

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
301 Ocean Boulevard, Suite 300
Long Beach, CA 90802
(562) 590-5071



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STAFF REPORT: CONSENT CALENDAR

Application No.: 5-19-0272

Applicant: 3805 Seashore Drive, LLC

Agent: Brion Jeannette Architecture

Location: 3805 Seashore Drive, Newport Beach, (Orange County)
(APN: 423-325-05)

Project Description: Construct a 10-foot deep x 25-foot wide concrete patio with landscape planters and a perimeter wall approximately 3-feet high associated with a single-family residence within the City of Newport Beach encroachment area.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

The proposed project, consisting of installation of a patio and perimeter wall within the City of Newport Beach encroachment area, is located on the beach within the Commission's original permit jurisdiction. The standard of review for development within the Commission's original permit jurisdiction is Chapter 3 of the Coastal Act, although the City's certified Local Coastal Program (LCP) may provide guidance for development.

Commission staff is recommending **APPROVAL** of construction of the patio and perimeter wall associated with a residence on a beach fronting lot, with seven special conditions to ensure that the development is temporary, will not adversely affect coastal resources, and is subject to removal in the future if determined by an appropriate agency to be permanently unsafe for occupancy or use due to coastal hazards. 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. Given that the applicant is choosing to construct a home in a potentially hazardous location, staff recommends that the Commission impose **Special Condition 1**, which requires the applicant to acknowledge that the development approved by this permit is not entitled to shoreline protection, to waive any rights to shoreline protection that may exist under applicable law, and to remove the accessory development if it is determined to be permanently unsafe for occupancy or use due to coastal hazards. **Special Condition 2** would require the applicant 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 3** outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris; and **Special Condition 4** identifies the types of landscaping allowed on the project site, which are native plants or non-native drought tolerant plants that are non-invasive.

The project includes development in the public right-of-way, on land owned by the City of Newport Beach. Private improvements are allowed in the public right-of-way adjacent to the subject site (a paper street that was never developed between the private properties and the public beach) under a policy and mitigation program approved by the Commission in June 1991 and incorporated into the City's certified LCP. The City's certified LCP allows private patio encroachments up to 10-feet onto the Oceanfront right-of-way, owned by the City, in the area of the subject site only if they do not interfere with access to the beach or ocean, when a building permit is not required, and subject to payment of a mitigation fee. To ensure that the applicant is enrolled in the City's mitigation program and that no further encroachments occur without an approved amendment to this coastal development permit or approval of a new coastal development permit, **Special Condition 5** requires the applicant to submit evidence of enrollment in the City's encroachment program, including proof of their most recent annual payment, and that an amendment to this permit or a new coastal development permit must be obtained for any modifications to the encroachments described in this permit. Additionally, in order to clarify that the approved development is temporary, **Special Condition 6**, states that issuance of the coastal development permit does not restrict nor interfere with the City's right to revoke its encroachment permit, without cause, in order to construct public access and recreation improvements in the public right-of way.

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, **Special Condition 7** 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.

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APPENDICES

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EXHIBITS

Exhibit 1 – Location Maps

Exhibit 2 – Project Plans

I. MOTION AND RESOLUTION

Motion:

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

Staff recommends a **YES** vote. Passage of this motion will result in approval of all 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. 5-19-0272 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 applicant agrees, 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. 5-18-0972 including, but not limited to, the patio, perimeter wall, footings 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 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 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 patio, perimeter wall, or footings, if the City or any government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to coastal hazards and that there are no measures that could make the structures suitable for habitation or use without the use of a shoreline protective device. In addition, the boundary between public tidelands and private land may shift with rising seas, the structure(s) may eventually be located on public trust lands, and the development approval does not permit encroachment onto public trust land; any future encroachment must be removed unless the Coastal Commission determines that the encroachment is legally permissible pursuant to the Coastal Act and authorizes it to remain, and any future encroachment would also be subject to the State Lands Commission's (or other trustee agency's) leasing approval. 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 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. 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 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>). 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. **Deviation from Approved Encroachments.** The only encroachment into the 10-foot deep encroachment area within the City of Newport Beach Oceanfront public right-of-way allowed by this coastal development permit is a patio wall (no more than 3-feet high) around the perimeter of an at-grade 10-foot deep by 25-foot wide concrete patio. Any development in the public right of way, including improvements, repairs, and maintenance, cannot occur without an amendment to this coastal development permit or a new coastal development permit from the Coastal Commission, unless the Executive Director determines through written confirmation that no amendment or new permit is legally required.

