

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT
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W16b & W16c

Filed	3/26/26
180 th Day:	9/22/26
270 th Day:	12/21/26
Staff:	LR-LB
Staff Report:	9/24/26
Hearing Date:	10/7/26

STAFF REPORT: REGULAR CALENDAR

Application Numbers: 5-26-0220 (Rafla)
5-26-0221 (Howard)

Applicant: Atef Rafla
Andy Howard

Agent: CAA Planning, Inc. (Attn: Shawna Schaffner)

Project Location: 1807 E. Bay Ave., Newport Beach, Orange County
1805 E. Bay Ave., Newport Beach, Orange County

Project Description: Removal of an unpermitted wood retaining wall and construction of a new concrete seawall, new wood steps to the beach, and mitigation for loss of intertidal habitat and for resolution of unpermitted development in the form of payment of an in-lieu fee to City of Newport Beach or other accepting agency for construction of public access improvements

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

The proposed projects involve demolition of an unpermitted wood retaining wall and construction of a new 30-ft. long concrete seawall on each site utilizing 11-ft. tall 16-inch diameter Truline Piles with cast-in-place concrete coping and stem wall tied to the

ground with helical anchors/tie-backs; and construction of new wood steps to the beach at two adjacent bayfront sites located at 1805 and 1807 E. Bay Ave., Newport Beach in Orange County.

The Applicants' original submittals proposed construction of the new seawalls in alignment with existing bulkhead-type structures on adjacent neighboring properties (**Exhibit 2**). However, as this would result in back fill of intertidal habitat areas behind the seawalls, the Applicants worked with staff to pull back the proposed new seawalls as much as possible with the use of return walls while still maintaining structural stability per their engineering consultant. This would still result in approximately 686 square feet of fill of intertidal area (area that would remain landward of the outside face of the proposed seawall) approximately 472 square feet at 1805 East Bay Ave. and approximately 214 square feet at 1807 East Bay Ave., the area is illustrated in **Exhibit 5**.

After extensive investigation, the Applicants were not able to identify any currently available program which would result in the like for like restoration of intertidal areas in Newport Harbor to mitigate for the impact at these subject sites. Thus, to mitigate the quantified intertidal-area loss, the Applicants propose a \$10,692.24 combined contribution to a restricted City of Newport Beach account dedicated to a selected Newport Harbor public-access improvements to serve as an in-lieu fee instead of like-for-like mitigation. The contribution amount was calculated using the 686 square feet of impacted wet sand area and a \$19.37/square foot in-lieu fee ($686 \text{ sf} \times \$19.37/\text{sf} = \$13,287.82$). In addition to this sum, the Applicants have agreed to contribute an additional \$30,000 to the above-described fund to address the Coastal Act violation related to the unpermitted construction of the wood retaining wall proposed for demolition. Thus, the total payment required by Special Condition #2 is \$43,287.82.

The City of Newport Beach Local Coastal Program (LCP) was certified on January 13, 2017. However, the entirety of the proposed development is located in the Commission's original permit jurisdiction (see Exhibit #). Therefore, the standard of review is Chapter 3 of the Coastal Act with the certified LCP serving as guidance.

Commission staff recommends the Commission **APPROVE** coastal development permit applications 5-26-0220 and 5-26-0221 with eight (8) special conditions requiring: 1) final revised plans; 2) payment of a habitat mitigation in-lieu fee; 3) the use of construction best management practices (BMPs); 4) no future seaward encroachment; 5) protection of the public trust; 6) assumption of risk, waiver of liability and indemnity; 7) future development; and 8) a deed restriction. The motions to approve the CDP applications are on Page 4.

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Exhibit 2 – Project Plans

Exhibit 3 – 2017 Topographic Survey Before Unpermitted Wall and 2023 Survey After

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Exhibit 5 – Intertidal Impact Area/Required Mitigation Area

Exhibit 6 – Harbor Bulkhead Line and Eelgrass Habitat in the Project Vicinity

Exhibit 7 – Jurisdiction Map

MOTION AND RESOLUTION

Motion I:

I move that the Commission approve Coastal Development Permit No. 5-26-0220 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 to Approve the Permit:

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. 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.

Motion II:

I move that the Commission approve Coastal Development Permit No. 5-26-0221 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 to Approve the Permit:

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. 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.

I. 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 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.

II. SPECIAL CONDITIONS

Separate permits for CDP No. 5-26-0220 and CDP No. 5-26-0221 are granted subject to the following special conditions:

1. Submittal of Final Revised Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Applicant for CDP No. 5-26-0220 and CDP No. 5-26-0221 for the related permit on the adjacent property shall submit two full-size sets of Revised Final Plans for the Executive Director's review and approval That conform with the plans submitted September 9, 2025, prepared by PMA Consulting, Inc., and dated 08/06/2023, as identified on **Exhibit 2** of this staff report, except that they shall be modified as required below:

- a. **Development Footprint.** The revised plan shall pull back the bulkhead/seawall 4-ft. landward from the originally proposed alignment parallel with adjacent bulkhead-like structures and provide return walls at each end attached to adjacent bulkhead-like structures.

- b. **Debris Disposal Site.** The Applicants shall identify in writing, the location of the disposal site for the demolition and construction debris resulting from the proposed removal of the unpermitted wood wall. Disposal shall occur at the approved disposal site. If the disposal site is located in the coastal zone, a coastal development or an amendment to this permit shall be required before disposal can take place.

