

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071



# W10c

Filed: 2/22/18  
180th Day: 8/21/18  
Staff: F. Sy-LB  
Staff Report: 6/22/18  
Hearing Date: 7/11/18

## STAFF REPORT: CONSENT CALENDAR

**Application No.:** 5-17-0669

**Applicants:** Aimee Weisner and Tom Saeman

**Agent:** Otis Architecture, Attention: Karen Otis

**Location:** 402 Ocean Avenue, Seal Beach, (Orange County)

**Project Description:** Construction of a new 3,785 square foot single-family residence with a 468 square foot attached two car garage on a vacant beach front lot. The resultant structure would be three stories (basement with two floors above) on the beach side and two stories on the street side with an approximate maximum height of 32-feet high above finished grade. Grading will consist of 536 cubic yards of cut, 60 cubic yards of fill and 476 cubic yards of export to a location outside of the Coastal Zone.

**Staff Recommendation:** Approval with conditions

---

## SUMMARY OF STAFF RECOMMENDATION

Commission staff is recommending **APPROVAL** of construction of a new single-family residence on a vacant 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 concerns.

The proposed project is located in an area where coastal hazards exist and can adversely impact 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 in the future, given that the applicants are choosing to construct a home in a potentially hazardous location, the Commission imposes **Special Condition No. 1**, which requires the applicants to agree that no future shoreline protective device is necessary to protect the proposed development. The Commission also imposes **Special Condition No. 2**, requiring the applicants to assume the potential risk of injury and damage arising from coastal hazards that may threaten the development.

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. 3** outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris; and **Special Condition No. 4** 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. 5**, 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 major issues, conditions have been imposed in order to minimize potential adverse impacts from the development consistent with the Coastal Act.

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.

## TABLE OF CONTENTS

<b>I. MOTION AND RESOLUTION.....</b>	<b>4</b>
<b>II. STANDARD CONDITIONS .....</b>	<b>4</b>
<b>III. SPECIAL CONDITIONS.....</b>	<b>5</b>
<b>IV. FINDINGS AND DECLARATIONS.....</b>	<b>8</b>
<b>A. PROJECT DESCRIPTION, LOCATION AND STANDARD OF REVIEW .....</b>	<b>8</b>
<b>B. HAZARDS.....</b>	<b>12</b>
<b>C. PUBLIC ACCESS .....</b>	<b>12</b>
<b>D. WATER QUALITY .....</b>	<b>12</b>
<b>E. DEED RESTRICTION.....</b>	<b>13</b>
<b>F. LOCAL COASTAL PROGRAM (LCP).....</b>	<b>13</b>
<b>G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).....</b>	<b>13</b>

### 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](#)

[Exhibit No. 5 – Grading and Drainage Plan](#)

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission approve the Coastal Development Permit applications included on the consent calendar in accordance with the staff recommendations.*

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

### Resolution:

*The Commission hereby approves Coastal Development Permit Application No. 5-17-0669 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 permittees 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 permittees 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 applicants/landowners agree, on behalf of themselves and all successors and assigns, that no new shoreline protective device(s) shall be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-17-0699 including, but not limited to, the residence, garage, driveway, patio, foundation 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 applicants/landowners hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under applicable law.
- B. By acceptance of this permit, the applicants/landowners further agree, on behalf of themselves and all successors and assigns, that the landowners shall remove the development authorized by this permit including, but not limited to, the residence, garage, driveway, patio, or foundation, 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 permittees 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 permittees 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 applicants acknowledge and agree (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 applicants 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. Storage of Construction Materials, Mechanized Equipment and Removal of**

**Construction Debris.** The permittees 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 applicants 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.

- 4. 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.
- 5. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowners have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

## **IV. FINDINGS AND DECLARATIONS**

### **A. PROJECT DESCRIPTION, LOCATION AND STANDARD OF REVIEW**

The applicants propose to construct a new 3,785 square foot single-family residence with a 468 square foot attached two car garage on a vacant beach front lot. The resultant structure would be three stories consisting of a basement with two floors above (approximately 32-feet high above finished grade) on the beach side and two stories (approximately 22-feet high above finished grade) on the street side. Grading will consist of 536 cubic yards of cut, 60 cubic yards of fill and 476 cubic yards of export to a location outside of the Coastal Zone ([Exhibit No. 2-5](#)). The foundation system for the project will consist of footings and a mat slab.

