

CALIFORNIA COASTAL COMMISSION

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F12b

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-17-0773

Applicant: Edie Miller

Agent: Ronald Wikstrom

Location: 1017 Seal Way, Seal Beach, (Orange County)

Project Description: Demolition of a 1,890 square foot two-story duplex with an attached 400 square foot two-car garage and carport and construction of a new 3,119 square foot, 24 foot above finished grade, two-story, single-family residence with an attached 540 square foot two-car garage on a beach fronting lot.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

Commission staff is recommending **APPROVAL** of the demolition of a duplex and construction of a new single-family residence on a beach fronting lot. The major issues raised by this proposed development concern beachfront development that could be affected by waves, erosion, storm conditions, sea level rise or other natural hazards in the future. In addition, the proposed development raises water quality and marine resource and affordable housing concerns.

The proposed project involves the replacement of an existing duplex (a legal non-conforming use) with a single family residence in an area where the Commission has approved twelve such similar types of development since 1994. The subject site is designated as Residential High Density (RHD-20) in its Zoning Code that allows maximum development of 1 unit per 2,178 square feet. The subject property has a lot size of 3,373 square feet, which allows only one unit

on the property by the City's zoning regulations. Thus, the lot cannot accommodate a duplex. While the zoning code is not the standard of review for the Commission's review of the project, the fact that the zoning code only allows one lot supports the Commission's approval that the project would not reduce housing density since only one unit is permitted on the property per the City's zoning regulations.

The City's 2013-2021 Housing Element states that the City examines any Coastal Zone development that entails demolition or conversion of residential units that are not categorically exempt from the California Environmental Quality Act (CEQA) as required under the California Government Code (§65588(d) pursuant to Section 65590 (The Mello Act)). The Mello Act is a statewide law which seeks to preserve housing for persons and families with low and moderate incomes in the Coastal Zone. Regarding the proposed project, the City of Seal Beach determined that it was a Ministerial Project and therefore since it was not considered categorically exempt, the City was required to analyze its compliance with the Mello Act. The City concluded that neither unit was an affordable unit. While the existing units are not considered affordable and the subject lot is too small to provide a second unit, the subject site is located in a densely filled residentially zoned area where many residential opportunities and amenities (i.e., restaurants, grocery store, etc.) are available. The public beach is also located adjacent to the public walkway fronting the subject site. Therefore, the project is located in an area that can accommodate it and will not have cumulative adverse impacts to coastal resources and located within these nearby amenities which minimizes vehicle miles traveled and energy consumption.

The proposed project is located in an area where coastal hazards exist and can adversely impact the development. Therefore, the Commission imposes **Special Condition No. 2**, requiring the applicant to assume the potential risk of injury and damage arising from coastal hazards that may threaten the development.

No shoreline protective device is proposed to protect the development pursuant to this permit. However to ensure that no future shoreline protective device is proposed, the Commission imposes **Special Condition No. 1**, which requires the applicant to agree that no future shoreline protective device is necessary to protect the proposed development.

Any potential changes to the proposed project may result in adverse impacts to coastal resources. To ensure that development on the site does not occur which could potentially result in adverse impacts to coastal processes, the Commission imposes **Special Condition No. 3**, which informs the applicant that future development at the site requires an amendment to Coastal Development Permit No. 5-17-0773 or a new coastal development permit.

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

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

While the proposed project raises coastal resource issues, conditions have been imposed in order to minimize potential adverse impacts from the development consistent with the Coastal Act. In addition, the project is consistent with previous Commission approvals in the area.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Seal Beach does not have a certified Local Coastal Program. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act.

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APPENDICES

[Appendix A – Substantive File Documents](#)

EXHIBITS

[Exhibit No. 1 – Location Map](#)

[Exhibit No. 2 – Site Plan](#)

[Exhibit No. 3 – Floor & Roof Plans](#)

[Exhibit No. 4 – Elevation Plans](#)

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit No. 5-17-0773 pursuant to the staff recommendation.*

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

Resolution:

The Commission hereby approves a Coastal Development Permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

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 or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. No Future Shoreline Protective Device.