All revised plans shall be prepared and certified by a licensed professional or professionals as applicable (e.g., architect, surveyor, geotechnical engineer), based on current information and professional standards, and shall be certified to ensure that they are consistent with the Commission's approval and with the recommendations of any required technical reports.

The Applicant shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

2. Habitat Mitigation In-Lieu Fee. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Applicant for CDP No. 5-26-0220 shall work with the Applicant for CDP No. 5-26-0221 for the related permit on the adjacent property to provide evidence, in a form acceptable to the Executive Director, that a payment of \$43,287.82 combined contribution, has been made to an accepting entity as proposed by the Applicants in a letter from their agent, CAA Planning dated September 16, 2026, as described below.

- A. The proposed minimum public access improvement fund payment of \$43,287.82 (herein 'Fund') shall be deposited into an interest-bearing account, to be established and managed by whichever of the following entities is approved by the Executive Director: the City of Newport Beach, the California Coastal Conservancy, or a similar Executive Director-approved entity, in support of providing increased public access to Newport Harbor. The proposed recipient entity must be approved by the Executive Director, in writing, prior to any payment to that entity. The entire Fund and accrued interest shall be used for the above stated purpose in consultation with the Executive Director. If development funded by this account will require a coastal development permit, then a separate CDP shall be obtained by the approved recipient entity. The Fund shall be used in its entirety within five years of being deposited into the interest-bearing account established and managed by the accepting entity (or entities). If any portion of the Fund remains in the account after five years and the Executive Director determines the funds should be reassigned, those funds shall be donated to an agency or nonprofit entity, to be selected by the Executive Director, providing increased public access opportunities to the Coastal Zone in Newport Beach.

- B. Prior to expenditure of any funds required pursuant to this condition, the Executive Director shall review and approve in writing, the proposed use of the funds as being consistent with the intent and purpose of this condition.

3. Construction Responsibilities and Debris Removal. The Applicant for CDP No. 5-26-0220 shall work with the Applicant for CDP No. 5-26-0221 for the related permit on the adjacent property to comply with the following construction-related requirements:

- a. 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;
- b. 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;
- c. 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;
- d. Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone;
- e. If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity;
- f. 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;
- g. Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss;
- h. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- i. The permittee shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- j. 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;
- k. 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;
- l. 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;
- m. The discharge of any hazardous materials into any receiving waters shall be prohibited;

- n. 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;
- o. 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
- p. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

4. 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 CDPs No. 5-26-0220 and No. 5-26-0221, 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.

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. 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.

7. Future Development. This permit is only for the development described in Coastal Development Permit No. 5-26-0220 and Coastal Development Permit 5-26-0221.

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 this permit. Accordingly, any future improvements to the structure authorized by this permit shall require an amendment to this permit from the Commission or shall require an additional CDP from the Commission. In addition thereto, an amendment from the Commission or an additional CDP from the Commission 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).

8. 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 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.

III. FINDINGS AND DECLARATIONS

A. Project Location, Description and Background

Project Location

The project site encompasses two adjacent, Newport Bay harbor-fronting parcels located at 1805 and 1807 E. Bay Ave., Newport Beach, Orange County. The subject sites are located near the eastern tip of the Balboa Peninsula between J Street and K Street, in a built-out neighborhood characterized by single-family residences and private recreational docks (**Exhibit 1**). Both sites have private residential docks extending into harbor waters. Both of the subject parcels are zoned R-1, 'Single-Unit Residential,' and designated as RSD-B, 'Single Unit Residential Detached,' in the certified Newport Beach Implementation Plan (IP) and Land Use Plan (LUP), respectively. In this area of Newport Harbor along the bay facing side of E. Bay Ave. there is a City vacated parcel identified as "Vacated East Bay Ave" which the City vacated and granted to the adjacent property owners prior to passage of the Coastal Act. The two subject sites located between J and K Streets fall within this "Vacated East Bay Avenue" area which is comprised of sandy intertidal shoreline identified on the topographic surveys included in **Exhibit 3** of the staff report. The bayside private property lines extend out into the

intertidal area up to the U.S. Army Corps of Engineers designated bulkhead line depicted in **Exhibit 6**. City administered public tidelands are located seaward of the designated bulkhead line. Thus, there are no public tidelands on the subject sites. Public access to the harbor is available approximately 60 feet westerly of the subject site at the J St. street-end and 90 feet easterly at the K St. street-end.

Project Description

The Applicant for CDP No. 5-26-0220 and the Applicant for CDP No. 5-26-0221 for the related permit on the adjacent property (herein 'Applicant') propose the demolition of a wood wall constructed in the winter of 2018-2019 by previous owners across both subject sites without the proper City permits or Coastal Development Permits and the construction of a new permanent cast-in-place concrete seawall pulled back landward 4-feet from the alignment of the adjacent bulkhead-like structures on adjoining properties. The seawall would span across each of the 30-foot wide lots, 60-feet long in total.

