary to support existing structures and public infrastructure constructed prior to 1977 located immediately east and west of the project site. Public infrastructure reliant on a continuous bulkhead system includes the public streets inland of the homes and municipal utility lines sited in the public right-of-way. Removing the subject bulkheads would threaten the continuous bulkhead system along the north-eastern side of the Balboa Peninsula by allowing erosion on either side of the adjacent seawalls and subject the public roadways to flooding. Nor is it feasible to relocate the two existing bulkheads further landward without disrupting the continuous line of bulkheads. The applicant's consulting engineer has also confirmed that the proposed work would not result in further lateral extension or bay-ward encroachment of the existing bulkheads.

Because coastal processes are dynamic, changing site conditions could render alterations to the subject bulkheads harmful to future shoreline conditions without proper evaluation. **Special Condition 2** thus waives any right to exemption from Commission permitting requirements for the development approved by the subject CDP and requires either an amendment to CDP No. 5-24-0359 or a new CDP for future bulkhead, trench drain, or staircase alterations. **Special Condition 3** additionally prohibits any future enlargement or bay-ward encroachment of the existing bulkheads.

¹ Page 37 of [Harbor Design Criteria](#) dated January 2022.

There is no direct public pedestrian access to the water through the private residential lots; the closest vertical access to the shoreline is available roughly 530 ft. west of the project site at a street end on K Street. Therefore, the proposed project does not result in adverse impacts to public access. However, Coastal Commission approval of this project cannot waive any public rights that may exist on the property. **Special Condition 4** thus establishes that approval of the subject CDP does not waive any public rights that exist onsite now or in the future.

The applicants propose the storage of construction materials landward of the bulkhead and would ensure that no vehicles, equipment, or materials enter the harbor waters. To further minimize the potential for pollutants and sediment to enter the adjacent water column, **Special Condition 5** requires the applicants to implement construction BMPs, including the disposal of debris at a legal disposal site outside of the coastal zone and prevention of spillage.

The use of planter boxes onsite also introduces the potential for non-native invasive species to contaminate the site and propagate near the dunes located 0.2 miles south of the project site. The applicant's proposed plans did not include a plant palette. To ensure the project does not have adverse effects on surrounding habitat, **Special Condition 6** requires the applicant to submit landscaping plans for Executive Director review and approval prior to issuance of the subject CDP. The subject condition requires the use of native, or non-native and drought tolerant, plants and encourages the use of recycled runoff for irrigation. Lastly, **Special Condition 7** requires the applicant to record a deed restriction imposing the conditions of this permit as restrictions on future use of the property.

The City of Newport Beach LCP was certified on January 30, 2017. Most of the project site is located in the City's permitting jurisdiction, but the bulkhead and a small segment of lot landward of the bulkhead is located in the Commission's original permit jurisdiction due to the presence of current tidelands and filled tidelands. The entirety of the proposed work is located in the Commission's original permit jurisdiction. Therefore, the standard of review is Chapter 3 of the Coastal Act with the certified LCP serving as guidance.

B. HAZARDS

Development adjacent to the ocean is inherently hazardous. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned to require that the landowner and any successor-in-interest assume the risk of undertaking the development; prohibit further seaward encroachment of the protective device; and require that future alterations to the bulkhead obtain a CDP or CDP amendment. As conditioned, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

C. WATER QUALITY

The proposed work will be occurring adjacent to coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into

coastal waters would result in an adverse effect on the marine environment. To reduce the potential for construction related impacts on water quality, the Commission imposes special conditions requiring, but not limited to, the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. To reduce the potential for post-construction impacts to water quality the Commission requires the continued use and maintenance of post-construction BMPs. As conditioned, the Commission finds that the development conforms with Sections 30230 and 32031 of the Coastal Act.

D. PUBLIC ACCESS

As conditioned, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Thus, as conditioned, the proposed development conforms with Sections 30210, 30212, 30220, 30221 and 30250 of the Coastal Act and the City's certified LCP public access and recreation policies.

E. DEED RESTRICTION

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

F. LOCAL COASTAL PROGRAM (LCP)

The City of Newport Beach LCP was effectively certified on January 13, 2017, but the proposed development subject to this CDP application is located within the Commission's original permit jurisdiction. As discussed above, the proposed development, as conditioned, will not adversely impact coastal resources. Therefore, the Commission finds that approval of this project, as conditioned, is consistent with the City's certified LCP.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

As conditioned, 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 can be found consistent with the requirements of the Coastal Act to conform to CEQA.

Appendix A - Substantive File Documents

CDP Application No. 5-24-0359 and its associated documents.