- A. By acceptance of the permit, the applicant/landowner agrees, on behalf of herself and all successors and assignees, that no new shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-17-0773 including, but not limited to, the residence, garage, patio and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, sea level rise, or any other coastal hazards in the future. By acceptance of this permit, the applicant/landowner hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under applicable law.
- B. By acceptance of this permit, the applicant/landowner further agrees, on behalf of itself and all successors and assigns, that the landowner shall remove the development authorized by this permit including, but not limited to, the residence, garage, and driveway/patios, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above, or if any public agency requires the structure to be removed, or if the State Lands Commission requires the structures to be removed in the event that they encroach on to State tidelands. If any portion of the development at any time encroaches onto public property, the permittee shall either remove the encroaching portion of the development or apply to retain it. Any application to retain it must include proof of permission from the owner of the public property. The permittee shall obtain a coastal development permit for removal of approved development unless the Executive Director determines that no coastal development permit is legally required.

2. Assumption of Risk, Waiver of Liability and Indemnity.

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, erosion, storm conditions, liquefaction, flooding, and sea level rise; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; 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.

3. Future Development.

This permit is only for the development described in Coastal Development Permit No. 5-17-0773. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-17-0773. Accordingly, any future improvements to the residence and garage, foundations and patio authorized by this permit, including but not limited to repair and maintenance

identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Coastal Development Permit No. 5-17-0773 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

4. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris. The permittee shall comply with the following construction-related requirements:

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

M. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

5. Landscaping-Drought Tolerant, Non-Invasive Plants. Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>). Use of reclaimed water for irrigation is encouraged. If potable water is used for irrigation only drip or micro spray irrigation systems may be used. Other water conservation measures shall also be considered, such as use of weather based irrigation controllers.

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

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION AND LOCATION

The applicant proposes to demolition of a 1,890 square foot, two-story duplex with an attached 400 square foot two-car garage and carport and construction of a new 3,119 square foot, 24 feet above finished grade, two-story, single-family residence with an attached 540 square foot two-car garage on a beach fronting lot. ([Exhibit No. 2-4](#)). In addition, the project includes a beachfront 1st floor patio and a 2nd floor deck and a roof top deck. No grading is proposed. The foundation system for the project will consist of footings and a mat slab.

The project site is a beach fronting lot located at 1017 Seal Way within the City of Seal Beach, Orange County ([Exhibit No. 1](#)). The lot size is approximately 3,659 square feet and is currently zoned as Residential High Density in the City of Seal Beach Zoning Code (not certified by the Commission). The site is located between the first public road and the sea on a lot adjacent to and inland of a public beachfront walkway separated by an existing and to remain 3.5 foot tall wall on the southern property line. The project is sited within an existing urban residential area, located southeast (downcoast) of the Seal Beach Pier and immediately upcoast of the Anaheim Bay jetty.

Glass railings are proposed on the 2nd floor beach fronting decks and they will incorporate Arnold Glass “Ornilux” in order to avoid bird strikes.

B. HAZARDS

Section 30253 of the Coastal Act states, in pertinent part:

New development shall do all of the following:

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

Section 30253 of the Coastal Act states that new development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard and requires that new development shall not create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area, or require construction of protective devices that substantially alter natural landforms along bluffs and cliffs.

There is an approximately 450 foot wide sandy beach between the project site and the Pacific Ocean. Due to its oceanfront location, the project site may be potentially exposed to the hazard of waves, erosion, storm conditions, sea level rise or other natural hazards.

Due to its beach fronting location, an inherently dynamic and potentially hazardous area, the project site must be examined for the potential for erosion, flooding, wave attack and wave runup hazards, including consideration of potential impacts due to severe storm events. Moreover,

these hazards may be exacerbated by expected future sea level rise, which must also be considered. The beach fronting the site has experienced minor, short term, erosion in the past where the shoreline has never eroded back within 150 feet of the site, but it is not experiencing a net long term erosion. Historically to prevent wave runup from reaching the public walkway fronting the site, the City has built a sand berm each winter. To analyze the suitability of the proposed development relative to potential hazards; the applicant has submitted the following coastal hazard analysis of the wave and water level conditions expected at the site as a result of extreme storm, wave action and sea level rise over the next 75-100 years for the planned 75-year life of the proposed residence: *Wave Runup and Coastal Hazards Analysis, 1017 Seal Way, Seal Beach, California* prepared GeoSoils, Inc. dated September 18, 2017.