The proposed new seawall would consist of 8-inch thick "Truline" piles filled with concrete and embedded 8-feet deep into the harbor sand, reinforced with a concrete cap/coping reinforced with subterranean horizontal helical anchor rods/tie-back bracing system, and a 3-foot-6-inch tall and 10-inch thick concrete stem wall atop the coping cantilevered bay ward 4-feet beyond the seawall in order to align with the adjacent bulkhead-like structures. The elevation of the top of coping is at a height of 7.7 feet MLLW (elevation 7.5 feet NAVD88) and the stem wall at a height of 11.2 MLLW (elevation 11.0 NAVD88) with future potential to be raised to a height of 14.60 MLLW (elevation 14.4 NAVD88). The stem wall is engineered to allow for future vertical extension to accommodate projected future sea level rise. New wood stairs are also proposed to be constructed from the existing piers at both sites to provide access to the remaining sandy beach area (**Exhibit 2**).

The Applicants' original submittals proposed construction of the new seawalls in alignment with existing bulkhead-type structures on adjacent neighboring properties (**Exhibit 2**). However, as this would result in back fill of intertidal habitat areas behind the seawalls, the Applicants worked with staff to pull back the proposed new seawalls as much as possible with the use of return walls¹ while still maintaining structural stability per their engineering consultant. To quantify the remaining intertidal impact after the 4-foot landward shift, the Applicants' engineering consultant overlaid the revised seawall alignment on a Google Earth aerial photograph dated October 19, 2016, which shows the largest amount of wet sand of any historic aerial photograph. Based on the October 2016 aerial, 686 square feet of wet sand lies landward of the outside face of the proposed seawalls: approximately 472 square feet at 1805 East Bay Ave. and

¹ A return wall (also called a wing wall or end wall) is a short, angled section of a seawall or bulkhead that extends landward from the main vertical face. It is designed to tie the seawall to adjacent structures or extend far enough to prevent flanking erosion that could cause loss of backfill and structural failure

approximately 214 square feet at 1807 East Bay Ave., the area is illustrated in **Exhibit 5**.

After extensive investigation, the Applicants were not able to identify any currently available program which would result in the like for like restoration of intertidal areas to mitigate for the impact at these subject sites. Staff communication with past applicants in Newport Bay over the years has indicated that there is a lack of available sites (and any ongoing programs) for mitigation for loss of soft-bottom/inter-tidal marine habitat. Thus, to mitigate the quantified intertidal-area loss, the Applicants propose a \$10,692.24 combined contribution to a restricted City of Newport Beach account dedicated to a selected Newport Harbor public-access improvements to serve as an in-lieu fee instead of like-for-like mitigation. The contribution amount was calculated using the 686 square feet of impacted wet sand area and a \$19.37/square foot in-lieu fee ($686 \text{ sf} \times \$19.37/\text{sf} = \$13,287.82$). This in-lieu fee formula was provided by Coastal Commission staff in email correspondence from September 2, 2026, based on current cost of sand for beach replenishment projects. In addition to this sum, the Applicants have agreed to contribute an additional \$30,000 to the above-described fund to address the Coastal Act violation described in Section E: Unpermitted Development. Thus, the total payment required by Special Condition #2 is \$43,287.82.

The Applicants for the related permit on the adjacent property have confirmed that unpermitted development in the form of a wood wall that has performed as a makeshift bulkhead/seawall exists on the subject sites constructed by previous property owners. The wood wall expanding across both properties constructed without a coastal development permit constitutes a violation of the Coastal Act (*refer to Section E: Unpermitted Development* of the staff report for further findings). Pursuant to this permit application, the Applicants will remove the unpermitted wood wall.

Background/Previous CDP Actions

Coastal Development Permit application 5-96-101-W, for development at 1805 E. Bay Ave. (one of the two subject sites) was approved by the Commission as a De Minimis Waiver in June 1996 for the construction of the existing 2,875 square foot two-story single-family residence with a 305 square foot garage and covered patio and 24-inch high seat wall/garden wall at the end of the patio along the seaward side of the residence. The previous pre-Coastal Act residence was demolished in 1995 after a fire. No bulkhead/seawall protected that pre-Coastal Act structure, and no bulkhead/seawall was proposed or approved when the site was redeveloped.

Coastal Development Permit 5-01-142-W at 1807 E. Bay Ave. (one of the two subject sites) was approved by the Commission as a De Minimis Waiver for the demolition of an existing single-family residence. The same year, Coastal Development Permit 5-01-345-W approved also as a De Minimis Waiver for the construction of a new 3,138 square foot, two-story, 26-foot tall single-family residence with attached two-car garage. No bulkhead/seawall was present at the site when the pre-Coastal Act home was demolished, and none was proposed or approved when the site was redeveloped.

In CDP 5-02-302, for the property next door at 1813 E Bay Ave., the corner residence at K street, the Commission approved the demolition of the existing residence and construction of a new residence, pool and block wall along the bay-facing side of the lot, that although not an engineered bulkhead/seawall, does provide the site some protection against coastal flooding. The permit record shows that the applicant and the Commission found that the block wall and pool would not serve as a seawall. Further, the Commission's permit included special conditions requiring that no shoreline protective device will be constructed in the future to protect the new development at the site.

B. Standard of Review

The City of Newport Beach Local Coastal Program (LCP) was certified on January 13, 2017. However, the proposed project consists of development located entirely within the retained permit jurisdiction of the Commission (**Exhibit 7**). Consequently, the standard of review is Chapter 3 of the Coastal Act, and the certified LCP serves as guidance.

C. Coastal Hazards

Coastal Act section 30235 states:

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. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

Coastal Act Section 30253 states, in relevant 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.