PRIOR TO ISSUANCE OF THE PERMIT, the applicants shall submit evidence, for the review and approval of the Executive Director, that the permittee has obtained an encroachment permit from the City of Laguna Beach, as well as the permittee’s enrollment in the City’s public access impact mitigation program, including proof of the permittee’s most recent annual payment into the City’s mitigation program. The applicant and all successors and assigns must remain enrolled in the City’s public access impact mitigation payment program and make the recurring annual payment so long as the encroachments approved by this permit remains in place. If the City’s encroachment permit modifies the requirements of this permit, the applicant must obtain an amendment to the permit.

6. **City’s Right to Revoke Encroachment Permit.** Approval of this coastal development permit shall not restrict the City’s right and ability to revoke, without cause, the approved City encroachment permit in order to construct public access and recreation improvements within the public right of way or to provide additional sandy beach area.

7. **Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has executed and recorded against the parcel(s) located at 3805 Seashore Drive, Newport Beach (the “Applicant’s Property”), 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 City-owned property adjacent to the Applicant’s Property associated with and benefiting the Applicant’s Property subject to terms and conditions that restrict the use and enjoyment of the adjacent property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Applicant’s Property. The deed restriction shall include a legal description of the entire parcel or parcels of the Applicant’s Property 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 property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on, adjacent to, or with respect to the property.

IV. FINDINGS AND DECLARATIONS

A. PROJECT LOCATION, DESCRIPTION, AND STANDARD OF REVIEW

The project site is adjacent to a beach fronting parcel located at 3805 Seashore Drive within an existing developed residential area in the City of Newport Beach (Orange County), north of the Newport Beach Pier (**Exhibit 1.1**). An existing duplex is located on the landside portion of the project site within the City of Newport Beach's LCP permitting jurisdiction. Recently, on February 14, 2019, the City of Newport Beach Zoning Administrator approved Local Coastal Development Permit No. CD2018-115 for the demolition of the existing duplex and construction of a new single-family residence and associated accessory improvements on the applicant's property.

The proposed project includes the construction of a 10-foot deep by 25-foot wide concrete patio, landscape planters (bottomless gravel), and an approximately 3-foot high perimeter wall within the City's allowable 10-foot deep oceanfront encroachment area. Proposed grading includes 4 cubic yards cut and 4 cy fill for the perimeter wall's shallow footings (approx. 18 inches deep and 12 inches in diameter) which will be buried in sand, not embedded in bedrock (**Exhibit 2**)

The land where development is proposed is owned by the City (**Exhibit 1.2**) but the development pattern in the vicinity is similar to that proposed by the project – primarily patios, landscaping, and low walls extending ten feet onto the sandy beach in public right-of-way designated on assessor's parcel maps as Oceanfront Street or Oceanfront Walk (**Exhibit 1.3**). The portion of public right-of-way along the central part of the Balboa Peninsula is developed with a public walkway/bikeway (boardwalk). However, there is no paved beachfront public lateral access way in front of the subject site; only sandy beach. The boardwalk begins approximately 520 feet south of the subject site, at 36th Street. The proposed encroachment would contribute to the cumulative adverse impact on beach use resulting from the various existing encroachments on the public right-of-way in the area. In addition, if not constructed in a manner which minimizes impacts to the natural environment and if not designed to be easily removable, the proposed encroachments could make it difficult for the City to extend the boardwalk upcoast in the future.

The City of Newport Beach LCP was effectively certified on January 13, 2017. The standard of review for development within the Commission's original permit jurisdiction is Chapter 3 of the Coastal Act, although the City's certified LCP is advisory in nature and may provide guidance. In 1991, the Commission certified an amendment to the City of Newport Beach Land Use Plan (LUP). The LUP allowed for the approval of encroachments in the City-owned public right-of-way, while also acknowledging the adverse public access impacts that would result from encroachments on the sandy beach area in this area. This cumulative impact is addressed in the certified Land Use Plan by imposition of a mitigation plan. The mitigation plan requires an annual payment to be made to the City by encroaching homeowners which is applied to improving public access in Newport Beach. The City has constructed a number of public access improvements (including street end improvements which provide additional public parking spaces) using the encroachment funds. When it certified the LUP amendment allowing these encroachments, the Commission found that, if developed consistent with the mitigation plan, encroachments onto the City's Oceanfront public right-of-way would be consistent with the public access and recreation policies of Chapter 3 of the Coastal Act. The Commission certified the City of Newport Beach Implementation Plan (IP) in January 2017 which included the Oceanfront Encroachment Policy Guidelines as Appendix C of the certified LCP.