The analyses state that the historical highest ocean water elevation in this project area is 7.7 feet NAVD88. In addition, the alley at the rear of the project site is at elevation +11.50 NAVD88 and the public beachfront walkway fronting the site is at elevation +10.50 NAVD88. The proposed finished floor elevation of the first floor of the proposed residence is +12.50 feet NAVD88.

Based on sea level rise projections from the April 2017 "Rising Seas in California" by the California Ocean Protection Council (COPC), sea levels may rise between 1.8 feet to 3.3 feet by the year 2092 (the end of the project's estimated 75 year design life). If there were to be a 3.3 foot rise (the upper range of the April 2017 COPC projections for southern California), an extreme high tide still water level of +11.0 feet NAVD88 (+7.7 feet NAVD88 + 3.3 feet = +11.00 feet NAVD88) could result. Such a rise would not exceed the finished first floor elevation, it would be expected to be below the finished floor elevation by 1.50 feet during peak tide or tide and wave events.

Recently in April 2018, the COPC produced a new guidance document for sea level rise. In this document, it states that sea levels may rise between 1.8 feet to 5.3 feet by the year 2092 (the end of the project's estimated 75 year design life). If there were to be a 5.3 foot rise (the upper range of the currently recommended amount of sea level rise to expect, taken from the April 2018 COPC projections for southern California), a likely high tide still water level of +13.0 feet NAVD88 (+7.7 feet NAVD88 + 5.3 feet = +13.0 feet NAVD88) could result. Such a rise would exceed the finished first floor elevation by 1.0 foot. An additional regional sea level rise modeling tool used to assess the vulnerability of coastal areas and the 100 year storm is U.S. Geologic Survey (USGS) COSMOS. Using this tool, it shows that within a 100 year storm event, the site may flood from area drainage by less than 25 centimeters (0.8 feet) of sea level rise. In addition, most of the surrounding area, all the way to Pacific Coast Highway, will flood with 1.25 meter (4.1 feet) of sea level rise. However based upon the project's finished floor level of +12.50 NAVD88, such a 0.8 foot rise would not exceed the finished floor level (+7.7 feet NAVD88 + 0.8 = 8.5 feet NAVD88). Nonetheless, the site would still be subject to sea level rise. Therefore, the proposed development may be impacted by future flooding hazards if sea level rises to the upper range of the currently recommended amount of sea level rise to expect that is taken from April 2018 COPC projections for southern California. In an attempt to minimize risks to life and property from sea level rise-related flood hazards, the applicant has proposed adaptation measures to deal with flooding, such as installing temporary barriers such as sand bags or Federal Emergency Management Agency (FEMA) approved flood shields.

Contrary to staff's assessment of the available data, the coastal hazards analysis for the site concludes that wave runup and overtopping will not significantly impact this site over the life of the proposed development. The report concludes that the property has not been subject to significant wave runup in the past and will not likely be subject to wave runup in the future and that the low height (3.5 feet tall) southern property line wall will prevent wave overtopping from reaching the property. Additionally it found that the proposed development will neither create nor contribute significantly to erosion, geologic instability, or destruction of the site, or adjacent area. Furthermore, it states that there are no recommendations necessary for wave runup protection and that the project minimizes risks from ocean flooding.

Although the applicant's reports indicate that the site is safe for development at this time, beach areas are dynamic environments and staff's assessment of the sea level rise data indicates the property may very well be impacted by sea level rise in the foreseeable future. Such changes and impacts may affect beach processes.