Coastal Act Section 30233 states:

- (a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and

The City of Newport Beach's certified LCP, Land Use Plan Policies state:

The Land Use Plan portion of the City of Newport Beach's certified LCP also includes the following policies that are relevant to the instant project:

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

Policy 2.8.6-7. Discourage shoreline protective devices on public land to protect private property/development. Site and design any such protective devices as far landward as possible. Such protective devices may be considered only after hazard avoidance, restoration of the sand supply, beach nourishment and planned retreat are exhausted as possible alternatives.

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

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

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

The City of Newport Beach certified LCP, Implementation Plan regulations include:

Section 21.30.030(C) Development Standards

3. Protective Structures. The following standards shall apply to the construction of protective structures:

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

i. Not subject to recorded waivers of future protection.

ii. Threatened by natural hazards, provided that the protective structures are limited to the minimum required to protect the existing structure and located on private land, not State tidelands. For purposes of this subsection, "existing structure" shall consist only of a principal structure (e.g., residential dwelling, required garage, second residential unit, etc.) and shall not include accessory

structures (e.g., cabanas, decks, landscaping, patios, pools, stairs, tennis courts, etc.).

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

c. Use of Sand Berms and Sand Dunes. In shoreline areas, temporary sand berms and/or permanent sand dunes may be installed to protect structures from wave uprush, provided that their installation minimizes significant impacts to coastal access and resources. Temporary sand berms shall avoid all areas of existing southern foredune and southern dune scrub habitat. When feasible, nonstructural methods (e.g., dune restoration, sand nourishment, etc.) shall be used instead of shoreline protective structures.

d. Protective devices shall be designed and sited to:

- i. Be as far landward as possible and within private property, where feasible;
- ii. Eliminate or mitigate adverse impacts to coastal resources;
- iii. Minimize alteration of natural shoreline processes;
- iv. Provide for public access to State tidelands and recreational areas and facilities;
- v. Minimize visual impacts and maximize the enjoyment of the natural shoreline environment;
- vi. Eliminate or mitigate adverse impacts on local shoreline sand supply;
- vii. To have the smallest footprint possible; and
- viii. Cause no reduction in public access, use, or enjoyment of the natural shoreline environment, and preserve or provide access to public recreational lands and facilities.

e. Mitigation Required. Mitigation shall be required, either through fees or other actions as applicable and feasible, for adverse impacts on local shoreline sand supply, for loss of sandy beach and other coastal habitats, and for adverse impacts to public access, visual, and other coastal resources.

f. Periodic Monitoring Required. Periodic monitoring of the protective device and surrounding site shall be required to examine excessive scour, erosion, or other impacts

to on-site and adjacent resources, exposure of subsurface elements, as well as damage to the protective device or movement from its initial footprint. The landowner shall apply for a coastal development permit to undertake any necessary repair and maintenance to return the structure to its authorized condition, including reburial of exposed subsurface elements and/or visual treatment.

Section 21.30.050(I) Bulkhead Development Standards

I. Bulkheads.

1. All bulkheads shall be installed within established bulkhead lines or at a location behind the bulkhead line that would preserve the design profile of the harbor. Any retaining or ornamental wall installed landward of the bulkhead line shall be considered a bulkhead if it also serves to contain the waters of the harbor and shall be processed in the same manner as if it were on the bulkhead line. The establishment of bulkhead lines does not necessarily allow the property owner to build to the limits of the bulkhead line, due to the potential environmental considerations established by the State of California and/or the Federal Government.

The Harbor Resources Division may approve bulkheads located between U.S. Bulkhead Station Nos. 112 and 109, not to exceed the bayward side of the "Vacated East Bay Avenue." U.S. Bulkhead Station No. 104 for the addresses at 2209, 2223, 2227, 2231 and 2233 Bayside Drive: staff recommendation for a bulkhead at these properties shall not exceed a point bayward of the average high tide line established at a point forty (40) feet landward of the face of the bulkhead at the property at 2137 Bayside Drive, and then on a straight line from that point to the bayward-most point of the bulkhead at the property at 2301 Bayside Drive.

2. Bulkheads shall be designed and sited to protect the character of the existing shoreline profiles and avoid encroachment onto public tidelands.

3. Maintenance or replacement of existing bulkheads is permitted when expansion or encroachment into coastal waters is limited to the minimum extent necessary to repair, maintain, or replace an existing bulkhead and the backfill is not used to create new usable residential land areas.

Coastal Erosion and Flooding Hazards

The project sites are bayfront lots adjacent to Lower Newport Bay Harbor. Due to their location, the sites are subject to erosion, wave and flooding hazards, and may be subject to increased flooding in the future because of the fluctuating nature of coastal conditions, such as changes to the sand supply and sea level rise.

The two subject adjacent lots (1805 and 1807 E. Bay Ave.) are a few of the remaining lots along E. Bay Ave. or other streets along Balboa Peninsula fronting Lower Newport Harbor without a bulkhead or a seawall. At the time these sites were re-developed in the 1990s and early 2000s, the sites were determined by Commission staff to be safe

from coastal hazards such as erosion and flooding. The bulkhead-like structures on the residential lots adjacent to the subject sites were constructed prior to the certification of the LCP policies and regulations.