LUP Section 3.1.3, Beach Encroachments, includes general requirements and specific policies:

On June 11, 1991, the Coastal Commission approved the Oceanfront Encroachment Policy (Amendment No. 23), which established a policy and mitigation program relating to private improvements within the Oceanfront public right-of-way. The City Council finalized this policy with the adoption of Resolution No. 91-80 on July 11, 1991. This policy established conditions and restrictions on the nature and extent of these improvements and a mitigation program involving the reconstruction of 33 unimproved street ends between 36th Street and Summit Street to provide additional parking and improved public access. In 2002, the final five street ends were reconstructed. Pursuant to the mitigation program, a minimum of 85 percent of the encroachment fees will be used for the construction and maintenance of improvements which directly benefit the beachgoing public such as parking spaces, restrooms, vertical or lateral walkways along the beach and similar projects.

LUP Policy 3.1.3-1. Continue to maintain and improve the Oceanfront public right-of-way for public access purposes.

LUP Policy 3.1.3-2. Continue to restrict the nature and extent of improvements that may be installed over public rights of way on the oceanside of beachfront residences and to preserve the City's right to utilize oceanfront street easements for public projects.

LUP Policy 3.1.3-3. Limit the maximum oceanward extent of encroachments to the following encroachment zones:

- B. 52nd Street to 36th Street. A maximum of 10 feet oceanward of the rear (ocean facing) property line within the oceanward prolongation of the side property lines.*

LUP Policy 3.1.3-4. Limit encroachments within encroachment zones as follows:

- A. Prohibit any structural, electrical, plumbing or other improvements that require issuance of a building permit.*
- B. Prohibit pressurized irrigation lines and valves.*
- C. Prohibit any object that exceeds 36 inches in height, with the exception of landscaping.*
- D. Prohibit any encroachments that impact public access, recreation, views and/or coastal resources.*
- E. Require landscaping to be designed and maintained to avoid impacts to public access and views.*
- F. Restrict landscaping in dune habitat areas to native vegetation.*

LUP Policy 3.1.3-5. Require annual renewal of encroachment permits and a fee.

LUP Policy 3.1.3-6. Require encroachment permits to specify that the property owner waives and gives up any right to contest the validity of the oceanfront street easement, and that the encroachment permit is revocable, without cause,

The proposed encroachments at the subject site are consistent with the certified LCP oceanfront encroachment policies and with previous Commission-approved encroachments adjacent to other properties in the 52nd Street to 36th Street encroachment zone in the vicinity of the project site. The Commission's findings supporting certification of LUP Amendment 90-1 address the encroachment policy's consistency with Chapter 3 of the Coastal Act and are incorporated herein by reference. Specifically, the Commission found encroachments could be permitted in this area because of the presence of the wide sandy beach, lack of beach habitat (e.g. dunes), and the public amenities the City pledged to invest in and improve with encroachment permit fees and other City funds. The City is continuing to carry out the public access improvements required by the LCP mitigation plan to offset any adverse impacts of the encroachments.

In order to assure that the encroachments are consistent with the City's certified LCP, as well as the public access policies of the Coastal Act, evidence must be submitted that the applicant has enrolled in the City's annual mitigation payment program and is actively participating in it. The applicant has indicated that they have a pending encroachment permit application with the City and that the City will finalize the encroachment permit once a Commission-issued coastal development permit has been issued. Therefore, the Commission imposes **Special Condition 5**, which requires the applicant to submit evidence of the City's issuance of an encroachment permit for the proposed development on City-owned property, as well as enrollment into the City's program including proof of their most recent annual payment. The applicant and any successors in interest must remain enrolled in the mitigation program and make the annual recurring payment to the City so long as the encroachment remains in place. If the City's encroachment permit modifies the requirements of this permit, the applicant must obtain an amendment to the permit.

Section 13250(b)(1) of the California Code of Regulations provides that development such as the proposed encroachments are not exempt from obtaining a coastal development permit pursuant to Coastal Act Section 30610(a), because such development would be located on the beach. To ensure that no further encroachments occur without a permit, the Commission imposes Special Condition 5 which requires that an amendment to this permit or a new coastal development permit be obtained for any deviations to the encroachments described in this permit. This would allow the Commission to evaluate future encroachment deviations for adverse public access and recreation impacts.