The Coastal Act discourages shoreline protection devices because they generally cause significant impacts on coastal resources and can constrain the ability of the shoreline to respond to dynamic coastal processes. This is expected to be exacerbated with future sea level rise. Adverse impacts associated with shoreline protection devices include: as a sandy beach erodes, the shoreline will generally migrate landward, toward the structure, resulting in reduction and/or loss of public beach area and in some cases, public trust lands, while the landward extent of the beach does not increase; oftentimes the protective structure is placed on public land rather than on the private property it is intended to protect, resulting in physical loss of beach area formerly available to the general public; the shoreline protection device may actually increase the rate of loss of beach due to wave deflection and/or scouring (this is site-specific and varies depending on local factors); shoreline protection devices cause visual impacts and can detract from a natural beach experience, adversely impacting public views; and, shoreline protection devices can lead to loss of ecosystem services, loss of habitat, and reduction in biodiversity compared to natural beaches. All of these impacts are likely to occur as a result of a shoreline protection device being constructed at this beach.

If the proposed project included a shoreline protective device, it likely could not be found consistent with Coastal Act policies. Only because the site specific hazards analysis provided by the applicant's coastal engineering consultant maintains that, even with expected future sea level rise, the proposed development is not expected to be threatened by coastal hazards and so is not expected to need shoreline protection over the life of the development, the project can be found to conform with the hazards policies of the Coastal Act. However, given the dynamic nature of coastal beaches, as well as staff's review of data indicating that the property could be impacted by sea level rise at some point in the future, it is important to make sure that the risks of developing on this beachfront lot or borne by the applicant who will benefit from the private development, and not the public.

To minimize the project's potential future impact on shoreline processes, as well as potential impacts to public access and public trust resources, the Commission imposes **Special Condition No. 1**, which prohibits construction of any future shoreline protective device(s) to protect the development approved pursuant to Coastal Development Permit No. 5-17-0773 including, but not limited to the residence and garage, foundations, patio and any other future improvements in

the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, flooding, sea level rise or other natural coastal hazards in the future. Although no shoreline protection is necessary, the proposed development is located in an area where coastal hazards exist and can adversely impact the development. Therefore, the Commission also imposes **Special Condition No. 2**, which requires the applicant to assume the risk of development.

Since coastal processes are dynamic and structural development may alter the natural environment, future development adjacent to the beach could adversely affect future shoreline conditions if not properly evaluated and potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. In order to ensure that development on the site does not occur which could potentially result in adverse impacts to coastal processes, the Commission imposes **Special Condition No. 3**, which informs the applicant that future development at the site requires an amendment to Coastal Development Permit No. 5-17-0773 or a new coastal development permit.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Section 30253 of the Coastal Act.

C. WATER QUALITY

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

Section 30232 of the Coastal Act states:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

Section 30230 of the Coastal Act requires that marine resources including biological productivity be protected. Section 30231 of the Coastal Act requires that the biological productivity of coastal waters be maintained, and where feasible, restored. Sections 30230 and 30231 require that the quality of coastal waters be maintained and protected from adverse impacts. Section 30232 of the Coastal Act requires protection against the spillage of crude oil, gas, petroleum products, or hazardous materials in relation to any development.

1. Construction Impacts to Water Quality

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species' ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources, the Commission imposes **Special Condition No. 4**, which outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. This condition requires the applicant to remove any and all debris resulting from construction activities within 24 hours of completion of the project. In addition, all construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

2. Post-Construction Impacts to Water Quality

The proposed project is considered development and there is an opportunity to improve water quality. Much of the pollutants entering the ocean come from land-based development. The Commission finds that it is necessary to minimize to the extent feasible within its jurisdiction the cumulative adverse impacts on water quality resulting from incremental increases in impervious surface associated with additional development. In order to deal with these post construction water quality impacts, the applicant has submitted a drainage and runoff control plan that minimizes impacts to water quality the proposed project may have after construction. On-site drainage will directed to permeable areas.

The applicant has stated that landscaping is proposed. The placement of any vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society (www.CNPS.org) in their publications. Furthermore, any plants in the landscape plan should only be drought tolerant to minimize the use of water (and preferably native to coastal Orange County). The term drought tolerant is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>.