However, presently, the Applicants have submitted a coastal hazard study by GeoSoils Inc. dated 12/2/22 and updated 12/5/25 and 2/16/26 which collectively state that the sites are subject to significant erosion from boat wakes, tidal currents and strong offshore winds, including very strong Santa Ana winds along Lower Newport Bay Harbor. In addition, the steep gradients from the shoreline to the Newport Harbor channel depth result in sand transport from the beach area back into the channel. According to information provided by the Applicants, sand along this section of the shoreline was originally placed from dredging during the construction of the Lower Newport Bay Harbor channels in the 1930s. The report provides a 1938 aerial photograph showing a compartment of shoreline bounded by groins filled by dredging immediately adjacent to the subject sites. Once the initial construction dredging of the channels was completed, the only recurring dredging has been from infrequent local individual boat dock maintenance dredging and some dredging to maintain the channel depths. The report states that in 2017 the berth area of the site docks were dredged and the material placed in front of the sites and by 2018 most of the sediment (20-30 feet) was eroded away. Thus, with limited available sand to re-nourish the bay fronting properties along the Balboa Peninsula, and deterioration of the groins over time, the Applicants' consultant concludes that rapid shoreline erosion rates make a seawall necessary to protect against flooding and erosion of adjacent residential properties and of existing public infrastructure such as the nearby public streets. The report states: 1) the proposed seawall will protect against flooding under expected sea level rise estimates, 2) the proposed seawall could be adapted/raised in the future to respond to possible future sea level rise; 3) and such adaptation would not require further seaward expansion from the proposed seawall footprint.

Coastal Act Section 30230 requires that marine resources be maintained, enhanced, and where feasible, restored, and for uses of the marine environment to 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. Construction of the proposed seawalls would result in unavoidable loss of intertidal habitat, which is an important component of the marine environment (See Section D: Marine Resources below).

However, Coastal Act Section 30235 requires the Commission to permit the construction of seawalls and other types of armoring to protect existing structures and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. In this case, the project is necessary to protect neighboring existing structures and public infrastructure on Balboa Peninsula. The Applicants provided photographic evidence of the high-water line at or landward of the nearby public street-ends. The Applicants' provided an Alternatives Analysis prepared by PMA Consulting, Inc. dated 3/20/25. The report characterizes the project as "involving the completion of a section of bulkhead in Newport Harbor where the adjacent properties are protected by bulkheads" and concluded that flooding due to a no-project alternative would continue to

damage public facilities and infrastructure, and that the damage caused by flooding would be exacerbated with even minor sea level rise. In addition, ongoing erosion would continue and lateral spreading of unconfined soils from the subject sites would damage the adjacent residential properties including undermining their foundations. The bulkhead/seawall is proposed to be revised to be pulled back landward as much as feasible due to engineering constraints and thus achieve some minimization of loss of intertidal habitat, though not able to fully avoid the impact. Therefore, the Applicants propose mitigation for the unavoidable impacts to intertidal habitat in the form of payment of an in-lieu fee to improve public access to tidelands in Newport Harbor.

The submitted coastal hazard studies also included an analysis of future Sea Level Rise (SLR) risks at both 1805 & 1807 E Bay Ave. The report describes that the site and area currently flood at high tide from Newport Bay and that the area has been subject to significant flooding in the past. The report concludes that per the Commission's SLR Guidance, in about 4 years' time, by 2030, SLR is predicted to be at almost 5 inches. This amount of SLR will allow bay water to travel through the site, if no bulkhead is present, and flood a large area of the Balboa Peninsula. Future sea SLR will only make the flooding more frequent and intense at the site and in the area. Due to the very flat topography with low lying streets, a small change in flood elevation will produce a large change in the total flooded area.

Furthermore, raising the height of the proposed seawall may be required sometime in the future to address the impact of sea level rise in order to protect the existing public street which is at a lower elevation. As proposed, the seawall could support a replacement of the 3-foot-6-inch concrete stem wall (elevation +11 feet NAVD88 or 11.20 MLLW) with a taller concrete stem (elevation +14.40 feet NAVD88 or +14.60 MLLW) if deemed necessary to accommodate sea level rise and thus ensuring protection of existing development on Balboa Peninsula without future seaward encroachment. Although the Applicants' consultants indicate that the seawall elevation would ensure the protection of the existing public infrastructure along this area of Balboa Peninsula from flooding at this time, shorelines are dynamic environments, which may be subject to unforeseen changes. The extent of SLR in the future also adds some uncertainty. Therefore, **Special Condition 6** requires the Applicants to acknowledge and agree that the sites may be subject to hazards which will worsen with future SLR and to assume the risks from such hazards. **Special Condition 7** also would require an amendment to this permit from the Commission or an additional CDP from the Commission for any future improvements to the structure authorized by this permit. Furthermore, **Special Condition 8** requires the Applicants to record a deed restriction informing future property owners of the special conditions of this CDP.

Commission staff has reviewed the submitted studies and concurs that construction of a seawall on the subject sites is necessary to protect existing development in the vicinity, including other residences, the public street and public infrastructure on Balboa Peninsula from flooding. However, although a seawall may be allowable to protect existing structures, the siting/alignment of the seawall must also be taken into consideration.