B. HAZARDS

There is a wide sandy beach, approximately 375 feet wide, 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.

Sea-level has been rising for many years. Several different approaches have been used to analyze the global tide gauge records in order to assess the spatial and temporal variations, and these efforts have yielded sea-level rise rates ranging from about 1.2 mm/year to 1.7 mm/year (about 0.5 to 0.7 inches/decade) for the 20th century, but since 1990 the rate has more than doubled, and the rate of sea-level rise continues to accelerate. Since the advent of satellite altimetry in 1993, measurements of absolute sea-level from space indicate an average global rate of sea-level rise of 3.4 mm/year or 1.3 inches/decade – more than twice the average rate over the 20th century and

greater than any time over the past one thousand years. Recent observations of sea-level along parts of the California coast have shown some anomalous trends; however, there is unequivocal evidence that the climate is warming, and such warming is expected to cause sea-levels to rise at an accelerating rate throughout this century.

The State of California has undertaken significant research to understand how much sea-level rise to expect over this century and to anticipate the likely impacts of such sea-level rise. On November 7, 2018, the Commission adopted a science update to its Sea-Level Rise Policy Guidance. This document provides interpretive guidelines to ensure that projects are designed and built in a way that minimizes sea-level rise risks to the development and avoids related impacts to coastal resources, consistent with Coastal Act Section 30253. These guidelines state, “to comply with Coastal Act Section 30253 or the equivalent LCP section, projects will need to be planned, located, designed, and engineered for the changing water levels and associated impacts that might occur over the life of the development.” The most recent projections in the statewide sea-level rise guidance indicate that sea levels in this area may rise between 5.5 and 6.8 ft. by the year 2100, though there is a risk of much more significant sea-level rise depending on various uncertainties, including the dynamics of ice sheet loss. The projection is given in a range largely because researchers cannot know exactly how much greenhouse gases we will continue to emit over the coming decades – large-scale curtailment of greenhouse gas emissions would keep sea-level rise towards the lower end of the projections, while business as usual emissions scenarios would result in the higher end of the projections. Because the world has continued along the “business as usual” scenario (and data suggests temperatures and sea-level rise are tracking along the higher projections), the Ocean Protection Council and the Natural Resources Agency have continued to recommend that we avoid relying on the lower projections in planning and decision-making processes.

Site-Specific Evaluation

In order to evaluate whether the proposed development would be consistent with Coastal Act Section 30253’s requirement and the Newport Beach LCP policies to minimize hazards, the applicant provided Coastal Hazard Report and Wave Runup Study (GeoSoils Inc; January 25, 2019). The study primarily focuses on potential hazards that may impact the single family home approved by City of Newport Beach CDP2018-115. Additionally, the study appears to reference low and medium risk SLR scenarios, rather than the medium-high risk scenario recommended for residential development by the Commission’s SLR Policy Guidance. The study indicates: “the likely range of sea level rise projection for year 2100 (exceeding 75 year life of structure) is projected between 1.3 and 3.2 feet, resulting in a future water elevation of between 9.0 feet and 10.9 feet based on the North American Vertical Datum of 1988 (NAVD88). The finish floor elevation of the proposed dwelling is 12.33 feet NAVD88, which exceeds the minimum 9.0 -foot (NAVD88) elevation standard for new structures and is approximately 1.4 feet above the 10.9 - foot future sea level rise projection.”

The preceding analysis is not consistent with the Commission’s SLR Policy Guidance for residential structures; however, that development is not before the Commission in the subject CDP application. The development before the Commission may be informed by the findings in the applicant’s Coastal Hazard Report and Wave Runup Study: “The site is greater than 375 feet from the shoreline. Using a conservative analysis of shoreline erosion, the shoreline would retreat 150 feet over the 75 -year life of the development, resulting in a distance of

approximately 225 feet between the site and the shoreline. This is recognized as a safe distance to protect the site from extreme events. Applying a more conservative 5.1 -foot sea level rise projection, wave bore would travel approximately 130 feet from the shoreline before it dissipates; therefore, the overtopping of waves over the next 75 years most likely will not reach the subject site, even under extreme conditions.”

The applicant’s consultant also noted in the City application that the three foot high perimeter wall proposed by the subject development in the encroachment area may prevent the site from flooding. This may be the case in instances of extreme rain events of a 100 year storm that causes low lying areas of the beach to flood, but the wall is not designed to act as a shoreline protective device that would deflect waves. It is proposed to be buried approximately 18 inches in the sandy beach, and can be easily removed in case it is damaged or the City revokes the encroachment permit.