The applicant has stated that landscaping will consist of California Native and water wise landscaping. While the proposed landscaping consists of non-invasive and drought tolerant

plants, future landscaping may not consists of such plants. Therefore in order to make sure that any onsite landscaping minimizes the use of water and the spread of invasive vegetation, the Commission imposes **Special Condition No. 5**, which imposes landscape controls that require that all vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30230, 30231 and 30232 of the Coastal Act.

D. PUBLIC ACCESS

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states:

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

Section 30212 of the Coastal Act states, in pertinent part:

*(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:[...]
(2) adequate access exists nearby, ...*

The project site is located along Seal Way, a beachfront public lateral accessway (walkway). The proposed project is consistent with the City's required setback from the seaward property line and walkway and is consistent with past Commission actions. The setback of residential development located along this walkway varies from zero feet to 14 feet between the house and the walkway with a majority of the balconies extending to the property line. However, setback or no setback, all development located along the accessway do not encroach into the walkway. As proposed, the residential development will not encroach into the walkway (the 1st floor livable area will be setback 11 feet to 14 feet from the walkway and the 2nd floor balcony will be built up to the walkway). In addition, the Commission has found through previous permit actions in this area that the City's setback in this area (setback or no setback) is acceptable for maintaining public access and is consistent with the pattern of development in the subject area. Vertical public access to the beach is available immediately east of the project site at the 11th Street, street end. The proposed development provides adequate parking based on the Commission's regularly used parking standard of two (2) parking spaces per individual dwelling unit.

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

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30210, 30211 and 30212 of the Coastal Act.

E. CONCENTRATION OF DEVELOPMENT AND DENSITY

Section 30250 of the Coastal Act states, in pertinent part:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Section 30253 of the Coastal Act states, in pertinent part:

New development shall do all of the following:

- (c) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (d) 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.*

...

- (d) Minimize energy consumption and vehicle miles travelled.*

Section 30604 of the Coastal Act states, in pertinent part:

Coastal development permit; issuance prior to certification of the local coastal program; finding that development in conformity with public access and public recreation policies; housing opportunities for low and moderate income persons

...

- (f) The commission shall encourage housing opportunities for persons of low and moderate income. In reviewing residential development applications for low- and moderate-income housing, as defined in paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code, the issuing agency or the commission,*

on appeal, may not require measures that reduce residential densities below the density sought by an applicant if the density sought is within the permitted density or range of density established by local zoning plus the additional density permitted under Section 65915 of the Government Code, unless the issuing agency or the commission on appeal makes a finding, based on substantial evidence in the record, that the density sought by the applicant cannot feasibly be accommodated on the site in a manner that is in conformity with Chapter 3 (commencing with Section 30200) or the certified local coastal program.

(g) The Legislature finds and declares that it is important for the commission to encourage the protection of existing and the provision of new affordable housing opportunities for persons of low and moderate income in the coastal zone.

Section 30250 of the Coastal Act requires that new development be located near existing developed areas able to accommodate new development, or near areas with public services and where there will not be significant cumulative adverse effects on coastal resources. Section 30253 of the Coastal Act states that new development shall minimize energy consumption and vehicle miles traveled. Section 30604 of the Coastal Act encourages the protection of existing and the provision of new affordable housing opportunities for low and moderate income in the Coastal Zone.

Since 1994 to the present, the Commission has approved twelve projects in Seal Beach involving the replacement of duplexes with single family residences. The proposed project is a similar type of project. However, the existing onsite structure is a duplex that does not comply with zoning regulations regarding lot size. The City of Seal Beach, which does not have a certified LCP, designates the subject site as Residential High Density (RHD-20) in its Zoning Code with a maximum development of 25 dwelling units/acre, or 1 unit per 2,178 square feet. The subject property has a lot size of 3,373 square feet, which allows one unit on the property by the City's zoning regulations. The lot is too small to accommodate a duplex; however, the site can accommodate 1 unit. Thus, the proposed project is consistent with the City's zoning regulations for the RHD-20 designation. Although this is not the standard of review for the Commission's review of the project, the fact that the site is only allowed one lot per the City's zoning regulations supports that the Commission's approval of the project would not reduce housing density because only one unit is permitted on the property per the City's zoning regulations.