Bulkhead Alignment

Coastal Act section 30235 states, in part: “Seawalls 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.” The City’s certified LUP policies and IP Sections cited above also requires bulkheads to be sited as far landward as possible and within private property, where feasible; avoid encroachment onto public tidelands, eliminate or mitigate adverse impacts to coastal resources, and prohibits the construction of protective structures for the purpose of enlarging or expanding areas for new development. Typically, the Commission’s approach has been to require protective devices to be located as far landward as feasible in order to mitigate adverse effects that protective devices typically have (e.g. public access impediment, adverse visual impacts, protection of biological resources). This ensures that protective devices will be sited where they pose the least impact to coastal resources, while still allowing for the protection of existing development.

The establishment of bulkhead lines in Newport Harbor by the U.S. Army Corps of Engineers does not necessarily allow the property owner to build to the limits of the bulkhead line. The City’s certified LUP policies stated in the section above, include the following on where bulkheads should be sited: “to minimize impacts to coastal resources”, “as far landward as possible”, “to the minimum required to protect existing structures”, “to protect the character of existing shoreline profiles and avoid encroachment onto public tidelands”, and to “limit bulkhead expansion or encroachment into coastal waters to the minimum extent necessary and do not allow the backfill to create new usable residential land areas.” The City’s LUP requires bulkheads to be sited in the most landward location to protect the bay and prevent further bayward encroachment and loss of marine habitat areas.

IP Section 21.30C.050(I) specifically allows the City to approve bulkheads [seawalls] located between U.S. Bulkhead Station Nos. 112 and 109, not to exceed the bayward side of the “Vacated East Bay Avenue.” The two subject sites located between J and K Streets fall within this “Vacated East Bay Avenue” area. However, the other residential lots on this block with bulkhead-like structures do not meet this requirement and are built exceeding the bayward side of the “Vacated East Bay Avenue.” The sites’ Topographic Survey included in **Exhibit 3** depicts the vacated right-of-way and the location of adjacent bulkhead-like structures on the adjacent properties.

The Applicants originally proposed new seawalls aligned with the adjacent bulkhead-like structures (**Exhibit 2**) and resulting in significant fill of the intertidal area and loss of intertidal habitat in non-compliance with Coastal Act Section 30230, IP Section 21.30.030(C)(b) prohibiting the backfill for the construction of a shoreline protective device to be used to create new usable land areas; and Section 21.30.030(C)(d) requiring shoreline protective devices be as far landward as possible and within private property, where feasible and to eliminate or mitigate adverse impacts to coastal resources. In the project’s alternatives analysis, the Applicants’ consultant state that “a bulkhead landward and not in alignment with the bulkheads on the adjacent properties would result in increased erosion, undermining the site walls and damaging the site

improvements including foundations at both adjacent sites due to lateral spreading of unconfined soils from the subject sites continuing to occur in the gap between the existing bulkheads and the new more landward bulkheads.” This lateral spreading of unconfined soils can in fact be prevented with the construction of return walls projecting in a bayward location to protect the offset sides of the neighboring properties and reduce the risk of erosion from lateral spreading. However, according to the Applicants’ engineer, long return walls (over five feet long) are not structurally feasible; and the Applicants, therefore, propose to revise the bulkhead/seawall alignment relocating it four-feet landward from the originally proposed alignment and cantilevering the stem wall and concrete deck four-feet. Thus, minimizing fill and loss of intertidal habitat to the greatest extent feasible. **Special Condition 1** requires the Applicants provide final plans depicting this proposed project revision. This revision brings the project into closer conformity with IP Section 21.30C.050(l)(1) and the Applicants were able to acquire a variance from the local government for a minor deviation from this requirement as part of their Approval-in-Concept.

Therefore, as conditioned, the Commission finds that the proposed development would be consistent with Sections 30233, 30235, 30253 of the Coastal Act regarding coastal hazards and in accordance with the certified LCP.

D. Marine Resources

The Coastal Act regulates the type of development allowed within wetlands, sloughs, rivers, and other coastal waterway. Sections 30233 states, in relevant part:

Section 30233(a). The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects...

The Coastal Act also includes a suite of protections for sensitive habitats including aquatic habitats and the water quality needed to support their health. Coastal Act Sections 30230 and 30231 protect marine and inland watercourse biological resources stating:

Section 30230. 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. 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.

The City of Newport Beach's certified Land Use Plan states:

4.2.3-11. [in part] Require the following minimum mitigation measures if a project involves diking or filling of a wetland:

C. However, if no appropriate sites under options (A) or (B) are available, the applicant shall pay an in-lieu fee of sufficient value to an appropriate public agency for the purchase and restoration of an area of equivalent productive value, or equivalent surface area.

4.2.3-16. Design and site all structures permitted to encroach into open coastal waters, wetlands, and estuaries to harmonize with the natural appearance of the surrounding area.

4.1.2-1. Maintain, enhance, and, where feasible, restore marine resources.

4.1.2-2. Provide special protection to marine resource areas and species of special biological or economic significance.

4.2.1-2. Protect, maintain and, where feasible, restore the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes.

Marine Biological Resources

The intertidal zone is located along coastlines, and may include rocky shores and sandy shores. The intertidal zone experiences two different states: one at low tide when it is exposed to the air and the other at high tide when it is submerged in seawater. The zone is completely submerged by the tide once or twice every day. Sandy shores provide sediments in which organisms bury themselves to stay cool and moist during low tide. Where a species lives within the intertidal zone depends on its tolerance of underwater and above-water conditions. The intertidal zone can be further divided into three zones: high tide, middle tide, and low tide. The high tide zone is only submerged at high tide and is hotter and drier as a result. The middle tide zone is submerged and exposed for equal amounts of time. The low tide zone is only exposed during low tide and has the greatest biodiversity of the three zones because it provides more favorable conditions for those organisms that cannot tolerate air exposure for long. Sandy intertidal zone hosts a diverse community of small invertebrates and microorganisms such as nematodes, copepods and tardigrades that live between sand grains which feed on bacteria and detritus, and in turn are prey for larger animals. While conditions in

the intertidal zone can be extreme, it is home to many living things and is also an important feeding spot for both resident and migrating birds. This ecosystem additionally provides protection against erosion and keeps storm waves from reaching buildings along the shore.