The finished surface elevation of the proposed patio within the Commission’s jurisdiction is 12.97 feet NAVD88; the applicant’s Coastal Hazard Report and Wave Runup Study finds that the subject site will not be impacted by coastal hazards. However, the 2018 OPC State Sea Level Rise Guidance and 2018 Coastal Commission Sea Level Rise Policy Guidance, which contain the current best available science on sea level rise, provide that proposals for residential structures, such as the proposed development, should use the sea level rise projections associated with Medium-High risk aversion, which is 6.7 feet of sea level rise by the year 2100 and about 6 feet by the year 2095. These SLR scenarios are higher than the consultant’s 4.1-foot scenario.

Based on CoSMoS modeling, the site will begin to become threatened with about 4.1 feet of SLR and no storm event - or with 2.5 feet of SLR with a 100 year storm. SLR medium-high risk aversion projections for the Los Angeles tide gauge indicated that 4.1 feet of SLR is expected to occur sometime between the years 2070 and 2080, and 2.5 feet of sea level rise is expected to occur by approximately year 2060. Thus, applying the best available science standard, the proposed development may be threatened prior to the end of its expected 75 year life, as soon as 2060. In addition, the updated Rising Seas science report and OPC Guidance also recognize the possibility of an extreme scenario (termed the “H++” scenario) of 9.9 feet of sea level rise by 2100 associated with possible future rapid ice sheet loss. Under this H++ scenario, the site would be impacted even sooner.

Because the best available science indicates the proposed development may be threatened by coastal hazards as a result of sea level rise before the end of its 75 year life, under section 30253, the Commission may not approve the project unless it finds: 1) the project does not create or significantly contribute to erosion, geological instability, or destruction of the site or surrounding area (section 30253(b)), 2) the project assures stability and structural integrity (section 30253(b)), and 3) the project minimizes “risks to life and property” in areas of high flood hazard (section 30253(a)).

No Shoreline Protection

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.

As discussed above, an important concern under section 30253 is the potential need for shoreline protection to protect against coastal hazards related to sea level rise, because shoreline protective devices typically conflict with section 30253(b)'s prohibition on new development that either creates or contributes significantly to erosion or destruction of a site. Here, the applicant has not proposed to construct a shoreline protection device and no shoreline protection would be authorized by this permit; however, the applicant or a successor-in-interest, could request a shoreline protection device at some point in the future.

Pursuant to the City approved CDP for the single family home and LCP Implementation Plan Section 21.30.030(C)(3)(i)(iv), the property owner will be required to enter into an agreement with the City waiving any potential right to protection to address situations in the future in which the development is threatened with damage or destruction by coastal hazards (e.g., waves, erosion, and sea level rise). The property owner will also be required to acknowledge any hazards present at the site and unconditionally waive any claim to damage or liability against the decision authority, consistent with Section 21.30.015(D)(3)(c). Both requirements are included as conditions of approval that will need to be satisfied prior to the issuance of building permits for construction of the home.

Because of the numerous adverse impacts to coastal resources caused by shoreline protective devices (discussed above), which are relevant to this project, to comply with section 30253's prohibition on creating or significantly contributing to erosion and destruction of the site, it must be clear that, as *new* development, the entire development recognized and approved by this permit is not entitled to a shoreline protection device now or in the future. Therefore, **Special Condition 1** prohibits construction of any future shoreline protective device(s) to protect the development approved pursuant to Coastal Development Permit No. 5-19-0272 including the patio, perimeter wall, footings, 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 coastal hazards in the future, and requiring the applicant to waive any rights to shoreline protection that may exist under the law.

Removal if Development is Threatened

Given that coastal hazards may impact the proposed development before the end of its economic life as a result of sea level rise, the Commission must also find that the project assures stability and structural integrity and minimizes "risks to life and property" in an area of high flood hazard without a shoreline protective device. Section 30253 does not prohibit development in a potentially hazardous area; rather, an applicant must demonstrate that risks to life and property

are minimized. Here, it is important to note that the site is not currently threatened by coastal hazards and is unlikely to be for many years, and has been designed to be stable and structurally sound under current conditions.