As stated in the City's 2013-2021 Housing Element, the City examines any Coastal Zone development that entails demolition or conversion of residential units that are not categorically exempt from the California Environmental Quality Act (CEQA) as required under the California Government Code (§65588(d) pursuant to Section 65590 (The Mello Act)). The Mello Act is a statewide law which seeks to preserve housing for persons and families with low and moderate incomes in the Coastal Zone. The City of Seal Beach determined that the proposed development is a Ministerial Project and therefore since it was not considered categorically exempt, the City was required to analyze its compliance with the Mello Act. In its analysis, the City determined that while the property has two units, the second floor unit has not been occupied for well over a year. Under the Mello Act, a unit shall not be considered affordable if it has been unoccupied for more than 365 consecutive days. Therefore, the City determined that the second floor unit is not considered an affordable unit. Regarding the first floor, the City stated that since the owner has allowed friends to occupy the first floor unit, the property is generally maintained as owner

occupied and not as an affordable income property. Thus, the first floor unit is also not considered an affordable unit by the City. Therefore, the City determined that the existing duplex did not contain affordable units. However while the existing units are not considered affordable and the subject lot is too small to provide a second unit, the subject site is located in a dense residentially zoned area where numerous residential opportunities are available and amenities such as restaurants, convenience stores, grocery store, etc. are located within a maximum ½ a mile. In addition, the public beach is located adjacent to the public walkway fronting the subject site. Thus, the project is located in an area that can accommodate it and will not have cumulative adverse impacts to coastal resources. In addition, the location of the subject site within these nearby amenities minimizes vehicle miles traveled and energy consumption.

More broadly, planning for concentration of development and encouragement of affordable housing can be done through a City's Local Coastal Program, but is more difficult to do in a meaningful way on a project-by-project basis. Here, Seal Beach does not currently have a certified LCP. The Commission previously approved a Land Use Plan for Seal Beach with suggested modifications; however, the City of Seal Beach did not accept those changes and the Commission's approval of the LUP expired. The City has received a Commission grant for the development of an LCP, so this presents an opportunity to address affordable housing in the context of an LCP.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30250, 30253 and 30604 of the Coastal Act.

F. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition No. 6**, which requires the property owner record a deed restriction against the property, referencing all of the above special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

G. LOCAL COASTAL PROGRAM (LCP)

Section 30604 of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be issued if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program, which conforms with the Chapter 3 policies of the Coastal Act.

On July 28, 1983, the Commission denied the City of Seal Beach Land Use Plan (LUP) as submitted and certified it with suggested modifications. The City did not act on the suggested modifications within six months from the date of Commission action. Therefore, pursuant to Section 13537(b) of the California Code of Regulations, the Commission's certification of the

land use plan with suggested modifications expired. The LUP has not been resubmitted for certification since that time.

The proposed development is consistent with the Chapter Three policies of the Coastal Act. Therefore, the Commission finds that the proposed development would not prejudice the ability of the City to prepare a certified coastal program consistent with the Chapter 3 policies of the Coastal Act.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by findings showing the approval, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The Commission's regulatory program for reviewing and granting CDPs has been certified by the Resources Secretary to be the functional equivalent of CEQA. (14 CCR § 15251(c).)

In this case, the City of Seal Beach is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Seal Beach determined that the proposed development is a Ministerial Project. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the marine resources, water quality, hazards and public access policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A: SUBSTANTIVE FILE DOCUMENTS

Administrative Permit 5-92-124; Wave Runup and Coastal Hazards Analysis, 1017 Seal Way, Seal Beach, California prepared GeoSoils, Inc. dated September 18, 2017; Letter from Coast Geotechnical, Inc. to Edie Miller dated September 20, 2017; Letter from Commission staff to Ron Wikstrom dated October 25, 2017; and Letter from Group W Design to Commission staff received November 7, 2018.