According to a 2024 City of Newport Beach eelgrass survey, eelgrass meadows are present in the shallow bay waters adjacent to the site beyond the designated bulkhead line. Eelgrass serves as critical habitat for numerous species. They provide nursery grounds for juvenile fish, crabs, shrimp, shellfish, offering shelter and foraging areas before these species move into deeper waters and support migratory waterfowl and sea turtles. Additionally, eelgrass beds help slow water currents and trap sediments, stabilize the seafloor, improve water clarity, and reduce coastal erosion.

In the winter of 2018-2019, previous property owners constructed an unpermitted wood wall not to City standards. The unpermitted wood wall is aligned with adjacent bulkhead-like structures and it has remained in place providing the site and adjacent existing development and public infrastructure on Balboa Peninsula with some protection from continuing erosion and flooding. The Applicants' engineering consultant states that a new engineered concrete seawall will confine the site soils and mitigate the potential for the progression of damage to the site and adjacent residences foundations and provide protection of Balboa Peninsula in consideration of SLR and is consistent with the City's SLR adaptation strategy for Newport Bay. The new concrete seawall is proposed 4-feet landward than the unpermitted wood wall. However, the construction of the unpermitted wood wall has in effect "set" the high-water mark, but for the wall, the highest water mark would be inland of the unpermitted wall, thus preventing an accurate analysis of impacts/possible loss of intertidal area with the construction of the proposed new concrete seawall.

The proposed project requests authorization of a bulkhead/seawall located further bay ward than is necessary to protect existing development. A more landward alignment avoiding the fill of the intertidal area would increase the capability of the intertidal area located bay ward of existing development to continue to provide a larger intertidal area, thus providing an increase in functional lift of intertidal habitat. As a result, the alignment of the proposed bulkhead does not qualify as the least environmentally damaging alternative. Due to engineering constraints caused by existing bulkhead-like structures seaward of the proposed seawall location, the proposed seawall placement (i.e., four feet landward than the existing bulkhead-like structures with connecting return walls) is the farthest landward possible alignment in order to provide necessary structural stability to the bay ward return walls which otherwise would be unsupported.

To quantify the remaining intertidal impact after the proposed four-foot landward shift, PMA Consulting overlaid the revised seawall alignment on a Google Earth aerial photograph dated October 19, 2016, which shows the largest amount of wet sand of any historic aerial photograph. Based on the October 2016 aerial, 686 square feet of wet sand lies landward of the outside face of the proposed seawalls: approximately 472 square feet at 1805 East Bay Ave. and approximately 214 square feet at 1807 East Bay

Ave. (See **Exhibit 5**). The Applicants propose to mitigate for the fill and loss of this intertidal-area through a \$10,692.24 combined contribution to a restricted City of Newport Beach account dedicated to a selected Newport Harbor public-access improvements. The amount was calculated in consultation with Commission staff using the 686 square feet of impacted wet sand area and a \$19.37/square foot in-lieu fee (686 square feet x \$19.37/square foot = \$13,287.82) based on the current cost sand for beach sand replenishment projects in the South Coast region. Funds would be accepted by City Council under Council Policy F-3 and deposited into a restricted Tidelands Capital account earmarked solely for the selected public access project. **Special Condition 2** requires the Applicants submit proof of payment of the habitat mitigation in-lieu fee to the City of Newport Beach or other entity in support of providing increased public access to Newport Harbor prior to issuance of the CDP. Additionally, **Special Condition 4**, requires the Applicants to agree to no future seaward extension/encroachment of the seawall into coastal waters.

As conditioned, the project would minimize the environmental impacts resulting from the placement of the bulkhead in the marine environment and impacts to marine organisms and would ensure that the biological productivity of the bay and remaining intertidal areas located seaward of the bulkhead are maintained.

Construction Impacts to Water Quality

The proposed development is adjacent to bay waters. Construction phase demolition and construction activities have the potential to adversely affect marine resources, water quality and the biological productivity of coastal waters. Construction of any kind adjacent to or in coastal waters has the potential to impact marine resources. The bay provides an opportunity for water oriented recreational activities and also serves as marine habitat such as the eelgrass meadows in the bay waters immediately in the vicinity of the proposed development discussed above. Because of the coastal recreational activities and the sensitivity of the harbor habitat, potential water quality issues must be examined as part of the review of this project. In order to avoid adverse construction-related impacts upon marine resources, **Special Condition 3** outlines construction-related requirements to provide for appropriate construction methods as well as the safe storage of construction materials and the safe disposal of construction debris. As conditioned, the project will minimize the construction-phase effects of the proposed development on water quality and the bay habitat.

Therefore, as conditioned, the Commission finds that the proposed development will not have an adverse impact on marine resources and will not result in adverse impacts to water quality and is consistent with Sections 30233(a), 30230, and 30231 of the Coastal Act.