However, as discussed, the best available science indicates that sea level rise is occurring and coastal hazards may threaten the project site to some extent before the end of its economic life, although there are uncertainties inherent in predicting exactly how and when the impacts discussed above will occur. Due to increasing coastal hazards in this area, the patio, perimeter wall, and footings in the encroachment area may become threatened or damaged, and a shoreline protective device would not be an option for protecting the structure from coastal hazards. If, however, the proposed development were to be removed if threatened, rather than protected by a shoreline protection device, the proposed development may be found to be consistent with the Coastal Act hazards policies, because the structurally unsound or unsafe development would be removed, minimizing risks to property and life.

Therefore, **Special Condition 1** requires the applicant to remove the proposed development if the City or any government agency with legal jurisdiction determines that the structures are currently and permanently unsafe for occupancy or use due to coastal hazards and that there are no measures that could make the structures suitable for habitation or use without the use of a shoreline protective device. In addition, the boundary between public tidelands and private land may shift with rising seas, the structure(s) may eventually be located on public trust lands, and the development approval does not permit encroachment onto public trust land; any future encroachment must be removed unless the Coastal Commission determines that the encroachment is legally permissible pursuant to the Coastal Act and authorizes it to remain, and any future encroachment would also be subject to the State Lands Commission's (or other trustee agency's) leasing approval. 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.

The proposed development is 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 accurate. Therefore, the Commission also imposes **Special Condition 2**, which requires the applicant to assume the risks of development.

Hazards Conclusion

The proposed development, as conditioned, can be found to be consistent with Section 30253 of the Coastal Act, which requires that risks to life and property be minimized, that stability and structural integrity are assured, and that proposed development neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area. Approval of the project, as conditioned, also is consistent with the Commission's obligation to manage and protect public trust resources.

C. DEVELOPMENT

The development is located within an existing developed area and is compatible with the current character and scale of the surrounding area (small beach encroachments subject to the City's encroachment program). However, the proposed project raises concerns that future development of the project site potentially may result in a development which is not consistent with the

Chapter 3 policies of the Coastal Act. To assure that future development within the encroachment area is consistent with the Chapter 3 policies of the Coastal Act, the Commission imposes **Special Condition 5** requiring a permit for any new development in the encroachment area. As conditioned, the development conforms with the Chapter 3 policies of the Coastal Act.

D. PUBLIC ACCESS

Public access is not available through the site. However, vertical public access to the beach is available 60-feet south of the project site at the 38th Street street end. There is currently no lateral access in front of the site (e.g. an ocean front boardwalk); however, such a feature may be developed by the landowner, which is the City of Newport Beach, in the future. As a condition of the City's approval of an encroachment permit, the permittee must sign an encroachment agreement in which the permittee waives his or her right to contest the ability of the City to remove the encroachments in order to build public access improvements within the public right of way. Thus the Commission imposes **Special Condition 6**, which states that issuance of the subject permit does not restrict nor interfere with the City's right to revoke its encroachment permit, without cause, in order to construct public access and recreation improvements in the public right-of way or to expand the sandy beach area. This would ensure future opportunities for public access and recreation. As conditioned, 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 Section 30252 of the Coastal Act.

E. 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. Consistent with **Special Condition 3** and **Special Condition 4**, 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.

F. DEED RESTRICTION

To ensure that any prospective future owners of 3805 Seashore Drive, Newport Beach, are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition 7** requiring that the property owner record a deed restriction against the property located at 3805 Seashore Drive, Newport Beach, 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 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)

On January 13, 2017, the City of Newport Beach Local Coastal Program (LCP) was effectively certified. Development proposed bayward of the property line is located within the Commission's jurisdiction and consequently, the standard of review is Chapter 3 of the Coastal Act and the certified LCP serves as guidance. As conditioned, the proposed development within the Commission's original jurisdiction is consistent with Chapter 3 of the Coastal Act.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City of Newport Beach is the lead agency responsible for certifying that the proposed project is in conformance with the California Environmentally Quality Act (CEQA). The City determined that in accordance with CEQA, the project is ministerial or categorically exempt (CEQA Guidelines Sections 15268) on March 19, 2019. Section 13096(a) of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of CEQA.

Although the proposed development is categorically exempt from CEQA, the Commission has imposed conditions to ensure conformity with Coastal Act requirements. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and consistent with the requirements of the Coastal Act and CEQA.

APPENDIX A: Substantive File Documents

City of Newport Beach Local Coastal Development Permit No. CD2018-115; City of Newport Beach Planning Department Approval-in-Concept dated March 19, 2019; Letter from Commission staff to Brion Jeannette Architecture dated May 2, 2019; and Letter from Brion Jeannette Architecture to Commission staff dated May 10, 2019.