The project site is a beach fronting lot located between the first public road and the sea at 402 Ocean Avenue within the City of Seal Beach, Orange County ([Exhibit No. 1](#)). The lot size is approximately 6,370 square feet and is currently zoned as Residential Low Density in the City of Seal Beach Zoning Code (not certified by the Commission). The proposed project is development within an existing urban residential area, located northwest of the Seal Beach Municipal Pier. Though the project site is in an urban residential area, it is located just inland of the beach and will be on a site which slopes upward as it goes inland.

The proposed residence would conform to the informal stringline established by an abandoned 10-foot wide right-of-way (alley). The abandoned alley runs between, and parallel to, Ocean Avenue and the beach. The abandoned alley extends across the middle of the lots located both north of the Seal Beach municipal pier and seaward of Ocean Avenue. The City has established the landward boundary of the abandoned alley as the development limit, or stringline, for seaward encroachment of enclosed living space and the seaward boundary of the abandoned alley as the limit, or stringline, for seaward encroachment of new patios or decks and the proposed development adheres to both of these development limits. Although the City's stringlines are not binding on the Commission, the Commission finds in this case that these living space and patio/deck stringlines establish appropriate limits of development for the proposed development.

There is an approximately 780-foot wide sandy beach between the project site and the Pacific Ocean. Although this is a wide beach, due to its oceanfront location, the project site may nevertheless be potentially exposed to the hazards 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 site has experienced minor, short term, erosion in the past where the shoreline has never eroded back within 300-feet of the site, but it is not experiencing a net long term erosion. 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, 402 Ocean Avenue, Seal Beach, California* prepared GeoSoils, Inc. dated October 2, 2017.

The analyses state that the historical highest ocean water elevation in this project area is +7.7 feet NAVD88. In addition, Ocean Avenue, the public street which fronts the project site, is at elevation +24.00 feet NAVD88 and the public beach at the rear of the project site is at elevation +13.00 NAVD88. The proposed lowest finished floor elevation of the proposed residence is +15.60 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 4.3 feet by the year 2092 (the end of the project's estimated 75 year design life). If there were to be a 4.3-foot rise (the upper range of the April 2017 COPC projections for southern California), an extreme high tide still water level of +12.0 feet NAVD88 (+7.7 feet NAVD88 + 4.3 feet = +12.00 feet NAVD88) could result. Such a rise would not exceed the finished first floor elevation, it would be expected to be below the proposed finished floor elevation by 3.60 feet during peak tide or tide and wave events.

Recently, in April 2018, the COPC updated their 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. This +13.00 NAVD88 would be 2.60 feet below the proposed finished floor elevation of +15.60 feet NAVD88.

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 150-centimeters (4.9 feet) of sea level rise. In addition, most of the surrounding area, all the way to Pacific Coast Highway, will flood with 1.00 meter (3.3 feet) of sea level rise. If there were to be a 4.9-foot rise, a likely high tide still water level of +12.6 feet NAVD88 (+7.7 feet NAVD88 +4.9 feet = +12.6 feet NAVD88) could result. This +12.60 NAVD88 would be 3.00 feet below the proposed finished floor elevation of +15.60 feet NAVD88.

Although the proposed finished floor elevations are higher than currently predicted sea level and flooding heights as discussed above, the foundation of the development located approximately at +13.00 NAVD88 could potentially be undermined by sea level rise and the site itself would still be potentially vulnerable to flooding and sea level rise since the project is located in an area where dynamic and unpredictable coastal hazards exist. In the future, these hazards could adversely impact the development and site should the existing predictions of flooding and sea level rise prove to be inaccurate. In an attempt to minimize risks to life and property from sea level rise-related flood hazards, the applicants have proposed installing temporary sand bags as an adaptation measure to deal with flooding on site.

The coastal hazards analysis for the site concludes that wave runup and overtopping will not significantly impact this development and 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 presence of the relatively wide beach will prevent waves from directly attacking the proposed development. Additionally, the report 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 hazards could adversely impact development should the existing predictions of flooding and sea level rise prove to be inaccurate.

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.

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 applicants' 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, can the project 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 should a shoreline protective device be constructed on this property, 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. 5-17-0669 including, but not limited to the residence, garage, driveway, patio, foundations 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 at this time or anticipated to be necessary in the future, the proposed development is nevertheless located in an area where dynamic and unpredictable coastal hazards exist that could adversely impact the development should existing predictions of flooding and sea level rise prove to be inaccurate. Therefore, the Commission also imposes **Special Condition No. 2**, which requires the applicants to assume the risk of development.