E. Unpermitted Development

Development has occurred on the subject site without benefit of the required coastal development permit, including construction of wood wall in an intertidal sandy beach

area that may or may not have resulted in the fill of coastal waters. All work occurred within or adjacent to Newport Bay harbor waters. 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 wall spanning both properties at 1805 and 1807 E. Bay Ave. was constructed in 2018 by previous property owners. The current owners/applicants at 1805 and 1807 E. Bay Ave. propose under this CDP application a complete redevelopment of the unpermitted structure including demolition/removal of the unpermitted wood wall and construction of a new engineered concrete seawall with a tie-back system pulled back 4-feet landward than the existing unpermitted wall. Demolition of the encroachment into harbor/bay waters is necessary for compliance with the Coastal Act and City of Newport Beach LUP policies for the protection of environmentally sensitive habitat areas.

Unpermitted development cannot be used as a basis to justify development in areas where, were it not for the unpermitted development, such development would not be allowed. Thus, an evaluation of a proposed project must consider site conditions (i.e., use a “baseline”) that assumes the unpermitted development had not occurred. The Commission’s findings are based on protection of all coastal resources present on the site and consideration of those that would be present on site if unpermitted development had not occurred (i.e., the intertidal habitat areas that would exist if not for the construction of the unpermitted seawalls). To mitigate impacts to these areas from the unpermitted wood walls, **Special Condition 2** requires the Applicants to pay \$30,000, \$15,000 each, into the City of Newport Beach public access fund described above, in addition to the \$10,692.24 for intertidal habitat mitigation.

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 Chapter 3 of the Coastal Act. The certified Newport Beach LCP was used as guidance by the Commission to reach its decision. 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, other than the unpermitted development described herein. However, approval of this application pursuant to the staff recommendation, along with issuance of the permit, and the Applicants subsequent compliance with all terms and conditions of the permit will result in resolution of Applicants’ liability for the above-described violations.

F. Public Coastal Access

Coastal Act Sections 30211 and 30212 protect public access to the shoreline and sea.

Section 30211. 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.

Section 30212. (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected...

The City of Newport Beach certified Land Use Plan states:

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.

3.1.1-2. Protect and enhance all existing public street ends providing public access to the shoreline, beaches, coastal parks, and trails.

Coastal Act Sections 30211 and City certified policies protect the public's right of access to the sea to and along the beach/shoreline and to offshore waters for public recreational access purposes. Coastal Act Section 30212 requires new development provide public access to the shoreline unless adequate access exists nearby. The two subject sites are located on the 1800 block of E. Bay Ave. in the middle of the block between J St. and K St. There is no direct public pedestrian access to Newport Bay Harbor through the subject residential lots. Adequate public access to the harbor is available nearby, approximately 60 feet westerly at the J St. street-end and 90 feet easterly at the K St. street-end. Furthermore, the proposed seawalls would not be located on public tidelands and setback from public tidelands in order not to impact the ability of the public to access Newport Bay Harbor.

Additionally, as approval of this permit does not constitute a waiver of any public rights that may exist on the property, **Special Condition 3** is imposed informing the permittee not use this permit as evidence of a waiver of any public rights that may exist on the property now or in the future.

Therefore, the development will not create adverse impacts on coastal access and recreation. Therefore, the Commission finds that the proposed development would be consistent with Sections 30211 and 30212 of the Coastal Act regarding public access.

G. California Environmental Quality Act

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 modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act ("CEQA"). The findings above are incorporated herein by reference.

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. As a certified regulatory program, Section 21080.5(d)(2)(A) of

CEQA still applies to the Commission's CDP regulatory process and prohibits approval of a proposed development 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, either individually or cumulatively with other past, current, or probable future projects. The proposed project has been conditioned to be consistent with the Chapter 3 policies of the Coastal Act. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the development 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, has no remaining significant environmental effects, either individual or cumulative, and complies with the applicable requirements of the Coastal Act to conform to CEQA.

Section 21080.5(d)(2)(A) of CEQA prohibits approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment. The project as conditioned herein incorporates measures necessary to avoid any significant environmental effects under the Coastal Act, and there are no less environmentally damaging feasible alternatives or mitigation measures. Therefore, the proposed project is consistent with CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

Coastal Development Permit Application No. 5-26-0220 and CDP 5-26-0221 and associated file documents.

Skelly Engineering, February 16, 2026. Coastal Engineering and Sea Level Rise Analysis for the Construction of a Bulkhead at 1805 & 1807 E Bay Avenue, Newport Beach, CA.

PMA Consulting, Inc. Consulting Structural Engineers, September 22, 2026. Return Walls and Wet Sand Areas Calculations, 1805 & 1807 East Bay Avenue, City of Newport Beach, County of Orange.

PMA Consulting, Inc. Consulting Structural Engineers, March 20, 2026. Bulkhead Design Alternatives Analysis, 1805 & 1807 East Bay Avenue, City of Newport Beach, County of Orange.

Skelly Engineering, December 8, 2025. Updated Coastal Engineering Justification for the Construction of a Bulkhead at 1805 & 1807 E Bay Avenue, Newport Beach, CA.

GeoSoils, Inc., December 2, 2022. Coastal Engineering Justification for the Construction of a Bulkhead at 1805 & 1807 East Bay Avenue, Newport Beach, CA.