The proposed project constitutes new development and must be constructed in a manner that protects water quality. The applicants have submitted a drainage and runoff control plan that minimizes impacts to water quality the proposed project may have after construction. On-site drainage will be directed to infiltration trenches. Also, to minimize erosion and prevent debris from being dispersed down the storm drain system leading to the ocean during construction, the Commission imposes **Special Condition No. 3**, which provides construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris.

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](http://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 applicants have 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 consist 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. 4**, 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.

The proposed project will not have an adverse effect on public access. Vertical public access to the beach is available 43-feet east of the project site at the 4<sup>h</sup> 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.

In November 2014, the Commission previously approved Coastal Development Permit No. 5-14-0540 for the demolition of an existing single-family residence and subdivision of the lot into two parcels at the subject site. The subdivision resulted in two newly created lots: a corner lot (42.6 feet x 196 feet with 42.6-feet of frontage along Ocean Avenue, referenced as Parcel #1) and an interior lot (32.6 feet x 196 feet with 32.6-feet of frontage along Ocean Avenue, referenced as Parcel #2). The curb that fronts the subject property and runs along the beach side of Ocean

Avenue is a popular parking area used by the public to access the adjacent public beach. There are currently no curb cuts along the subject property that fronts Ocean Avenue; however a curb cut was anticipated with the development of the interior lot. Thus, measures were put into place to prevent the future loss of parking and reduction of public access. A condition was imposed on Coastal Development Permit No. 5-14-0540 that required that only a single new curb cut along Ocean Boulevard be created for this interior lot, with the width of that curb cut minimized such that public parking can still be provided to the maximum extent feasible. The interior lot (Parcel #2) is the subject lot of this permit application, CDP No. 5-17-0669. As proposed, the new curb cut (15-feet, 4-inches in length) has been designed so that public parking along the beach side of Ocean Boulevard has been provided to the maximum feasible.

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. 5**, which requires the property owner to record a deed restriction against the property, referencing all of the above special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the property.

## **B. HAZARDS**

Development adjacent to the ocean is inherently hazardous. Development which may require a protective device in the future cannot be allowed due to the adverse impacts such devices have upon, among other things, public access, visual resources and shoreline processes. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned to: require an appropriate set-back from the water; require a drainage and run-off control plan to direct, treat, and minimize the flow of water offsite; prohibit construction of protective devices (such as a seawall); and to require that the landowners and any successors-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development conforms to the requirements of the Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

## **C. PUBLIC ACCESS**

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. As conditioned, the Commission finds that the development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

## **D. WATER QUALITY**

The proposed development has a potential for a discharge of polluted run-off from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, reducing run-off through the use of permeable surfaces, the use of non-invasive drought tolerant vegetation to reduce and treat the run-off discharged from the site, and for the use of construction and post-construction best management practices to minimize the project's adverse impacts on coastal waters. As conditioned, the Commission finds that the development conforms with Sections 30230 and 30231 of the Coastal Act regarding the

protection of water quality to promote the biological productivity of coastal waters and to protect human health.

### **E. DEED RESTRICTION**

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes one additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, 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.

### **F. 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 that 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 3 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.

### **G. 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, meaning the project is exempt from the requirements of

CEQA. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the water quality, hazards and public access policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse impact that 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**

Coastal Development Permit No. 5-14-0540; City of Seal Beach Planning Department Approval-in-Concept dated July 6, 2017; Letter from Commission staff to the Otis Architecture dated September 5, 2017; Wave Runup and Coastal Hazards Analysis, 402 Ocean Avenue, Seal Beach, California prepared GeoSoils, Inc. dated October 2, 2017; Geotechnical Investigation Report, Custom Build Home at a Residential Lot, 402 Ocean Avenue, Seal Beach, CA 90740 (APN 199-144-01) prepared by ZA Engineering dated February 18, 2017; Letter from Commission staff to the Otis Architecture dated November 15, 2017; Letter from Otis Architecture to Commission staff received November 27, 2017; Letter from Commission staff to the Otis Architecture dated December 27, 2017; and Letter from Otis Architecture to Commission staff received February 7, 2018.